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Foreword

Diversity is an issue of great importance, as is increasingly apparent to every citizen. It is even more so for someone who has been involved in politics for decades, as I have. In all my years of intense activity as Federal Minister and President of the German Federal Parliament, in my various academic pursuits, and also in the context of my missions for the OSCE and the UN Global Commission on International Migration and especially recently in my capacity as Chair of the EU High-Level Expert Group for Integration of Ethnic Minorities, I have always maintained that minorities and the way we perceive them are a critical challenge for European societies.

The issue of "diversity" comprises the phenomenon of migration as well as the minorities that have traditionally resided within current EU territory, of which there are well over a hundred. Moreover, European diversity also pertains to indigenous peoples like the Sami and involves the social inclusion of groups that differ from the majority in other ways, such as their sexual orientation. In short, diversity is a multifaceted topic, complex and thus elusive. Nonetheless, the two authors of this book have successfully treated the subject in concise, comprehensible language in order to reach a wide audience. Using a keyword-based format, it presents the various concepts of the European minority debate alphabetically, from A for

"Autonomies" to Z for "Zero Tolerance". Each abstract concept is illustrated with concrete case studies. Summaries and mnemonic devices are provided for the reader at key points in each chapter, offering a reading experience that is informative and compelling for each and every reader.

The expert authors succeed in highlighting the complexity of Europe's diversity while at the same time cutting through the European debate, which should be helpful in accommodating diversity within unity.

I wish you a rewarding reading experience!

Dr. Rita Süssmuth

Preface

This book is called ABC and it is an ABC, nothing more, and nothing less. As such, it has 26 entries and is organised in a modular fashion, making it a quick read. It is not exhaustive, but stimulating, not academic in depth, but connective in width. The entries cover various topics pertaining to minority protection in Europe with special attention devoted to the traditional, or so-called "national" minorities, while immigrants, indigenous peoples, homosexuals and transsexuals, as well as linguistic and religious minorities are also part of the discourse. The many cross-references placed within parentheses (→ keyword) highlight the connections, making the big picture visible.

The book was first published in German by Böhlau in 2010. In 2011 around 200 persons joined us at the official presentation of the book in the Austrian Parliament and since then we have received a lot of positive feedback. Martha Stocker, Vice President of the Federal Union of European Nationalities (FUEN) even went so far as to say "this small book is big enough to be read by as many persons as possible - we have to make it available in English!".

Eighteen months later we want to express our gratitude for this friendly reception and table an English translation of the book. This

was made possible due to the commitment of the Autonomous Region Trentino-Südtirol. This English version has been largely updated to May 2012. We hope the English version will also find an interested readership sharing with us the curiosity to understand how we can preserve both unity and diversity in today's European societies. The views we express here are purely personal and can in no way be attributed to our respective employers.

Gabriel N. Toggenburg
and Günther Rautz

Vienna and Bozen/Bolzano, May 2012

Autonomies: Europe's Prime Examples

Autonomy is a kind of magic word, suggestive of harmony. Regarding minorities, there is a distinction between territorial and cultural autonomy. Cultural autonomy includes the protection and promotion of languages, religions and traditions of minorities that are dispersed rather than residing within a compact, territorially-defined area. Cultural autonomy allows a religious or ethnic community to independently organise its politico-cultural life through specially selected bodies of self-government. Territorial autonomy, on the other hand, applies to a minority residing in its traditional territorial area, which in addition to self-administration provides a limited amount of legislative power over the respective territory. This status grants the minority the right to govern its own affairs in its region, where it usually constitutes the majority, (so-called "internal self-determination"). It must, however, be stressed that no full sovereignty is associated with a territorial autonomy. Ideally, such an autonomous regime is secured in the national constitution, so that it cannot be revoked by simple legislation. In contrast to cultural autonomy (which has been introduced in only a few European countries such as Estonia, Slovenia and particularly in Hungary in the form of self-government corporations), there are a variety of functioning territorial autonomies in Europe - most of them the result of lengthy negotiations following militant confrontations.

The Åland Islands and South Tyrol - Europe's Flagships of Autonomy

Territorial autonomy was first introduced on the Åland Islands, in Finland. The archipelago, located between Finland and Sweden, now has approximately 27,000 Swedish-speaking Åland inhabitants (→ What is a "Minority"?). After the fall of czarist Russia in 1917, Åland was denied the right to self-determination when the archipel-

ago was annexed by the newly-formed nation of Finland, which rejected Åland's wish for reunification with Sweden. The compromise provided by the League of Nations stipulated that Finland grant Åland self-government backed by extensive protection measures as well as a neutral, demilitarized status. Following the Second World War, the autonomy was significantly reformed in 1951, and again in 1991. In addition to previously existing special rights restricting land purchases and commercial activities by non-Ålanders, 1951 saw the creation of a regional citizenship as well as Åland's own flag and postage stamps as "national" symbols. With the 1991 reform, additional powers were transferred from the national level to Åland, and sufficient knowledge of the Swedish language was made a prerequisite for regional citizenship acquisition.

Swedish is the official language of the Åland Islands, and the sole language of instruction in public schools. Documents and other official acts by Helsinki must be translated into Swedish. The small number of Ålanders who speak Finnish as their mother tongue (5% of the population) are allowed to use Finnish in court, as well as in all correspondence with the public administration. Regional citizenship is required for the exercise of political rights, such as the active and passive voting rights. The islands have their own legislative assembly and a regional government. Their territory is a distinct constituency for election to the Finnish Parliament, with a deputy in the national parliament in Helsinki assuring its representation at the national level (→ Participation). Laws adopted by the regional legislative assembly may only be revoked in two cases: by the Finnish president's veto in the case of an overstepping of its granted legislative powers or for reasons related to Finland's domestic or foreign security. After the 1991 reform and the related transfer of powers, today only the areas of foreign policy, customs and monetary policy, judicial and insurance matters, shipping and aviation routes, constitutional, criminal, civil and tax law remain under control of the Finnish state. All remaining competencies fall to the islands' autonomous authority.

Despite Finland's foreign policy competence, since 1975 the Åland Islands have been a member of the Nordic Council, in which all the Nordic countries and autonomous regions of Denmark are represented (→ Indigenous Peoples). At the EU level, the Åland Islands are represented in the Committee of the Regions (→ Organisations) and enjoy exceptions such as exemption from the customs union (based upon an additional protocol of Finland's 1995 accession to the EU).

Südtirol (South Tyrol) enjoys a similar degree of autonomy today, which had been a territory of the Habsburg Empire for centuries before being ceded to Italy in 1919 with no regard for its right to self-determination. Before the First World War, 93 percent of the South Tyrolean population were German (and just 4% Ladin and 3% Italian). This ratio was actively altered through massive fascist repression under Mussolini: Today, the 500,000 inhabitants of the Province of Bolzano comprise 70 percent German speakers, 26 percent Italian speakers and 4 percent speaking Ladin (one of the Raeto-Romance languages). This reflects years of assimilation through the prohibition of German language schools and the Italianisation of family names as well as the so-called "option" program, under which German-speaking individuals were forced to choose between remaining in their homeland and accepting complete Italianisation or being settled somewhere in the territory of the Third Reich (→ Zero Tolerance). The tide slowly began to turn in 1946 with the signing of the Gruber-De Gasperi Agreement. These guidelines solidified South Tyrolean autonomy under international law (→ Transnational Cooperation).

The blatant non-implementation of the 1948 "First Autonomy Statute" was met with demonstrations and bombings in the 50s and 60s. South Tyrol came to the world's attention. When the conflict between the South Tyroleans and the Italian authorities escalated to the point of fatalities on both sides, in 1959 the United Nations addressed the South Tyrol question. Only after this second international intervention was the so-called "Paket" prepared: a package of measures prepared by a mixed commission of Italians and South

Tyroleans: the 1972 "Second Autonomy Statute". Following a 20-year implementation phase, in 1992 Austria and Italy officially declared the dispute settled before the United Nations. The still-standing autonomy statute primarily protects the German and Ladin-speaking minority, but as a genuine territorial autonomy, it is also of benefit to all of South Tyrol's language groups.

Unlike the Åland Islands, proportional representation is provided in the public sector for all three South Tyrolean language groups (→ Quota and Proportional Systems). Introduced in 1972, this "quota system" was intended to curb the glaring dominance of the Italian population in public service: Public positions and various social and financial benefits are distributed proportionally amongst the language groups. For this purpose, individual membership in one of the groups is based upon a declaration made in the census (→ Uncounted). As for the school system, the smaller Ladin group follows a different model than the two major language groups (→ Education). This parity-based model assures Ladin-speaking children equal hours of instruction in the Italian and German languages. On the other hand, pupils of German or Italian mother tongue attend separate schools and have only a few hours of instruction per week in each other's mother tongues. Due to a lack of second-language proficiency upon matriculation, this school model has drawn criticism from the population for its divisive potential. Since both German and Italian are official languages, a full-fledged bilingual (and in the Ladin valleys, trilingual) administrative system had to be developed. The requirement of bilingual language competence in the public sector is assured by the requirement of a bilingualism assessment test, the so-called "patentino".

As in the case of Finland, only a few competences are left to the central state: defence and foreign policy, internal security, monetary and fiscal policy and civil and criminal law. Unlike Finland, however, the central government in Rome (since a 2001 constitutional amendment) lacks the power to veto South Tyrolean provincial legislative acts. Such action requires a case before the

Constitutional Court, which has the power to resolve such disagreements legally.

Comparing these two oft-cited success stories in autonomy, South Tyrol stands out as an example of successful conflict resolution and the peaceful co-existence of different language groups. Its territorial autonomy both protects and promotes the Ladin- and German-speaking minorities as well as the Italian-speaking population, which has engendered a strong local identity even among Italians. In contrast, the Åland Islands extensive protection provisions have led to an almost exclusively Swedish regional identity. Both regions have assembled the necessary ingredients for what appears to be a "secret recipe" of success: a comprehensive legal framework governs everyday life and depoliticises delicate questions of partitioning, prosperity that owes to generous national tax refunds as well as efficient local government, a broad political consensus for active autonomy at the local level, the long stretches of autonomy-friendly governments in Helsinki and Rome, the involvement of international organisations like the League of Nations and the UN, the protective influences of Sweden and Austria, and eventually the European integration process, which connects regions and states, making independence movements appear increasingly anachronistic and dysfunctional.

Spain - A Balancing Act of Autonomy and Independence

When the Franco regime ended in 1975, a process of regionalisation began in Spain, which by 1983 had given rise to seventeen autonomous communities with differently graded systems of autonomy. The most extensive of these (Catalonia, Galicia and the Basque Country) have an ethno-national basis. Increasing identification of citizens with their regions, especially the aforementioned "historic" nations of Catalonia, Galicia and the Basque Country has also provided a boost to separatist tendencies. While economically fit Catalonia has secured and expanded its autonomy within Spain,

in the last 45 years over a thousand people have lost their lives in the ETA's struggle for Basque independence.

The historic Basque Country comprises the three provinces of the present-day Basque Autonomous Community, part of Navarra, and the Northern Basque Country, which belongs to France. Because of high immigration during the Franco regime, only a third of the autonomous community's two million inhabitants possess Basque roots and corresponding language competency. Despite the active suppression of the Basque language, the Basque Country possesses the most extensive autonomous powers of any region in Europe. Besides full responsibility for domestic security exercised by its own Basque police force, the Basque country holds the power of taxation. The proportion of tax revenue to be delivered to the central government is negotiated annually with Madrid. In contrast, Spain is responsible only for defence and foreign policy, citizenship and visa matters, customs and telecommunications, and monetary policy. A far-reaching autonomy statute adopted by the Basque Regional Assembly would have provided for the right to self-determination and international representation of the Basque Country, but was rejected by the Spanish Parliament in 2005.

The quest for a Basque state and the right to self-determination are in conflict with the Spanish Constitution's principle of national unity. Accordingly, Basque society is divided between those in favour of an even greater degree of autonomy, those who oppose autonomy altogether, and supporters of immediate independence. The latter rely on other recent European examples, such as Kosovo or Montenegro - both newly independent States with even smaller populations than the Basque Country. Even among the younger population (which is beginning to rediscover the value of Basque cultural associations, religious organizations, and sport clubs) autonomy is widely seen as a transitional phase. The nearly insoluble dilemma for the Basques is that neither maintaining the status quo nor expanding autonomy within Spain is sufficient to stabilize the situation. At the same time, the establishment of a regional citizenship or a voluntary association with Spain (as provided for in

the rejected autonomy statute) would pose Madrid with the risk of other autonomous communities following suit. The much-feared "domino effect" of statehood is thus not only relevant to the Balkans, but also to some EU Member States.

Greenland and the Faroe Islands - On the road to statehood

Greenland and the Faroe Islands enjoy a very extensive territorial autonomy within Denmark. The special status of Greenland is characterized by its geographic location and the way of life of the Inuit (→ Indigenous Peoples), who account for the majority of the 56,000 inhabitants. In addition to broad autonomy provisions and the customary law of the Inuit, Greenland has the right to negotiate agreements with other countries and to be a member of international organizations (such as the Nordic Council). Its three largest political parties cover the entire spectrum - from maintaining the current autonomy, developing autonomy in the context of national unity with Denmark, to complete independence from Copenhagen. In 2008, an overwhelming majority of Greenlanders voted to expand autonomy, and leading politicians aspire to independence only in the medium- to long- term. Independent statehood is only realistic with economic independence, which is at least 20-30 years away, as Greenland is currently dependent upon economic assistance from Denmark in the amount of 375 million U.S. dollars annually.

After a referendum for independence in 1946, Denmark granted the Faroe Islands' 45,000 inhabitants to govern all local affairs including taxation, foreign policy, trade and fisheries, as well as the right to issue their own passports. Like Greenland, the Faroe Islands are exempt from Denmark's membership in the EU, but nonetheless maintain bilateral trade agreements with the EU and individual member states. Complete sovereignty remains unfeasible because of significant financial contributions from Denmark, illustrating that the political question of internal self-government (autonomy) versus external self-determination (independence) is determined to a significant degree by economic factors.

As a rule, autonomies develop on the basis of particular ethnic, linguistic or religious characteristics. They are usually the result of periods of conflict and lengthy negotiations leading to a compromise. One thing that all autonomies have in common is the widest possible independence in legislation and administration.

Among Europe's regions with differently-configured territorial autonomies are the five autonomous regions of Italy, Spain's 17 autonomous communities, Scotland, Wales and Northern Ireland (Great Britain), the Åland Islands in Finland, Greenland and the Faroe Islands (Denmark), Belgium's German Community, the Azores and Madeira (Portugal), the Crimea in Ukraine and Gagauzia in Moldova, as well as the overseas territories of France (New Caledonia, French Polynesia) and the Netherlands (Dutch Antilles, Aruba). In November 2009, the autonomy of Vojvodina (which had been repealed in 1989 under Slobodan Milošević) was also re-introduced by the Serbian Parliament.

Territorial Autonomy offers extensive separation of powers and transfer of competencies. These aspects have great potential for conflict resolution and also play a role in Europe's current trend of federalisation. Cultural autonomy may present an alternative approach for achieving self-government, especially for those minority groups that are not settled in one concentrated area.

Business and Economic Crises: The Social Integration of Minorities

It is said that man is a political animal, yet as life in all its facets becomes clear, the economic dimension of human existence can hardly be underestimated. In the discourse on minorities, the focus thus far has been primarily on the question of how to ensure their *political* participation in society (→ Participation). However, of no less importance is the question of how to bring minorities into society's economic cycle. In fact, the Council of Europe's Framework Convention for the Protection of National Minorities (→ Organisations) recognises this fact, and requires that each state fosters "in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority" (Article 4). They must thus create the necessary conditions to enable minority participation "in cultural, social and economic life" (Article 15). Of course, participation in social life is more difficult to measure than in political life: there are no clear indexes, such as the number of minorities in parliament as an indicator of political representation.

The Macro-Dimension: Social Inclusion and Employment Policy in the EU

Increasingly, the question of who is and who is not integrated into the European societies and their economic cycles is a pan-European issue. For this reason, in March 2000 the heads of state and government proposed the (perhaps overly) earnest and promising "Lisbon strategy", the stated aims of which were to make the EU the most competitive economy in the world and to achieve full employment by 2010. Most of its proposals were clearly outside the legislative competences of the EU, falling instead to the Member States. To correct this conundrum of an EU strategy outside EU competence, a new, "soft" means of quasi-governmental action was

created: the so-called Open Method of Coordination (OMC), which allows the EU (in this case the Commission and Council) to set goals for the Member States. While non-binding, Member States must work out "action plans" stating how they intend to achieve the goals. The EU has since issued and implemented such plans on a regular basis, establishing an official European dialogue and an exchange of best practices within which means of combating social exclusion and assisting the most vulnerable individuals are amongst the priorities.

The EU Commission was rather sceptical as to whether the Member States would invest sufficient energy into the political integration of minorities. It calls for "concerted drive to reduce the levels of poverty and social exclusion and to increase the labour market participation of immigrants and ethnic minorities to the same levels as the majority population". Most countries, as the Commission put it, "continue to present the issue of immigrants and ethnic minorities in rather general terms". In many cases, they only briefly mention vulnerable immigrants and ethnic groups in their reports, "with little attempt to analyse their situation or factors which lead to exclusion and poverty" (from the Commission's second progress report, 2004). There remains a need for measures to prevent potentially discriminatory behaviour, attitudes and practices on the part of the majority population. Such measures could prevent immigrants from not receiving adequate access to employment, service and training courses despite adequate language ability (→ Discrimination). The political discourse should address the contribution of foreigners and immigrants to economic prosperity and cultural diversity in each country (→ Media).

In addition to social inclusion policy, the EU Open Method of Coordination has been applied in the field of European employment policy. As early as 1999, the first so-called "employment guidelines" made explicit reference to minorities. The goal is an open labour market for everyone. Therefore, Member States should give "special attention to the needs of the disabled, ethnic minorities and other groups and individuals who may be disadvantaged, and develop ap-

propriate forms of preventive and active policies to promote their integration into the labour market". Naturally, this sounds easier than it is in practice. A major problem for input in policy-making is the lack of comparable data describing the extent or the nature of ethnic minorities' needs. Such data would also be essential in seriously evaluating the relevant policies that *do* exist: The Commission found that only the United Kingdom and the Netherlands collect complete data on ethnic minorities. In addition to the drastic shortage of data on ethnic minorities in this context, the problem of definition arose once again: The term ethnic minority (as regards employment policy) is defined very differently by each Member State. For example, the United Kingdom and the Netherlands offer the generous definition "visible minorities" while such nations as Sweden and Germany limit the expression to foreigners and non-EU citizens. Others like Ireland, Finland and Austria address specific *national* minorities (→ What is a "Minority"?).

This diversity leaves the collected data appear less than comparable, which is precisely why the call for coordinated and comprehensive data collection is appropriate. At the EU level, although socio-economic criteria addressing social inclusion and poverty as specifically and meaningfully as possible do exist, the data collected under the current 14 criteria (e.g. long-term unemployment rate, drop-out rate, people living in unemployment-affected households, percentage of adults with low education levels, percentage of young people with dyslexia), are broken down to gender and age, but not ethnicity. Consideration of the ethnic dimension in data collection on the subjects of social inclusion and the labour market is therefore a frequent demand in the field of EU policy.

In early 2006, the EU Commission appointed an independent "High Level Group of Experts on the Social Integration of Ethnic Minorities and their Full Participation in the Labour Market". This eleven-member panel, chaired by former German Bundestag President Rita Süssmuth, presented a report in December 2007 that identified 14 obstacles hindering the integration of ethnic minorities in the labour market. This includes lack of qualifications as well as the

fact that foreign professional qualifications are not recognized in the EU Member States, lack of access to education and training, bureaucratic barriers, disincentives through welfare systems, and stereotypes, prejudice and discrimination. Süssmuth stresses that a holistic, multidimensional approach is necessary. She underlines that there is an urgent need for more data on the ways in which discrimination, cultural factors and social disadvantage interact with each other. Policy makers on local, regional, national and European level will have to continue examining these issues while drawing on the knowledge and experience of experts from various areas of society.

Minorities and the Micro Level: So-called "Diversity Management"

Particularly in the United States, the catchphrase "diversity management" has made a career for itself. It describes a management strategy that sees the diversity within a company's workforce as promoting its positive potential, specifically for enhancing overall efficiency. The theory is characterized by some grey areas. For instance, the question of defining diversity is answered in various ways. It is potentially just as multi-faceted as the debate over equality (→ Discrimination). Differences on this subject sometimes distinguish between primary and secondary characteristics: The former are unalterable, such as gender, ethnicity, physical abilities or disabilities, sexual orientation, and age. Secondary differences are variable, such as income, education level, parental duty, religion, language skills, and family status. This already shows that the diversity management extends far beyond the treatment of ethnic minorities. Significantly, the theory looks for diversity management not as a method of protection, but as a management technique that provides companies greater efficiency and better economic returns. The "benefit" of diversity management is seen in its ability to promote otherwise hidden talents; to create a winning marketing image; to attract new customer groups; and to activate new synergies through cooperative management of internal diversity. This also has the beneficial effect of preventing the losses incurred by a high rate

of discrimination - loss of morale, expensive litigation and government sanctions (→ Discrimination).

Concretely, this means, diversity considerations in hiring, training programs on intercultural communication, and generally a management style that improves the working environment significantly through intercultural sensitivity - for example, through flexible rules regarding appropriate workplace attire, the establishing of religious prayer rooms, handicapped-accessible office equipment, and multilingual corporate policy. Criticism of the approach cites contradictory studies that fail to consistently demonstrate statistically and empirically that diversity actually enhances corporate performance. It has been pointed out that there are also examples of diversity complicating and hindering decision-making. In fact, there is little point in labelling diversity as "better" with do-gooder airs and graces. Above-average diversity within a company can have both positive and negative effects. Which scenario occurs depends largely on how great the variety is, what kind of diversity one is dealing with (e.g.: diversity of skills or of beliefs), and in particular, the context in which a company operates. In different sectors (e.g. production vs. communication), diversity will have different effects for obvious reasons: in one case, diversity may be reflected in creativity, flexibility and efficiency, while in another, its advantages are outweighed by drawbacks such as friction or errors in communication. But anyone who thinks that the subject of diversity management is off the table because of these arguments is wrong. In practice, diversity management is not used to decide whether more or less diversity is good or bad for a business: It's about using the existing degree of diversity within a company as an advantage rather than suffering from it as a disadvantage. This shows that diversity management in the business field is not only of benefit for minorities, but contributes to the overall collective good as well - an insight that also holds true for the broader context of society (→ Yin and Yang).

Economic Crisis and Minorities

The recent and persistent crisis brought about a 4 percent reduction in European economic performance during the year 2009, and unemployment increased further in 2010, to more than 11 percent. The EU statistics office estimates that in July 2009, nearly 22 million people in the EU were unemployed (9%). The highest rates were recorded in Spain (18.5%), Latvia (17.4%) and Lithuania (16.7%); the Baltic States suffered an especially dramatic increase - there, the unemployment level jumped by a good 10 percent in barely a year. The dramatic consequences are literally life-threatening: Latvia has reported that doctors in hospitals are confronted with new emergency symptoms, because people shy away from seeking medical attention until the very last moment. Whereas the unemployment figures in the Baltic states recently showed a slight decrease, they were rocketing in other countries: at the beginning of 2012 Spain reached an unemployment rate of around 23 percent and Greece stood at around 19 percent. It is not surprising that the impact of the economic crisis is asymmetrical - not everyone is affected equally. As early as 2008, a number of international organizations and NGOs highlighted that the poorly educated, low-wage sector (such as the construction or industrial sectors) would be hit particularly hard. These sectors include many people from immigrant backgrounds (→ Kaleidoscope of Demographic Change). Moreover, in times of economic scarcity of resources, the climate of fear of perceived or real "strangers" intensifies greatly, a situation which is, sadly, exploited by populist parties. The aggression-prone danger of such scapegoating syndromes was collectively highlighted in March 2009 by the OSCE's Office for Democracy and Human Rights, the Council of Europe Commission for Human Rights and the Fundamental Rights Agency of the EU (→ Organisations). Recently, this scapegoating has escalated to actual racist attacks: In Great Britain, it has been reported that Polish immigrant workers are increasingly the victims of aggression, while in Northern Ireland in the summer of 2009, some 100 Roma were attacked, eventually finding refuge in a church (→ The Roma). Similar attacks took place in Romania in autumn 2009. The situation in Hungary appear as almost

notorious: radical ideas are held openly (such as the recently forbidden but nonetheless active "Hungarian Guard") and members of the Roma community are targeted and killed in fire and bomb attacks with tragic regularity (→ Xenophobia).

A society that allows everyone participation must be open not only to the participation of minorities in its political, but also the cultural, social and economic life. The issue of social inclusion, such as in the economic cycle, is primarily the responsibility of the Member State. Nevertheless, the EU is now working in this field through the continuous exchange of experience and "best practices". It would be helpful if data were collected and broken down by, for instance, ethnicity in order to evaluate policy measures and thus improve efficacy and targeting. From a macroeconomic perspective, many obstacles remain, such as diminished access to education, stereotypes, discrimination and deficits in language skills, which all hinder the participation of minorities in economic life. From a microeconomic point of view, "diversity management" shows how even when ethnic and cultural diversity are not of direct economic advantage, a company can nevertheless benefit from best use of its existing diversity. The current economic crisis particularly affects ill-trained workers, many of whom belong to minorities. Furthermore, the crisis has provoked scapegoating, providing a dangerous breeding ground for xenophobia and racism.

Case Studies: Selected Minority Situations in Europe

A "majority that is in a as safe situation as the Austrian people are" should certainly "regard a minority with particular generosity, as it finds itself in a less favourable situation". So stated former Austrian President Rudolf Kirchschläger in 1975, a period of restrictive Austrian minority policy and increasingly heated atmosphere among the population in the bilingual region of Carinthia. German nationalist groups were then forcibly removing the bilingual German/Slovenian signage established by the Treaty of Vienna concluded between Austria on the one side and the US, the Soviet Union, France and the United Kingdom on the other side. The outbreak of what came to be called the signpost riots (1972) began a new chapter in the assimilation of Slovenes living in Carinthia, a process that continues to this day. This is only one example of many similar cases involving various minorities in Europe in which support measures to offset the unfavourable treatment were not exercised, or remained the exception rather than the rule (→ Formal Equality).

Bilingual Signage - The Signpost Dispute

In 2001, the Austrian Constitutional Court struck down a provision of the National Minorities Act from 1976, which had stipulated that bilingual place names would only be required in those municipalities in which more than 25 percent of the population belonged to a national minority. In this judgment (and many similar judgments were to follow) the court came to the conclusion that bilingual place names must be erected in municipalities with at least 10 percent Slovenian population. However, only in 2011, after ten years of seemingly endless heated political discussions did the Austrian Parliament enact a law implementing the high court's decision. This new Federal Act on National Minorities requires all municipalities with more than 17.5 percent Slovenian population to

erect bilingual signs and introduce Slovenian as an official language at the municipal level. The implementation of this law results in the erection of 164 new signs. This represents a compromise solution reached between the majority population and the minority (represented by homeland associations, Slovene organizations and political parties in Carinthia). Other solutions that have been proposed and discussed would have resulted in only 150 or as many as 400 bilingual signs. Against this background, and especially considering the message of the Constitutional Court, this compromise seems to be rather modest in nature and not at all far-reaching. On the other hand, the compromise can be seen as finally concluding an endless political debate, long years of political neglect, and a persistent failure to implement the obligation resulting from the above mentioned treaty.

Political Representation - The Controversy over the 2005 Schleswig-Holstein Elections

Another example of the friction that often characterises relations between a majority and a minority comes from the German-Danish border region. After the regional province elections in Schleswig-Holstein on 20 February 2005, the CDU and FDP held 34 seats, the SPD and Greens 33, and the South Schleswig Voters' Association (SSW) just two seats, with only 3.6 percent of the vote. As is so often the case in minority areas in Europe, here too, the low number of minority members prevents representation in the parliament since the general obligation to gain a minimum percentage of the total votes in order to qualify for Parliamentary seats, is extremely hard for minority parties to meet. In fact, only the Bonn-Copenhagen Declarations of 1955, freeing the SSW of the five-percent threshold, allowed the Danish and Frisians minorities to enter the state legislature.

When it formed a government in the spring of 2005, the SSW did not limit its political discourse to minority-specific programs, but pursued (as it had in the election) general economic, social and

educational policy goals - programs that were legitimized by its rather successful performance as both a regional and a minority party. By doing so, the SSW had also been elected by the non-minority population throughout the region. The ensuing discussion revolved around the question of whether a privileged minority party (which had been freed from the five percent threshold) need limit itself to minority issues in the narrowest sense of the word (→ Participation). Were they allowed to behave as a normal party, without giving up their exemption? Four days before the election in Schleswig-Holstein, the five-percent exemption "privilege" was confirmed by Germany's national Constitutional Court in Karlsruhe. While the Danish minority resides only in the Schleswig region, the decision of the Constitutional Court also applies to the exemption from the five-percent electoral threshold in Holstein.

The stalemate that followed the elections in Schleswig-Holstein (and the role of the SSW as the kingmaker that was willing to support a red-green minority government) led to an unexpected revival of resentment against the minority, as well as a backlash against 50 years of increasingly harmonious political development. Political agitation against the Danish and Frisian minority party culminated in death threats, and prevented the re-election of SPD Minister President Heide Simonis.

Recognition - A Vital Question for Minority Promotion

In addition to the Danes, the Sorbs, Frisians, Sinti and Roma form the four minorities officially recognized in Germany. The Danish minority differs from the others in its comparatively compact settlement area on the Danish border in Schleswig-Holstein. The Frisians reside in two geographically separate settlement areas in Schleswig-Holstein and Lower Saxony, while the Sinti and Roma are dispersed throughout the whole federal territory (→ The Roma). Unlike the Roma and the Frisians, the Sorbs live in a geographically contiguous, non-urban area of Lusatia, located in the two federal states of Brandenburg and Saxony.

At the regional level, both Saxony and Brandenburg have adopted minority protection rules for the Sorbs that, however, not all were effectively implemented. For example, bilingual signage is in place, but the right to use the Sorbian language in official matters is only theoretical (in fact, Sorbian language skills are not a criterion for hiring public officials). The number of active speakers (minority members who speak and write Sorbian) can only be estimated, but is not more than 30,000. In many communities, Sorbs now account for less than 10 percent of the population. Pronounced mixing with the German population dates back to the pre-1945 Germanisation, but the settlement of German repatriates from the East, as well as extensive coal mining, caused a large influx that amounted to 10 percent in some cities, resulting in a gradual assimilation of the Sorb population.

Legislation in Saxony and Brandenburg includes essential measures for the preservation and revitalization of the Sorbian language. Nevertheless, the number of students in Sorbian schools is decreasing, as Sorbian is increasingly learned only as a Second Language (→ Education). The already extremely high unemployment rate even before the recent economic crisis led to increased emigration of young Sorbs, which has had a dramatic impact on demographic development (→ Business and Economic Crises). Additionally, there is no political framework making the added value of the Sorbian language apparent to the majority population. Instead of acting as an interlocutor to the Slavic neighbouring states, there is a tendency toward right-wing extremism. The consequences include social problems and the closing down of minority schools. This, together with the lack of minority promotion by either of the two States or the federal government, endangers the continuance of the various activities sustaining the Sorbian culture.

Various legal frameworks are the basis of the recognition of the Slovenes, Croats, Hungarians, Czechs, Slovaks and Roma in Austria. Only in 1992, Slovaks and Roma were recognized as ethnic groups, and the existence of the Slovene minority in Styria was long ignored

despite the fact that the rights of this minority are guaranteed under the Treaty of Vienna.

A difficulty with the recognition of the Roma has been that the at least partially nomadic population did not meet the generally-accepted definition of an ethnic group. (→ What is a "Minority"?). Roma migrant workers arriving in the last forty years now make up the largest portion of minority members living in the regions of Lower and Upper Austria, Vienna, Styria, and finally, in Burgenland, where at least their language (Romany) is promoted in the schools (→ Speaking of Languages). Over 20,000 Romany-speaking Roma live in Austria (based on self-identification figures), and in the future, it will be interesting to see whether the ethnic group lays claim to rights such as native-language education or media coverage outside of the province of Burgenland, or if their scattered settlements and social problems pose the danger of total assimilation (→ The Roma).

In addition to the special position of the Roma as a recognized ethnic group, internal migration, immigration and naturalization of migrant workers represent a new picture of Austrian ethnic groups. Particularly in Vienna, the remarkable increase in size of the Hungarian and Croatian ethnic populations owes to immigration. Thus, the Viennese Hungarians recognized as part of the minority in Burgenland derive from waves of emigrants and refugees from Hungary through the 40s and 50s. In contrast to recognized ethnic groups in Vienna like the Czechs, Slovaks and Hungarians, attempts to recognize the Polish-speaking population as an ethnic minority have failed, even though Polish has been a traditionally-spoken language in Vienna since the days of monarchy.

State Objectives: A Modern Approach to Minority Rights

The recognition of the Austrian minorities is based on a number of legal provisions. The "Magna Carta" of minority protection for Croatians in Burgenland and Slovenes in Carinthia and Styria is the 1955 Treaty of Vienna. Other minorities, in contrast, have had to

rely either on the 1919 Treaty of Saint-Germain or the so-called "Staatsgrundgesetz" dating from the era of monarchy. In July 2000 the Republic of Austria committed itself to the Protection of National Minorities in its constitution (in the so-called "Staatszielbestimmung"). With this step, the four parliamentary fractions unanimously took a first step toward the unification of the system of minority protection. Therein, the Republic pledges to safeguard and promote the linguistic and cultural diversity of autochthonous ethnic groups. Here, in the fundamental principles of the constitution, where German is identified as the official language of the Republic, we find the first commitment to a multilingual, multicultural Austria.

Minority protection, like other State Objectives, is now an objective standard for future policy direction, administration and jurisdiction. The Council of Europe's Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages can, in combination with this new State Objective, help to initiate a new phase of modern minority policy in Austria (→ Organisations).The question of whether immigrant minorities must now be considered under the traditional definition of minorities is still rejected by prevailing opinion (→ Kaleidoscope of Demographic Change). But is there a major difference between recognized groups such as the Croats in Burgenland or Vienna's Hungarians, Roma and Sinti and, on the other hand, new minorities not explicitly mentioned in the State Objective (→ What is a "Minority"?)? The Burgenland Croats emphasise their accomplishment of social integration and their integration into the Austrian political system; the Viennese Hungarians are composed partly of naturalized immigrant workers, yet the Roma and Sinti are still denied integration into the larger society. So in its diversity, this picture does not seem entirely different from the world of new minorities. Isn't the main concern of these new minorities precisely this economic and social integration, paired with a fear of assimilation and a need to preserve their identity?

It is therefore incomprehensible that the phrasing of the State Objective did not expressly incorporate a constitutional commitment to a diversity of cultures. The same can be applied to Germany and the eventually failed discussions of its Constitution's Article 20b. The deliberations of the Constitutional Commission made it clear that just as in Austria's State Objective, new minorities must be included. The German Social Democratic Party's draft of Constitution Article 20b expressly provides protection for new additions to traditional ethnic minority protection: "The State shall respect the identity of the ethnic, cultural and linguistic minorities."

In relations between a minority and a majority, the disadvantaged group must be legally recognised as such. Under certain conditions it must be granted preference in order to achieve de facto equality. There are many examples where such affirmative actions, intended to compensate for disadvantages, are not taken, or are improperly implemented. For instance, thresholds at political elections that are higher than 5 percent are considered too high to be fulfilled by minorities. Similarly, from a comparative perspective, legal systems are excessive if the right to use a minority language as an official language or the right to bilingual place names is made dependent on a threshold requiring 20-25 percent of the population to belong to the minority. In this vein, the Austrian Constitutional Court struck down a threshold of 25 percent; a minority percentage of 17.5 percent has since been established as a rather restrictive benchmark by the Austrian legislature.

Discrimination: Of Equality and its Absence

Equality has been associated with justice ever since Aristotle. Unlike errant ideologies such as those in the former Soviet Union, international human rights protection does not claim that all humans are equal, but that they are all entitled to the same rights. Equality as understood in context of international human rights protection does not serve a politicised, enforced equanimity. Instead, it concerns the task of protecting human rights and recognizing inequalities between people rather than levelling - but more on that later. What is striking about the principle of equality in the first place, is that the centrality of the right to equality is completely undisputed, while at the same time, the subject of its concrete application is hotly debated. This applies to the important questions regarding the nature of the principle of equality as well as the means of achieving it (→ Formal Equality).

But the more central question of who has the right to equal treatment can also be unsettling. In the case of Aristotle, it is not exactly astounding that he preached equality, yet found it natural that slaves were excluded from it. However, 2300 years later, the situation remains very similar: the authors of the American Declaration of Clearance Independence in 1776 were fairly uninhibited about the fact that their bold proclamation of the equality of all people made no mention of the practice of systematic slavery. But it was not only slaves who were excluded from this claim of equality: Women, too were left out of the equation. Despite two millennia of idealised equality in Germany and Austria, general women's suffrage dates back just 90 years. In Liechtenstein, it was introduced only in 1984, and in the Swiss canton of Appenzell Innerrhoden, in late 1990 (→ Participation).

Aside from such glaring legal differences, human existence in general is characterized by a lack of equality. In this respect,

Europe is an island of the blessed, as we have achieved a relatively advanced degree of equality on our continent. Global inequalities, however, do not end at Europe's gates. Of the around two and a half million people that are in forced labour (including sexual exploitation) as a result of trafficking,, a part arrive in Europe (→ Kaleidoscope of Demographic Change). And even within the European societies, equality is a relative matter, particularly for ethnic, linguistic or religious minorities, whose efforts to have their demands for equality recognized is generally higher than among the members of the majority. In cases where people differ due to visible characteristics, there is a risk of structural inequality; for this reason, obviously distinguishing features such as gender, skin colour, and language were used as apportioning criteria in the allocation of economic, political, and social resources. It is not for nothing that political conflicts so often break down over the exploitation of these fine distinctions.

What do we mean by discrimination?

Discrimination can be either "direct" or "indirect". Direct discrimination occurs when a person is treated less favourably on the basis of a certain distinguishing characteristic. According to Article 21 of the EU Charter of Fundamental Rights discrimination on the basis of the following grounds is prohibited under EU law (→ The Lisbon Treaty): "gender, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation". Of course, this is merely a list of examples. It is also important to note that also indirect discrimination is prohibited under EU anti-discrimination law. Indirect discrimination refers to cases in which an apparently neutral provision, criterion or practice would put at a disadvantage those persons who meet the distinguishing characteristic of a minority. This does not apply if the provision, criterion or practice is objectively justified by a legitimate aim and the means employed to achieve this aim are appropriate and necessary. For example, where a distinction is

made between the hourly overtime rate for part-time and full-time employees, women are disproportionally affected in comparison to men, since more part-time employees in the sector are women. Because the difference cannot be justified, it constitutes discrimination on the basis of gender, and is unlawful.

In addition to direct and indirect discrimination, *harassment* is also prohibited by EU anti-discrimination law (see below). This refers to unwanted conduct related to any of the grounds mentioned in context and having the "purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment". As with direct and indirect discrimination, the order of acts of harassment is itself illegal. In Summer 2008, the Court of Justice of the European Union in Luxembourg (CJECU) established that discrimination can exist even in the absence of any concrete victim. The case in question involved the Belgian company *Feryn*, installers of garage doors. Its managing director repeatedly stated publicly that his company was seeking to recruit installers, but could not employ people of foreign origin because its customers were reluctant to entrust them with access to their homes. The CJEU came to the conclusion that public statements in which an employer makes it known that it would not as a policy employ any person of a particular ethnic or racial origin are sufficient grounds to justify the presumption of a directly discriminatory recruitment policy. It is then up that employer to prove that no violation of the equal treatment principle has been committed by showing that the company's actual recruitment practice does not establish direct discrimination. Similarly, the same Summer (2008), the CJEU handed down another important ruling, this time concerning the question of whether EU discrimination protection applies only to persons with disabilities, or extends to caregivers for such persons (so-called associative discrimination). The case concerned a Mrs. Coleman, parent of a disabled son and employee at an English law firm. In the proceedings, she demonstrated that her employer had called her "lazy" for taking off days to care for her son, and accused her of manipulating working conditions using her "fucking child" as an excuse. In its ruling, the CJEU affirmed the illegality of

associative discrimination under EU law (at least in the context of disability).

Do minority members experience discrimination?

Discrimination can be found in the search for work, in work itself, in finding housing, in social and health services (such as a hospital stay, etc.), in education, in service at pubs and restaurants, shopping in the supermarket or applying for a bank loan - in short, discrimination can be found throughout all the aspects of everyday human life. In order to identify the locations of pronounced discrimination against minorities, 23,500 minority members were interviewed about their personal experiences as part of a large-scale study by the EU Fundamental Rights Agency. The first results of this "EU MIDIS" study were presented in early 2009. One indication was that roughly half of Roma indicated to have suffered some kind of discrimination in the preceding twelve months. On the other hand, significantly fewer migrants (23%) from the new EU Member States reported being discriminated against during this period. Among the members of the Turkish minority, the figure was only 14 percent. Particularly frequent victims of discrimination included the Roma living in the Czech Republic, Hungary and Poland as well as Africans living in Malta (60% or more experienced discrimination in the preceding year). Thus, Roma appear to be at particular risk of unwarranted disadvantage in Europe (→ The Roma). Among the Roma, incidentally, the impression of a high discrimination rate was supported with specific concrete and personal experiences of discrimination. In contrast, while 59 percent of Russians in Estonia described discrimination there as "widespread," just 17 percent specified personal experiences of being discriminated against in the past twelve months. This shows how the perception of the general situation of discrimination can be subjective, and is related to specific historical experiences and current expectations.

A study by the European Commission (Eurobarometer Special Survey 296, July 2008) showed that the majority of the general

population assumed that discrimination on the basis of sexual orientation, age, or religious belief had decreased. However, discrimination based on ethnic origin was an exception to this pattern of perception, and was perceived as common by a majority of respondents. Ethnic discrimination was recognised by 62 percent of the general population, making it the most widely recognised form of discrimination in the EU, followed by discrimination based on sexual orientation (51%) and disability (45%). The Commission's recent poll from November 2009 (Eurobarometer 317) indicated a new trend, as public perception of age-based discrimination has seen a sharp increase of 16 percent, and now ranks second in the top grounds of discrimination: 58 percent of the population are now of the opinion that age discrimination is widespread. The economic crisis may be a contributing factor to this increase. Regarding ethnic discrimination, it is noteworthy that while the survey shows that in the Netherlands, France, Hungary, Sweden, Malta, and Denmark, between 77-80 percent of the population consider ethnic discrimination is common, the percentages of those who have experienced discrimination do not correspond with these high figures. Conversely, in Estonia, Slovakia, the Czech Republic and Bulgaria less than 30 percent of respondents indicated that discrimination based on sexual orientation was widespread; at the same time, the percentage of the population claiming to have LGBT friends was merely subaverage (→ Homo- and Transsexuals). Here, as with various minority themes, treatment in the media sphere plays a role (→ Media). In any case, it remains true that ethnic discrimination is more widespread than is generally recognised (→ Xenophobia); this is confirmed by the results of the "EU MIDIS" study. Interestingly, in this study, only 10 percent of Muslim respondents reported experiencing religious discrimination within the last twelve months - the majority reported discrimination based upon their ethnicity. The wearing of religious symbols or clothing, which increase their recognisability as Muslims, did not appear to increase the risk of discrimination (→ The Veil).

As for personal experience of discrimination by members of the general population, in the European Commission's latest survey, 16

percent of respondents reported feeling like they had experienced discrimination on the basis of gender, disability, ethnic origin, age, sexual orientation, religion or belief within the last twelve months while 83 percent of Europeans stated that they did not feel they had been discriminated against during that period. The most frequently reported reason for the discrimination was age, (with 6% of respondents experiencing this form of discrimination over the year), followed by gender-based and ethnic discrimination (3% each). When these figures are compared with the results of the above mentioned EU-MIDIS survey, it is obvious that discrimination situations in the majority and minority populations are different. It is also interesting that in the Commission survey, significantly fewer people than had been expected claimed minority affiliation (multiple answers were possible). In 2008, 3 percent identified as ethnic minorities, 3 percent as religious minorities, 1 percent as sexual minorities and 2 percent as disabled. 2009 saw slight changes in those describing themselves as members of an ethnic minority (5%) or a religious minority (4%). It remains, however, that the overwhelming majority replied "none of the above" (85%) even though the estimated proportion of minorities is considerably higher (e.g. the proportion of disabled people in the EU's total population is estimated at between 16 and 20%). That minority identification appears unattractive speaks to an assumption of discrimination.

Difficulties in the fight against discrimination

The probability of the state receiving report of any given act of discrimination is rather low. In many cases, there is a lack of awareness that discriminatory treatment is illegal and a lack of understanding of how to proceed against such behaviour. This was confirmed in the "EU MIDIS" study, wherein the vast majority of persons belonging to minorities interviewed were unaware that discrimination was legally forbidden and that public institutions offering assistance exist. Among the Turks in Austria, 84 percent knew of no such institution, while 75 percent of the Turks in Germany were similarly unaware. Significantly less than one-fifth of minority

members reporting that they had experienced discrimination within the last twelve months stated that they had reported the discrimination incident in question - indicative that the underreporting of discrimination against minorities is very high. A *shadow share* of such proportions cannot be overcome merely through information campaigns on protection mechanisms for minority rights and corresponding government and private drop-in centres. It is telling, in this context, that the same study showed that only 36 percent of victims not reporting their incident of discrimination failed to do so because they were unaware of where to report such a crime. 63 percent of victims did not report the discrimination because they did not expect any result, while 40 percent indicated they consider discrimination "normal" and thus not worth reporting. Meanwhile, 26 percent stated that they were worried about the negative repercussions of making such a report, and 14 percent said that they would be afraid of intimidation by the discriminating party. Effective combating of discrimination thus requires strong signals of a firm commitment to the fight against discrimination in order to improve community trust in the state and public officials.

Europe's answer to the real situation of discrimination

Since 1950, Article 14 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) has forbidden discrimination - but this is not a self-standing right but rather refers to the equal "enjoyment" of the rights listed in the ECHR which is "secured 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." This prohibition is binding in all 47 current member-states of the Council of Europe. A general ban on discrimination (that is, independent of the other applicable ECHR provisions) was called for in the 12th Additional Protocol of the Council of Europe in 2000. This protocol very broadly prohibits the states from discrimination based upon the outlined criteria. In some countries, this Protocol has been in force since 1 April 2005, and was officially enacted by six EU

Member States in Autumn 2009. Germany and Austria both signed the Protocol in Fall 2000, but thus far, neither has ratified it. Switzerland has not even signed it, and thus none of these three states is bound by the protocol.

Like the Council of Europe, the EU soon addressed the issue of discrimination, the internal struggle over which had begun in the early decades of the Union: It feared that free exchange among the EU countries would be threatened by different treatment on the basis of citizenship. Gender discrimination quickly became another major theme in the discussion. Until 1999 (the year the Amsterdam Treaty entered into force), the fight against these two specific forms of discrimination, (based on gender and citizenship) remained the primary concern of the EU. However, in the Treaty of Amsterdam, or more precisely, the former Article 13 of the EC Treaty, the EU was granted full legislative powers regarding equality policy (→ Formal Equality). The Council of the European Union can, after consulting the European Parliament, take *appropriate action to combat discrimination based on sex, race, ethnic origin, religion or belief, disability, age or sexual orientation.* Unlike Article 14 of the ECHR and Article 21 of the Charter of Fundamental Rights, which are merely *prohibitive* rules, this provision (now Article 19 of the Treaty on the Functioning of the Union), is an *enabling* rule, thus a competence base for the European Union. Recent constitutional developments at the EU level have further increased awareness of equality in a horizontal clause (→ The Lisbon Treaty). Nevertheless there remains a certain inconsistency between those forms of discrimination that are banned by EU law, and those which the EU can also actively combat by adopting anti-discrimination laws. For instance, the EU Charter of Fundamental Rights prohibits discrimination on the basis of language, while Article 19 of the Treaty on the Functioning of the Union does not allow the EU to pursue an active policy favouring regional and minority languages.

A look at the Equal Treatment Directives of the EU

Once the EU was assigned these new competences in the former Article 13 of the EC Treaty, it immediately made extensive use of them. In the mid- to late 2000s, two important directives on equal treatment were enacted: Directive 2000/43 on equal treatment of persons irrespective of racial or ethnic origin (Racial Equality Directive, → Xenophobia) and Directive 2000/78 establishing a general framework for equal treatment in employment and occupation (Framework Directive). Both were transposed into national law in the EU Member States and have led to significant changes in their anti-discrimination laws. This applies to the treatment of discrimination in court cases (such as the compulsory introduction of the so-called *reverse burden of proof*) as well as institutional changes such the need to establish specialised bodies for equality. Here the marked distinction between EU law and classical international law (as applied in the context of the Council of Europe) becomes apparent: EU law is far-reaching and directly encroaches upon national legal systems to guarantee actual alignment. However, this did not mean that there would be no difficulties in implementing the directives on equal treatment. Quite the contrary, as is evident in the significant degree of difference in implementation of the Racial Equality Directive between Member States. In 2007, under this directive 95 penalties were imposed in Great Britain, totalling more than € 140,000. In France, four penalties were imposed in the amount of € 30,000. Some countries have also persistently lagged in the establishment of the equality bodies as required by the Racial Equality Directive. The equality bodies vary considerably, and many have a deplorably low level of public visibility and effectiveness. Also, their responsibilities are very different (→ Homo- and Transsexuals). It is therefore a welcome development that these authorities are becoming increasingly interconnected at the European level, as can be seen in the EQUINET Association (the European Network of Equality Bodies). The Commission has announced that it will report on the effects of the Racial Equality Directive and the Framework Directive and propose changes where necessary on the basis of the respective findings.

All in all, it must be said that as the current system stands, the EU's efforts for equality have had mixed results. The Racial Equality Directive was, already in 2000, a massive and decisive legal achievement in the fight against ethnic discrimination based on a solid political consensus. It prohibits racial discrimination in both the public and private sectors. Furthermore, this prohibition applies to a broad spectrum of possible everyday situations, far beyond employment relationships (→ Xenophobia). Discrimination on other grounds, such as age or sexual orientation, is prohibited under the Framework Directive (→ Homo- and Transsexuals). However, his *thematically* parallel ban has a narrower scope: It is limited to the context of the workplace, and thus leaves countless everyday situations outside its scope of protection. The European Commission now wants to eliminate this asymmetry in anti-discrimination policy: In mid-2008, it proposed in its "Renewed Social Agenda" to adopt a policy requiring equal treatment *outside* the context of employment with respect to *all* grounds of discrimination outlined in the present Article 19 of the Treaty on the Functioning of the Union. Some Member States have been reserved in their enthusiasm, however, so it may be that this proposal becomes a nominal one and never goes into force.

Discrimination is the unfair unequal treatment of people. Several legal texts offer examples of the distinctive features most frequently used as a basis for unjustified discrimination. These include gender, ethnicity, language, religion, and national origin, as well as membership in a (national) minority.

In Europe, the fight against ethnic discrimination is particularly important. It is being dealt with decisively by means of EU law. At the same time, ethnic discrimination remains very widespread. The fight against discrimination requires more than legal standards: public awareness and confidence in the public sector are crucial. The latter are lacking on the part of the potential victims, as the number of unreported cases of discrimination remains very high.

Education: Minorities in Schools and Universities

State-run education systems are not ideologically neutral, which makes education a political issue. In this context, languages play an important role. As a rule, the state language prevails in the public sphere. Citizens brought up in state-run education systems are socialised with the official language, while minority languages are marginalised almost by default. The identity-forming function of language has therefore become a matter of contention, particularly in multilingual regions, making education policy and language acquisition some of the hottest issues in minority areas (→ Speaking of Languages). Different school systems offer different approaches and each plays an essential role in a language's acquisition and social status.

Bilingual education based on strictly equal terms

Bilingual education and educational systems that base language use on strictly equal terms comprise teaching methods in which two languages are taught with equal weight. When a majority and a minority language are regarded with equivalence, minority rights must be balanced against the parental right to choose the language of instruction. There are also practical questions of favouritism on the basis of a language's prestige, existing language skills, class composition, and different instructional approaches or curricula in the respective languages.

In the school system of Italy's Autonomous Region of the Aosta Valley, for example, the French and Italian languages are treated with equivalence (→ Autonomies). Both languages are granted equal hours of instruction at all levels and in every type of school, regardless of a student's or parent's ethnicity, without regard to their mother tongue and without granting the parents a right to choose.

The main criticism of this particular form of bilingualism is the lack of hours of instruction in Franco-Provencal, the actual first language of the majority of the 90,000 Aostans. Due to strict bilingualism, Franco-Provençal has been displaced from everyday life and (reinforced by corresponding consumption of media) replaced by French and Italian.

Another case of a less widely spoken language at risk of perishing is that faced by the Ladin language group under the school system in South Tyrol (→ What is a "Minority"?). This system provides a balanced number of lessons in Italian and German as well as a few hours of Ladin-language instruction. The fact that the system is based on a compromise is evident in the fact that kindergarten is still conducted almost exclusively in Ladin. In the early grades, Ladin serves as a kind of auxiliary language, the function of which is to bring the children closer to German and Italian. As in the Aosta Valley, the parents' right to first language education - be it Ladin, German or Italian - is restricted. This system, which fulfils the need for multilingualism while at the same time offering protection for the Ladin minority has met with great approval from families of all language groups. This positive approach to multilingualism assures that the Ladin acquire excellent skills in all three official languages.

Another bilingual school model was introduced by the Provisional Government of Carinthia after the Second World War. It applied to the first three grades in virtually the entire autochthonous settlement area of Carinthian Slovenes (→ What is a "Minority"?). Essentially, it assured mother-tongue instruction for each child. At the same time, the model also called for equal hours of instruction in both the German and Slovenian languages, of which Slovenian could be reduced to a minimum of six hours per week. From the fourth grade on, the transition was made to exclusive German language instruction, with a further reduction of the limited but nevertheless guaranteed instruction in Slovenian to just three hours per week. This regulation of educational policy aimed to reduce students' use of Slovenian to an auxiliary language until they acquired sufficient knowledge of German to make the transition to exclu-

sively German instruction. In the primary and secondary schools, which these elementary schools fed into, Slovenian was merely a subject of study with just three hours of instruction per week. Although this system fulfilled the function providing students with sufficient knowledge of German, it was met with strong opposition from the German-speaking population, who saw it as a compulsion to learn a socially inferior language. After massive pressure from the population, in 1958 Carinthia's governor granted exemption from Slovenian instruction. The overwhelming majority of German parents opted for instruction exclusively in German.

Bilingual school models with voluntary instruction in the minority language

In contrast to the examples above, there are systems allowing for the option of voluntary registration (and de-registration) in minority language instruction, bringing the parental right to the fore. This is not based upon the child's first language, but solely upon the parents' will to have their children learn the minority language (or not). Registration for minority language instruction is often perceived as a declaration of minority affiliation (→ Uncounted). For this reason, the general model of bilingual education with the opportunity to opt out of minority language instruction is considered one that devalues the minority language. (→ Speaking of Languages).

The bilingual education system introduced in Carinthia after 1958 allowed parents in the autochthonous settlement area to voluntarily enrol their children in bilingual instruction independently of any objective criteria or a subjective commitment to the minority. In most of elementary schools, mixed classes are held which include both bilingual-inscribed and non-inscribed students. Identification of classes as bilingual that had just a few, or even a single student enrolled in Slovenian-language instruction aroused protest from parents who feared that German language instruction would suffer from parallel instruction in Slovenian. To ensure quality of teaching

in both languages, minimum class size was lowered in 1988, and a second teacher employed in bilingual classes, but the quality of teaching nonetheless continues to suffer. Since the EU accession of Slovenia promoted a positive image of the Slovenian language, enrolment of non-Slovenian-speaking children in bilingual classes has risen sharply, which will surely affect the quality of instruction in both languages.

In the Austrian region of Burgenland's autochthonous settlement area for Croats and Hungarians, attendance in bilingual education in primary schools requires no registration (→ What is a "Minority"?). Students have a right to voluntarily participate in minority-language instruction regardless of minority affiliation. In contrast to the Carinthian model, in Burgenland's autochthonous settlement area, children take part in bilingual elementary education by default. Parents who want to avoid this can opt their children out. This unconditional option to un-enrol at any time, however, leads to organizational problems such as adherence to the school curriculum, un-enrolment due to grading, and perceived inferiority of the Croatian and Hungarian languages.

Mother tongue instruction in separate school systems

In 1948, the first Autonomy Statute provided for the German and Italian language groups in South Tyrol mother tongue instruction at the kindergarten, elementary and secondary levels by teachers of the same mother tongue in separate schools (→ Autonomies). The second Autonomy Statute of 1972 maintained this separation model, but expanded the obligation to learn the other language (always taught by first-language instructors). Regardless of the respective mother tongue parents have the right to voluntarily enrol their children in either a German- or Italian-language school (→ Uncounted). The educational function of the separation model - mother tongue instruction in order to protect against assimilation - can thereby, of course, be circumvented. However, if the enrolment of one or more pupils with inadequate language skills threatens the quality of first

language instruction, these students may be excluded when their competence level does not meet their attendance and successful participation in the lessons.

Second-language instruction as a compulsory subject of just a few hours per week has increasingly come under criticism because of declining competence in the respective second languages within the region (→ Speaking of Languages). Furthermore, there is a political dimension: the separate school model allows little social contact between Italian and German students, and the youth grows up with very little interethnic exchange. Many parents, especially in mixed-language families (from which some 10% of students come), attempt to circumvent what is increasingly seen as anachronistic separation: they enrol their children in the other language group's school system. Despite recent attempts at reform, there remains great resistance to bilingual schools or increased Italian-language instruction, particularly among the German-speaking population. The alternative of a German-Italian bilingual school (similar to the region's Ladin schools) remains unrealistic in South Tyrol for the time being.

Multilingual education at the university level

More and more colleges and universities recognize the value of multilingual course offerings. Not only does the European integration process call for specially qualified multilingual graduates; some universities, particularly in minority areas, already offer regionally specific foreign language and bilingual courses because of their particular locations.

The Free University of Bolzano/Bozen was founded in 1997 and was mandated to offer an international orientation. It employs up to 70 percent of teachers from outside of South Tyrol (the Aosta Valley has a corresponding quota of 50%, and neighbouring Trento, 30%). This is necessary to maintain the University's trilingual instruction. In addition to South Tyrol's two national languages, in-

struction in the Free University of Bolzano/Bozens's Faculty of Economics is held in English, creating additional incentive for foreign students.

Founded in 1669, Leopold-Franzens University in Innsbruck continues to serve South Tyrol's German-speaking population, despite their own university, because of their cultural ties with Austria. An Austrian Equal Treatment Act has provided for the automatic recognition of South Tyrolean high school diplomas for decades. The recognition of the Austrian degree in Italy, too, was already a mere formality even before Austria's 1995 accession to the EU (→ Transnational Cooperation). A bilateral agreement between Austria and Italy allows South Tyroleans to study Italian law at the Austrian University of Innsbruck (in cooperation with the University of Padova) with primarily Italian-language instruction.

Other examples of multilingual universities include the University of Freiburg/Fribourg, (founded in 1889 in Switzerland, with bilingual instruction in German and French) and the University of Luxembourg (founded in 2003 and offering courses in the German, French and English languages). German-language study programs are also found at Andrássy Gyula University in Budapest as well as the bilingual Romanian-Hungarian Babes-Bolyai University in Cluj-Napoca, Romania. A few other universities and colleges have instituted bi- and multilingual instruction, such as the University of Helsinki (Finnish, Swedish, and English), University of Barcelona (Catalan and Spanish), Frankfurt an der Oder (German and Polish) and the Colleges of Education of Bern and Freiburg/Fribourg in Switzerland. Against the backdrop of the boom in European studies and the English-language international master's degree program, the Universities of Graz and Krems provide examples of universities that offer master's programs in European Integration, Minorities and Cultural Diversity in Europe.

In a minority context, the school system is always a point of controversy in educational policy. Specific school models and

quality of instruction are prerequisites for the sustainable survival of minorities and their languages. The two models of bilingualism and of separation serve different educational functions: The former focuses more on integration, but is associated with a risk of assimilation. The latter, on the other hand, focuses on cultural preservation at the expense of the positive aspects of multicultural exchange.

But the picture is complex: if bi- and multilingualism are perceived as coercive, bilingual school models may also lead to division and political radicalization. When there is sufficient acceptance of the languages, a bilingual school system can also help to preserve minority identity.

School models based upon separation support the promotion of minority identity and the peaceful co-existence, but complicate interaction and integration in a multilingual society, which need not automatically carry the endangerment of minority identity.

Despite the great demand and new educational requirements arising from globalization and European integration, there are only a few multi-lingual universities in Europe. The niche players have colleges primarily in minority areas, successfully using multilingualism to improve the competitiveness in the higher education market.

Formal Equality is Not Enough: Positive Action is Needed

Providing for equality is easier said than done, and this is also reflected in social reality (→ Discrimination). Neither is it easy to determine how to treat people equally nor to determine whether someone stands in a comparable position (which entitles them to be treated equally). The principle of equality holds that people are by nature "equal" beings in the sense of holding the same fundamental rights. At the same time, it also recognises that people are not all "the same", but rather very different individual human beings. How equality works in practice therefore depends on each individual's concrete social context.

Thus, formal equality must be distinguished from substantive equality. For example: every student in Munich is instructed in German. This applies to the entire course of study. In this sense, they are all formally treated equally. But is there actual, tangible equality? Not when the cultural background of the students is considered, in which case we see that German-language instruction means different things for different students. For the vast majority of children residing inMunich, German instruction in the classroom means instruction in their first language. For those speaking a language other than German at home, German-language instruction means having lessons in a second or foreign language. A substantive view of equality would require first-language instruction to every pupil.

Naturally, this is not to say that all people must be treated substantively the same in every situation, which would be impossible. What is important is the insight that in many cases, a purely formal view of equality is inadequate and misses the mark. One example is the integration of Muslim populations which, in the "cultural shadow" of our Western legal systems, find themselves treated differently in many areas of life than the majority populations, whose

cultures have developed together with these legal systems over time (→ The Veil). The insight that a dictate of (substantive) equality of treatment can result in actual (formal) inequality is, of course, nothing new. As early as Aristotle, it was recognised not only that equivalent situations be treated the same, but that non-equivalent situations call for unequal treatment (→ Judiciary). This is also known as the paradox of the equality principle. Of course it is hardly paradoxical. Rather, it is only logical that equality in the legal sense is concerned with the actual comparability of real-life situations in order to take equality seriously. Whether a difference in treatment is granted or denied in a specific context depends upon whether it can be justified by commonly accepted goals and whether the treatment is proportionate.

The lack of acceptance of group rights

In addition to the above and in contrast to the merely substantive equal treatment of individuals, groups are granted special rights in certain cases. These may include the right to regional autonomy (→ Autonomies), or the establishment of strict quotas (→ Quota and Proportional Systems). Overall, however, the granting of group rights is left to the individual states, and is not required by international law. In the period before the Second World War, the international debate remained quite friendly to the notion of group rights, but in the transitional period between the League of Nations and the UN era (i.e. the period coinciding with the beginning of EEC integration) there was a shift in attitude from sympathy towards group rights toward an emphasis on individual rights. The fact that the Council of Europe's Framework Convention on the Protection of National Minorities (FCNM) is based on individual rather than group rights is symptomatic in this regard. The same applies to the failed efforts in the European Parliament to legally institute a group-oriented "Charter of Minority Rights" in the mid-80s (→ Organisations). Various proposals and revisions at protecting minority groups at the EU level (particularly in Parliament) followed. For instance, in its December 1991 resolution regarding EU citizenship, the Par-

liament held that the Treaty of Maastricht should ensure that the European Union and its Member States take special precautions for the protection and promotion of minority languages, the local and regional self-government or autonomy of specific groups. Similar efforts failed in the process of drafting the Charter of Fundamental Rights and the EU Constitutional Treaty.

Over the course of the drafting of the Charter, more than a dozen written proposals regarding how to enshrine the protection of minorities in the EU's Charter of Fundamental Rights were presented. This relatively high level of interest for a side issue is explained by the participatory nature of the so-called "Convention method" used for the first time in the drafting of the Charter (→ The Lisbon Treaty). In addition to Parliament and the Committee of the Regions, the Republics of Slovenia and Hungary as well as representatives of Finland and Austria called for stronger anchoring of the ethnic groups in the Charter. That the Charter of the EU ultimately merely obliges the EU to "respect" linguistic, cultural and ethnic diversity while prohibiting any discrimination based on "membership in a national minority" was regarded as a great "setback" by many observers and experts. However, the approach taken in EU primary law (thus the EU Treaties) is quite conclusive. First, the innovations are not purely cosmetic (→ The Lisbon Treaty). Second, they comply with the allocation of roles between Member States and EU and reflect the spirit of the subsidiarity principle. Lastly, a hermetic division between group rights and individual rights does not seem to properly reflect reality (→ Yin and Yang).

The European Union's understanding of equality

In European Union law, the substantive understanding of equality is granted relatively little space. This is evident in gender policy. The former EC Treaty (now the "Treaty on the Functioning of the European Union") charges the Union in "all its activities ... aim to eliminate inequalities, and to promote equality, between men and women" (Article 8). The Treaty further states that the principle of

equal treatment "shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers" (Article 157). Here, the treaty appears to regard positive action as an exception to the principle of equality rather than as an expression of the selfsame principle.

This has also been confirmed by the EU's Court of Justice in Luxembourg (CJEU). In October 1995, the CJEU concurred with Mr. Kalanke and upheld his challenge to the gender quota established by German equality legislation. Two years later, the court had the chance to clarify its sceptical attitude toward quotas. The case of Hellmut Marschall vs. the state of North Rhine-Westphalia concerned the plaintiff's application for a school position in the city of Schwerte. In this "Marschall ruling", the CJEU held that quotas granting preference to similarly qualified female candidates are acceptable under EU law if they contain a clause guaranteeing that "priority given to equally qualified women - which is designed to restore the balance - is not contrary to EU law provided that an objective assessment of each individual candidate, irrespective of the sex of the candidate in question, is assured and that, accordingly, promotion of a male candidate is not excluded from the outset". Thus, the Court clearly indicates that equality policies may indeed favour a specific group only in order to achieve equal opportunity (as opposed to equal results). The difference between affirmative action as opposed to strict quotas is that quotas grant a preference based on group affiliation alone. However, according to the Court, being part of the group "women" cannot itself be the basis for automatic preference. Nor may the fact of belonging to the male gender be an automatic relegation. The individual must always be assessed objectively. Clearly, then, strict quotas based solely upon membership in a group are not compatible with the EU law understanding of equality. Admittedly, the Court has so far dealt only with women's quotas. No case regarding an "ethnic quota" has been examined so far. However, it is quite plausible that the Court would apply similar reasoning as it did vis-a-vis the gender quota. The Member States

must therefore observe certain precepts of EU law in the field of group rights (→ Yin and Yang). However, much of what falls under quota regimes supporting specific minorities is beyond the scope of EU law and therefore within the discretion of the Member States (→ Quota and Proportional Systems, → Participation).

In addition, it must be stressed that specific EU policies may increasingly exhibit a substantive understanding of equality, the prevention of discrimination alone does not amount to equal opportunity. In its 2005 "framework strategy for non-discrimination and equal opportunities for all", the European Commission stresses that anti-discrimination laws at the "individual level" are not sufficient to tackle the "complex and deep-rooted patterns of inequality experienced by some groups". The Commission identifies "a need to go beyond anti-discrimination policies designed to prevent unequal treatment of individuals. The EU should reinforce its efforts to promote equal opportunities for all, in order to tackle the structural barriers faced by migrants, ethnic minorities, the disabled, older and younger workers and other vulnerable groups."

Furthermore, the Commission stresses that "positive measures" may be necessary "to compensate for long-standing inequalities suffered by groups of people who, historically, have not had access to equal opportunities". As previously mentioned, many productive alternatives exist in the broad spectrum between purely formal equality and the granting of group rights. Unfortunately, there is considerable confusion in terminology on this subject. All too often, positive measures are misunderstood as "positive discrimination" or even miscategorised entirely as "group rights".

The broad range of positive measures

A substantive understanding of equality, as described above, allows for the consideration of equality in the context of individuals' actual lives. One possible example of what is meant by "positive measures" would be a process by which applicants for a specific

post from the Roma population would be exempted from some formal documentation like training certificates and thus receive the opportunity to demonstrate their existing skills in alternative, more practice oriented ways. This would recognize that even now, Roma rarely enjoy the benefits of universal education and vocational training. Such access would help to provide equality of opportunities. Providing equal opportunities aims at placing persons belonging to disadvantaged groups in a position that is, at the "starting line" at least, similar to the position of persons belonging to the majority population. An even broader reading of substantive equality aims not only to provide equal opportunities but also to achieve equality of results. Those belonging to the minority should thus not only be placed at the starting line with the majority, but will be virtually guaranteed benefits at the finish line as well. This interpretation of equality therefore requires quotas and targets. As stated above, from the perspective of EU law, such quotas must be provided with a clause allowing for the flexibility needed to ensure that individuals not belonging to the protected group are still taken into account. The Equal Treatment Directives of the EU state the following on the subject: "With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin."

Thus, EU secondary law (that is the EU directives etc.) takes a low-key approach: Positive action on the part of the Member States is allowed but not required. In fact, experts do not quite agree whether the EU has the legal authority at all to force Member States to assign such measures. Article 19 of the Treaty on the Functioning of the EU (formerly Article 13 of the EC Treaty) states only that the EU "may take appropriate action to combat discrimination based on sex, race, ethnic origin, religion or belief, or belief, disability, age or sexual orientation".

With the Treaty of Lisbon, this question has gained urgency: the EU is now committed to combating discrimination when defining and implementing its wide range of policies and measures (→ The Lisbon

Treaty). Whether the anti-discrimination policy allows for the prescription of Europe-wide "positive measures" can probably not be determined by only looking at the wording of the provisions of Articles 10 and 19 of the Treaty on the Functioning of the EU. The reach of these norms depends on the very understanding of what equality actually means and requires. Should a European consensus arise that the fight for real equality requires the adoption of positive measures, then Article 19 could provide an appropriate legal basis for such measures. In that sense this article is a neuralgic provision - its reach depends on how equality is defined (which is something the treaties do not do). Should there be an overall consensus on substantial equality and the need for positive measures, then this provision could very well allow European measures to be prescribed in this regard. Against this background, one also understands the often criticised fact that the important provision of Article 19 was kept under the unanimity rule in the Council: politically speaking, the central notion of equality is obviously so sensitive that Member States wanted to make sure that they could block any legislation by turning to a veto.

Equality can be understood formally or substantively. A purely formal equality of treatment ignores the concrete situation of the individual and concentrates solely on the treatment itself, without regard to social context or the actual impact on the individual. A substantive understanding of equality, on the other hand, focuses instead on the concrete impact that this action has on the individual. Therefore, measures based on a substantial reading of equality can indeed be asymmetric; they can "favour" certain members of particularly disadvantaged groups, and may aim to provide equal starting conditions (equal opportunity) or even equal objective outcomes (equality of results). While so-called "positive measures" aiming to produce equality of opportunity are legally unproblematic, result-oriented quotas lacking a "flexibility clause" do not hold up legally under the European Court of Justice's understanding of equality. In any case, measures that attempt to produce equal

results via asymmetric measures are temporary: once the equality of results is achieved, such measures tilt in the illegality.

Current EU legislation allows Member States to take positive action without requiring them to do so. It also seems possible to impose positive measures by means of EU legislation. This, however, would require a unanimous consensus amongst the representatives of all the Member States in the Council of the European Union.

Grisons:
The Rhaeto-Romans in Europe

In Grisons, Switzerland's largest canton in terms of area, in addition to German and Italian, a Rhaeto-Romanic language is spoken by several thousand inhabitants. This Rhaetian Latin-derived language developed over centuries in the alpine valleys. The once entirely Rhaeto-Romanic -speaking area in the Southern Alps has in the meantime diversified and has seen independent linguistic developments. Thus, the Rhaeto-Romanic spoken in Grisons is called "Romansh", that in the Dolomites, "Ladin", and the version spoken in Friuli, "Furlan". Romansh is considered a Romance language like French and Italian, but also like other minority languages such as Occitan and Catalan. Grisons is the only Swiss Canton with three official languages: German, Italian, and Romansh, which became the fourth official language of the Swiss Confederation in 1938.

The Swiss Federation and its languages

When one speaks of Switzerland as a nation-state as opposed to a nation based on a shared culture, this implies that the common identity is not based upon culture and language, but upon other connecting features, such as its shared history, its constitution or its traditions of neutrality and direct democracy. As such a "nation of will", Switzerland is in prominent company: the United States of America, Canada, and France, as well as Austria (the latter qualifying, for historical reasons, as a hybrid form somewhere between a nation-state and a nation based on a shared culture).

Politically based upon the 1291 *Rütlischwur* (an historic oath), the resulting Confederation consists of 26 cantons, the last of which (Jura) was founded in 1979. The current, federal state of Switzerland was established in 1848 and is now a member of the European Free Trade Association (but not the EU), the Council of Europe, the

World Trade Organization and the UN (→ Organisations). It differs from other European countries, mainly in its elements of direct democracy and strong federalism, which explicitly includes the cantons in all stages of policy development (→ Participation). The Federal Assembly (the legislative body of the Swiss Parliament) consists of the National Assembly and the Senate, with 46 representatives from the cantons. The function of the Government is performed by the Federal Council, which consists of seven equal members elected by the Federal Assembly. It is from the Federal Assembly that the Federal President is elected, who presides over the Federal Council for one year, assuming the functions of national and international representation.

Switzerland's population showed an increase of 1.4 percent in 2008 (which corresponds to the numbers in the 60s), of which about 1.6 million of the 7.7 million residents in Switzerland are foreign nationals, amounting to 21.7 percent of the total population (→ Kaleidoscope of Demographic Change). Reasons for this high percentage are the restrictive naturalization policy and the more than 200,000 border-crossing commuters who work in Switzerland. Regarding the use of official languages, Switzerland has stuck strictly to the principle of territoriality, meaning that in general, each canton is monolingual in either German, French or Italian. The Swiss Federal Constitution declares German, French, Italian and Romansh national languages, specifying in Article 70: "The official languages of the Federation are German, French, and Italian. In communication with persons of Romansh language, the Romansh is also an official language." The determination of official languages is the responsibility of the cantons (Article 70 paragraph 2), but the linguistic minorities and the original language patterns in the areas must be respected. With a share of 63.7 percent of the total, German is the most common language. French is spoken by 20.4 percent of the population, Italian by 6.5 percent (located in the canton of Ticino and some valleys of the canton of Grisons). In Grisons, Romansh is also spoken, accounting for 0.5 percent of the overall population. Apart from Grisons, there are also the multilingual cantons of Bern and Valais, the latter having even defined language areas within its

territorial limits. Thus, when travelling through other cantons, citizens have no right to communicate with the authorities at the municipal and cantonal level in their native language (→ Speaking of Languages). In some multilingual cantons like Grisons and Freiburg, the municipalities establish their official languages. For example, the municipality of Freiburg/Fribourg is officially bilingual in German and French. In contrast, many municipalities in Grisons are officially monolingual, with Romansh as the official language. Finally, to complete the language picture, both the Yenish language of the nomadic population and Yiddish should be mentioned: They are recognized as non territorial languages under the European Charter for Regional or Minority Languages that was ratified by Switzerland in 1997.

Romansh: The genesis of a minority language

The area where Romansh, Ladin and Furlan are spoken today was originally inhabited by Rhaetians and Celts. After being conquered and absorbed into the Roman Empire, Rhaetian (an Etruscan language) gradually gave way to Latin. After successful Romanisation, the area came under Germanic influence in the Eighth and Ninth Centuries. German increasingly took the position of the official language in public, while Romansh was relegated to a peasant language. The first attempts at a written language were made in the Reformation era, but a real recognition of the language did not come until the 19th Century. Despite all the incentives, since 1860 more than 50 municipalities in Grisons have changed over to German from Romansh as their official language, and through massive emigration (primarily to Zurich) lost population. Today, five dialects of Romansh are recognised in Grisons: Sursilvan, Sutsilvan, Surmiran, Vallader and Puter. At the last census in 2000, about 35,000 people indicated Romansh as their primary language (→ Uncounted). In family, school and work, it is used by roughly twice as many people. As a tool against the continuing decline of the language, there has been an attempt since the 70s to create a standard Romansh language. Indeed, a "Grisons Romansh" has developed in

literature, drawing from the three most widely-spoken dialects, Sursilvan, Surmiran and Vallader, but as an artificial language it has been met with great reservations by potential speakers. The aim of the standard language of Grisons Romansh is (as with the standardised *Ladin Dolomitan* in South Tyrol and Trentino) not to replace the existing Romansh dialects, but to serve for communication between speakers of different dialects. This allows cost-saving measures and a reduction in the administrative burden placed on local authorities and other organizations.

Since 2001, the Grisons Romansh has been the official written language in the canton of Grisons and, at the federal level, the means of communication with the Romansh population. At the municipal level, however, the respective dialects remain the official languages. Since a 2003 decision by the canton parliament of Grisons to slowly shift from the five local dialects to the standard language (at least as a written language) in the schools, new teaching materials are only being printed on Grisons Romansh. The secondary schools have already been successfully converted, and at the elementary school level, Grisons Romansh is strongly promoted by the canton. At the kindergarten level, however, greater resistance has been met, as the municipalities hold responsibility in that sphere. Regarding Media and the Press, Romansh speakers have a daily newspaper, "La Quotidiana", an all-Romansh radio station, and a few minutes of television daily on the Swiss public television station *SF* (→ Media).

Romansh is a Romance language related to more widely spoken languages like Italian and French, but it also shares roots with other minority languages, such as Occitan and especially the Ladin and Furlan languages spoken in Italy.

Romansh is one of the four official languages in Switzerland, although it is only spoken by just over 14 percent of the population in Grisons, one of Switzerland's 26 cantons. The approximately 60,000 Romansh speak five different dialects, currently

being unified, at least as a written language, by the standard language "Grisons Romansh". Media such as radio, television and newspapers, in their use of all forms of speech, serve as a bridge between dialects while also helping to establish the written language. Instruction in standardised written language in schools should also promote the formation of an overarching identity in the face of declining Romansh population and language use.

Homo- and Transsexuals: The "other" Minorities

In its emphasis, our ABC reflects that the term "minority protection" is generally claimed by the so-called "old" minorities (→ What is a "Minority"?). Advocacy of such "old" or "traditional" minorities often look at the political energy that is put into the protection of vulnerable groups, as a scarce resource. Thus if someone gains more attention, someone else will receive less so. Correspondingly, in some corners efforts to expand the concept of "minority protection" to include "new" minorities (→ Kaleidoscope of Demographic Change) are seen with a certain degree of hesitation. Further, both old and new minorities sometimes bear an anxious reluctance to being "lumped" together with Homo- and Transsexuals under the umbrella term "minorities". This is understandable in the sense that the state itself must be aware of the different needs of its populations if it aims to provide accurate recognition and protection. On the other hand, it is counterproductive for a society's imperilled groups to compete for political attention: the protection of diversity is not a zero-sum game. Every group that is in a socially disadvantaged position because of its otherness should be aware that appreciation for a *specific* form of social diversity will also spill over into greater tolerance for diversity in more general terms and thus served also other socially disadvantaged groups.

Lesbians, gays, bisexuals and transgender people as a threat to traditional gender roles?

What connects the so-called "LGBT" community with immigrants is that both are constantly the subject of vehement debate between the political fronts. And as with immigration policy, attention should be paid to the contribution of human rights, particularly the separation of political issues from the legal sphere, thus depoliticising (or rationalising) the debate as much as possible. For ex-

ample, the question of whether homosexuals can enter into a traditional marriage is a political issue, while the question of whether rights comparable to marriage rights have to be granted to gay couples on the basis of discrimination bans is a legal question. Of course, the boundaries between politics and law are not always crystal-clear. And often ideological struggles are fought on the backs of small social groups; the otherness of the LGBT community is still able to cause astonishing fears amongst certain corners of the majority population. For example, one occasionally still hears of homosexuality as being a "disease" to be cured, particularly in the conservative fringes of the church. This implies the idea of a risk of infection. Indeed, it seems that a fear is being cultivated that deviance from the statistical norm of sexual behaviour may in the mid-term future displace the standard sexual orientation. Given that for millennia hardly 10 percent portion of the population have been homosexual, this fear seems absurd and justifies to talk about "homophobia".

The amount of political opposition to broad-minded provisions supporting transsexuals seems even more remarkable given that this group is so statistically small (in Germany, the estimate is between two and four thousand individuals in a country that has a population of around 80 million). In the defensive reaction against the sexually "different", it becomes apparent that homosexuality challenge the traditional roles of the sexes and transsexuality challenges the understanding of gender in itself. This is perceived as a social challenge - not altogether dissimilar from the challenge faced by traditional minorities (questioning the linguistic and cultural unity of a nation) or immigrant minorities (questioning the historical continuity and the religious composition of a territory).

The still-sceptical attitude toward sexual "deviants"

A 2006 Eurobarometer survey across all EU Member States showed that the Europeans are only conditionally willing to consider LGBT individuals as equal. This is true not only in the specific case

of child adoption, but can also be detected with regard to an issue that is - so one would assume - only of relevance to the LGBT community itself, namely the issue of same-sex marriages. It was found that only 37 percent of Europeans believe that same-sex marriages should be allowed anywhere in Europe. Furthermore, the range of attitudes among the various countries was striking, suggesting that the subject of homosexuality can hardly rely on trans-European consensus. While less than a sixth of the populations in Romania, Latvia, Cyprus and Bulgaria support the general equality of gay marriage, the approval rate in Belgium (62%), Denmark (69%), Sweden (71%) and the Netherlands (82%) is more than four times as high. European attitudes are similarly diverse when it comes to the question of allowing adoption by same-sex couples: All in all, only a quarter of Europe's population supports such adoptions. Approval rates range from well below 10 percent in Malta, Poland, Latvia and Romania to more than 50 percent in Sweden and almost 70 percent in the Netherlands.

But it is important to note that the omnipresent issues of so-called "gay marriage" and adoption rights for homosexuals are merely the tip of the iceberg of open issues. To understand why the question of open or hidden discrimination is indeed relevant, it is helpful to remember that even in Europe's not too distant past, homosexuals were commonly classified as a criminal. In Austria, homosexuality was punishable by death until 1787, when the punishment was reduced to "mere" forced labour - by doing so it was considered the most modern country of the time! The development of an increasing perception of homosexuality as an equal expression of autonomous sexual self-determination was and continues to be slow. For instance, Paragraph 175 of the German Penal Code from which the German slang for homosexual men "175ers" derives remained in force until 1994. It forbid homosexual acts between males as a punishable offense and put it next to "unnatural fornication with animals" until 1969. This shows the persistence of an obscure legal legacy. The first European criminal justice system - the Constitutio Criminalis Carolina, created in 1532 by Karl V - declared in its Article 116 that to engage in "unchaste conduct between men

and cattle, men and men, or women with women is to forgo life". Ergo: homosexuals were burned at the stake.

Today, there is a European consensus that homosexual behaviour is not a crime. When homosexuality became legal in Armenia in August 2003, the European ILGA (International Lesbian and Gay Association) celebrated that Europe was free of discriminatory persecution for the first time in 1500 years. On the global level, the situation is quite different. In some 80 countries, homosexuality is still punishable by law. In more than a handful of countries, people continue to be threatened with punishment because of their sexual orientation, even the death penalty! When the EU Presidency issued a declaration to decriminalize homosexuality in the UN General Assembly on 18 December 2008, only 39 countries (most of them European or South American) joined the 27 nations of the EU. 57 states (such as North Korea - a country that purports to harbour no homosexuals) were against it. 69 of the 192 UN Member States abstained - including political heavyweights such as China and Russia. Even the United States did not participate in this declaration - supposedly deferring consideration to the competence of its 50 states (which is unconvincing, as the declaration has no binding legal implications).

Politics and Law: LGBT treatment in conflicts of values and law

An example of homophobic behaviour that may well win over the political elite pertains to the debate in Poland. In 2007, the Polish government approved a bill forbidding "homosexual propaganda" in schools. Principals, teachers and students are to be dismissed if they are actively committed to LGBT rights in the schools. The same applies to teachers who are out-of-the-closet homosexuals. The former Polish prime minister explained that promotion of the homosexual lifestyle to young people in schools as an alternative to a "normal" life had gone too far, and constitutes a distortion of the concept of tolerance. The Polish Ombudsman for Children even issued a list of jobs for which homosexuals are unfit. In June 2006,

the Polish Public Prosecutor began a review of funding to LGBT organizations for alleged connections to "criminal movements" and regarding their presence in schools, in order to determine evidence of criminal conduct (the investigation was inconclusive). The same year, the Polish Government sacked the head of the Center for Teacher Education and forbade the distribution of an official European manual to combat discrimination. The newly appointed head of the Center explained that inappropriate role models should not exist in the schools, which have the duty to teach the difference between good and evil, beauty and ugliness, and must explain that homosexual practices lead to tragedy, emptiness and degeneracy. Furthermore, the Polish government has refused to co-finance EC youth program projects that are promoted by LGBT organizations. All of these developments have drawn strong criticism from the EU Parliament.

It is important to stress that European Union law does not affect the right of Member States, to legislate in "the sphere of public morality, family law as well as the protection of human dignity and respect for human physical and moral integrity" as is emphasised in Poland's declaration attached to the Treaty of Lisbon (→ The Lisbon Treaty). Member States and their governments are free to make autonomous decisions on social values. The Union must respect the "national identity" of the Member States. However, the EU Treaty makes it equally clear that EU integration is based upon "the principles of freedom, democracy, respect for human rights and fundamental freedoms and the rule of law", and that these principles apply to "all Member States" (TEU Article 6). The EU Charter of Fundamental Rights, which became with entry into force of the Lisbon treaty legally binding, stresses that discrimination on the basis of sex or sexual orientation is unlawful (→ Discrimination). Certain political developments can indeed compromise these shared values. Particularly in the case of new Member States, incidents occurred that were of legal relevance: for example, LGBT demonstrations were prohibited (without sufficient cause), or permitted without assuring the demonstrators sufficient protection against acts of aggression from other parts of the population. The legal issues go far

beyond the freedom to demonstrate. Over the recent past political declarations, but also legally binding measures as well as case law of the European Courts in Luxembourg and Strasbourg contributed to the development of minimum standards for the protection of LGBT people that Member States have to guarantee.

The fight against discrimination on the basis of sexual orientation

Instructions coming from "the EU" are not deriving from another star, but have been developed together with the Member States in Brussels. Then there are those guidelines "from Europe" that were developed in the Council of Europe. For example, the General Assembly of the Council of Europe called in 1981 upon the World Health Organization to end the classification of homosexuality as a disease (in fact, the WHO responded in 1990 and removed homosexuality from its list of diseases). At the same time, the General Assembly requested that the States decriminalize homosexuality and combat discrimination against homosexuals. In 1993, the EU Parliament adopted a milestone resolution (on the basis of the report by Claudia Roth of the German Green Party) advocating for the rights of homosexuals. It called for the repeal of differing legal protections for gays and lesbians as compared to heterosexuals in the areas of age of consent, social benefits, gender equality in civil and inheritance law, registered domestic partnership as well as barriers to adoption.

In 1997 the Council of Europe's Commission for Human Rights Council of Europe concluded that in light of recent scientific findings that homosexual inclinations were anchored usually before puberty, a higher age of consent for homosexual relationships than for heterosexual relationships could no longer be tolerated. In 2003, the Court in Strasbourg ruled against Austria, stating that the unequal treatment under Paragraph 209 of the Austrian Criminal Code was devoid of objective and factual justification and thus is contrary to the European Convention of Human Rights (L. & V. v. Austria). Paragraph 209 of the Austrian Criminal Code set the age of

consent for homosexual relationships at 18 years, while maintaining the age of 14 for relationships between women and men. Thus consensual sexual relationships were treated differently depending on whether they are homosexual or heterosexual. This special protection provision replaced a previous total ban on homosexual contact in 1973. The Austrian Constitutional Court had justified Paragraph 209, arguing (among other things) that these standards aim at protecting "maturing young people from sexual aberration". Such an argument seems removed from nowadays social reality: Homosexuality is no longer perceived as the result of an error, but rather, a different development.

Against this background, the European Court in Strasbourg, interpreted the European Convention of Human Rights (ECHR): Different treatment based solely on the basis of sexual orientation must be justified by very strong arguments, or else it is illegal. Even if the ECHR, unlike the Charter of Fundamental Rights, does not explicitly mention sexual orientation, it nevertheless also covers such inequalities (→ Discrimination). In a 1999 ruling made, the Court in Strasbourg held that the exclusion of homosexuals from military service could not be justified (Smith and Lustig-Prean v. United Kingdom). The British government had claimed that the integration of homosexuals into the armed forces had an extremely negative effect on troop morale, thus affecting the combat effectiveness and efficiency of the troops. The reason did not concern the physical or mental fitness of homosexuals, but rather the discomfort of the other recruits in the presence of homosexual colleagues. The Court made it clear that negative stereotypes against homosexuals cannot be the basis for justifying discrimination against homosexuals.

The EU Court in Luxembourg was initially far less resolute when it came to dealing with the phenomenon of sexual orientation. 1998, the Court denied the question of whether EU law precluded a British train firm from offering financial benefits exclusively to married couples or unmarried heterosexual couples (Lisa Jacqueline Grant v. South-West Trains Ltd.). It concluded that Community law covers only discrimination based on gender, and since in this case

men and women were treated equally, no discrimination was observed. Moreover, the Court said that comparability of different-sex and same-sex partnerships was not recognized in Europe. Another factor in this decision was that the Court was probably reluctant to prejudge amendments to the EU treaties, as the former Article 13 of the EC Treaty was not yet in force (→ Discrimination).

Shortly thereafter, the legislature (Council and Parliament) responded on the basis of the then newly introduced Article 13: With the directive to combat discrimination in the workplace in 2000, the EU first proposed an instrument requiring states to combat discrimination in the workplace, including discrimination on the basis of sexual orientation. 18 Member States (Germany and Austria included) decided, when transposing this Directive into national law, to also ban this form of discrimination in areas outside the workplace. While the Racial Equality Directive provides in the context of discrimination based on ethnicity an obligation to establish specialized anti-discrimination bodies, this is not the case for discrimination based on sexual orientation. Only one country, Sweden, has established a specialised institution addressing specifically the issue of discrimination based on sexual orientation. However, at least 18 Member States have a body that is in part responsible for dealing with such discrimination. In Austria, this is the Equal Treatment Commission and the Equal Treatment Ombudsman, in Germany, the Anti-Discrimination Agency (ADS) in Berlin. While both of the equality bodies in Austria are primarily concerned with sexual discrimination in employment, the working range of the ADS is broader, as German legislation prohibits discrimination based on sexual orientation in many areas of live, including access to housing, education or health. (→ Discrimination). The ADS currently employs 20 staff in Berlin. Between August 2006 and December 2007, they received over 3659 requests, of which about 5 percent dealt with sexual orientation.

Preferences "from Europe" on the Concept of "Family": Delicate Fine-tune

Equality in civil and inheritance law, the possibility of registered same-sex partnerships and the right of homosexuals to adopt, are all policy fields falling within the core competence of state regulation. Nevertheless, even here, the supreme courts of the Council of Europe and the EU have identified certain minimum standards that have to be respected (→ Judiciary). Development was admittedly slow. The Human Rights Commission of the Council of Europe did not accept gay and lesbian lifestyles as "families" as protected under the ECHR. In 2003 the Court issued a ruling granting a homosexual partner the right to claim the term "spouse" under the terms of the Austrian Tenancy Act. This case concerned a man who had cared for his partner until his death. The landlord wanted to evict this caregiver after the death of his former tenant. The caregiver referred to the fact that marriage law aims to give cohabiters social and financial protection against homelessness, without having regard to family policy goals. The Austrian Supreme Court disagreed with this interpretation and to the contrary argued that the historical intention of the legislation was not to include homosexual couples, rather the scope of the legislation is to protect the traditional family. The response of the court in Strasbourg was that the protection of the traditional family can indeed form a justification for a differential treatment. However, so the Court, it has to show, why the exclusion of homosexuals from rent protection was necessary to protect the traditional family. The government was unable to provide evidence and arguments to this effect and consequently Austria was convicted of violation of the ECHR. For the plaintiff, this was no longer useful - he had already died in 2000. But for the civil protection of homosexual couples in Europe, it was an important step.

Recently also the European Court in Luxembourg has been occupied with the civil law issue of surviving homosexual partners (Tadao Maruko v. Retirement Fund of the German Theatre). Again, there was a more than long-standing homosexual relationship torn

apart by the death of one of the two partners. In its decision of 1 April 2008, the Court ruled that in Germany, homosexual partners could be considered surviving heirs. This is since Germany created the institution of "civil partnership", its conditions have gradually been made equivalent to those of marriage. Accordingly, if surviving (heterosexual) spouses and surviving (homosexual) partners are in a comparable situation, then provisions such as those at stake in the concrete case must also be extended to homosexual survivors of departed partners. However, whether or not an institution like a "civil partnership" is comparable to a marriage has to be assessed - so the European Court of Justice stated - by the national judge. This comparability was established by the German Federal Constitutional Court in a 2009 ruling.

The question of adoption has so far only been examined by the Court in Strasbourg. In 1999 there was decisive case concerning a man who lived in a same-sex partnership after his divorce from his ex-wife. Specifically because of this fact, his application for custody of his daughter from a previous marriage was rejected (Mouta Salgueiro da Silva v. Portugal). The Court ruled that denying his legal custody on the basis of his sexual orientation was a violation of the ECHR. Likewise, the Strasbourg criticised that the national court had instructed the man to not to give his daughter the impression that he was living with a man in a marriage-like relationship.

Three years later, the Court was confronted with the question of whether a denial of adoption rights to gays and lesbians is acceptable under the ECHR (Fretté v. France). This is one question that seems to divide not only society, but also lawyers: The Court ruled by a razor-thin majority that the ECHR does not preclude such a ban. In early 2008, the Strasbourg Court finally decided a case in which a woman in a stable homosexual relationship asked to be allowed to adopt a child (EB v. France). Her request went through all stages of appeal and was ultimately rejected by the Conseil d'Etat. The latter found that the two reasons given by the national authority, namely the lack of a male caregiver and the ambivalent attitude of the applicant's partner towards the child do justify the de-

nial of an adoption. The plaintiff, however, argued that the decision was based on their implied homosexuality. The Strasbourg Court agreed with the latter and qualified the decision by the national authority as unjustified discrimination. It is important to emphasize, however, that the Court did not specify in that case that homosexual couples have a right to adoption under the Convention. Rather, it noted that in those countries which also allow single people to adopt children (such as France), adoptions cannot be made dependent on the fact that the prospective adoptive father/parent is heterosexual, nor on the requirement of the presence of a caregiver of the opposite sex in the immediate environment. This is conclusive insofar as a country that allows single persons to adopt children indirectly also conveys the message that the combination of a "mother" and a "father" is not necessary for the adoption of a child.

Various estimates show that around 3-10 percent of the population are homosexual (including supposedly more men than women). The phenomenon of transsexuality, on the other hand, rests below the per mill range (including more male-to-female transsexuals than female-to-male transsexuals). However, trans- and homosexuality are ancient societal phenomena. Only the setting has changed. Homosexuality is no longer perceived as a result of an aberration, but simply as a different development.

In light of new scientific findings and growing social acceptance, the judicial authorities in Europe have made a key contribution to equality for LGBT people. The aim is to separate the political issues from legal questions and to thereby rationalise the debate. Europe will not create a unified family model, but pave the way for a rationally based equality. While the various Member States still bear very large differences in terms of the social acceptance of LGBT people, a general and consistent tendency toward greater legal equality can be found.

Indigenous Peoples: The Sami and Inuit

Indigenous peoples are distinguished from autochthonous, ethnic, religious, linguistic and national minorities or ethnic groups (→ What is a "Minority"?). As "indigenes", they have strong territorial ties and are greatly marginalized both economically and politically. They stand out culturally to the majority population to a greater degree than other groups. Unlike members of those minorities, who benefit only from individual rights, indigenous peoples enjoy additional collective rights - specifically, rights pertaining to their ancestral land as well as self-determination.

From "indigenes" to "First Nation"

The only currently binding international agreement referring to indigenous tribes dates from 1989: This Convention concerning Indigenous and Tribal Peoples in Independent Countries, No. 169 of the International Labour Organisation, calls for the promotion of their identity, language and religion as well as the protection of their lifestyles, institutions and economic survival within the existing national borders. But the Convention, ratified so far by 20 states, was not even signed by major countries with large indigenous populations like Sweden and Finland, Canada and the USA, Russia, China or Australia. The UN General Assembly's Declaration of the Rights of Indigenous Peoples, on the other hand, received significant support on 13 September 2007 with 144 votes, just four votes against and eleven abstentions. Finally, after twenty years of drafting, this widely accepted declaration for the first time recognises not only the rights of indigenous peoples, but also the right of self-determination. Furthermore, other collective rights, such as property, land use and control over natural resources are provided for by the UN declaration. The maintenance and development of its own political, religious and cultural institutions, including schools is also provided for, as is a consultation process between states and

indigenous populations. Finally, the declaration calls for compensation payments and measures to prevent genocide (→ Zero Tolerance).

As is the case with the terms minorities or ethnic groups, there is no universally accepted definition for indigenous peoples. However, some criteria, such as historical continuity in a certain area, or before others "invaded" or came to the area, close cultural relationship with nature, self-definition and traditional life style as well as oppression and threat to livelihood by a dominant company can be used for a working definition. Based upon these criteria, as many as 400 million people (or 5% of the world's population) can be counted as indigenous peoples. Particularly in the Third World, entire countries and their majority populations define themselves as indigenous because of a traumatized, post-colonial self-conception, thus blurring the image of truly marginalized population groups. Sometimes the indigenous roots of a population become a constitutive element of national identity, creating a certain potential for abuse. Venezuelan president Hugo Chavez and Bolivia's Morales government have succeeded in uniting oppressed (under Colonialism and subsequently by multinational corporations) indigenous majorities behind them by invoking their indigenous origins. The term "First Nation" - introduced in Canada in the 1980s, is not yet widely used, but may be helpful because of the neutrality and considering the borderline cases mentioned above.

The Sami: Europe's only indigenous peoples

The Sami, the only indigenous peoples living in continental Europe, reside in northern Scandinavia and on the Kola Peninsula. The term Sami means "swamp people", and replaces the term "Lapps" (derived from Reindeer herding) which, perceived as a discriminatory label, has fallen out of use. The number of Sami is estimated at between 70,000 and 90,000 in the countries of Norway (~40,000), Sweden (~20,000), Finland (~6000) and Russia (~2000). Their historical settlement area, the "Sápmi" or "Same Ätnam",

was formerly much larger, and supported their traditional nomadic lifestyle of reindeer herding, fishing, hunting and gathering. However, the Sami have experienced centuries of exploitation by mining and trade as well as slavery and missionary work. In recent decades, the already limited habitat has been restricted even further by road construction, industrialization, expansion of hydroelectric power and tourism development.

The Middle Ages and the early nation-building of the 17th Century saw the suppression of the Sami. Taxation, restriction of hunting rights, industry and commerce, forced resettlement, bans on their language and culture, and the nationalisation of agriculture and livestock have nearly led to the demise of the Sami culture. This is evidenced in the proportion of the Sami population living in their original settlement area - just 4 percent, and on the Russian Kola Peninsula, less than 0.2 percent, only a small percentage of whom partake in traditional reindeer herding. In 1952, the Sami, who (with their Mongolian origin and Finno-Ugric language) have been living in Scandinavia since 10,000 BC, founded the Sami Council, a political advocacy organisation, to confront the threatening situation faced by the Sami in Norway, Sweden and Finland (→ Participation). 1989 saw the first meeting of a directly elected Sami Parliament in Norway, followed a few years later by Sami parliaments in Sweden and Finland. In 2000, the joint Sami Parliamentary Council met for the first time, together with the Association of Russian Sami, to promote the common interests of the Sami across borders.

Despite these collective regional institutions, most of the areas relevant to the Sami are still regulated by the state. Norway for example, is the only country with a Sami population that has ratified the ILO Convention 169. The Norwegian constitution, which recognizes the Sami as a people, only established a special commission determining their land and resource rights in 2007, in order to compensate the Sami for the nationalisation of the collectively used "Halogaland". As in Norway, in Sweden the Sami Parliament is also consulted on matters concerning the Sami. Further, the Sami Par-

liament in Sweden regulates administrative tasks in the distribution of state subsidies, in language policy and other cultural and social issues that directly affect the lives of the Sami. In contrast to these collective rights, the Sami in Finland are treated as a national minority, so their individual rights and obligations are equal to those of other Finnish citizens (→ What is a "Minority"?). Thus, reindeer-herding is not an exclusive right of the Sami in Finland - a fact that places non-traditional reindeer-herding and the timber industry in conflict with the territorial claims of the Sami. On the other hand, in 1995, with the accession of Sweden and Finland to the EU, the so-called "Sami protocol" was included in the Accession Treaty, reserving the Sami population special rights explicitly defined as non-discriminatory and compliant with the Single European Market - similar to what was agreed with regard to the special autonomy agreement regarding the Åland Islands (→ Autonomies). Thus, the fact that Norway - following a negative referendum on the question - did not accede to the EU in 1995 resulted in the disruption of the Sami settlement area by the EU border. However, the EU accession of Sweden and Finland should, at the very least, be regarded as a positive development for the provision of regional funding. In Russia, on the other hand, the Sami of the Kola Peninsula were indeed recognized as an indigenous peoples in 1999, but their survival continues to be threatened by nationalization and resettlement measures, "Russianisation", and finally, by pollution resulting from the Chernobyl catastrophe.

The Inuit: A special case in Europe and Canada

In comparison to other indigenous peoples, the Inuit people living in Canada and Greenland, with their extensive political rights, are an exception among indigenous peoples. In 1979, the Inuit in Greenland were granted a far-reaching territorial autonomy by the Danish government (→ Autonomies). Of Greenland's 56,000 inhabitants, 47,000 are Inuit and 9000 of Danish origin and have developed a strong regional identity since the 1960s. Tensions with Denmark arose in connection with its application for membership in the then

EC: In 1972, the Greenlanders voted not to apply for membership, because they wanted to protect their fisheries' yields against the Single European Market. Denmark nevertheless joined the EC in 1973 (along with Great Britain and Ireland), but in return conceded a special autonomy to Greenland in 1979. Availing these new freedoms, Greenland soon produced a referendum for the withdrawal of the world's largest island from the EC: In 1985, the territory of Greenland was re-designated as an "overseas territory" rather than part of the EU territory proper. In late 2008, 76 percent of Greenlanders voted for further expansion of autonomy. Greenland's foreign minister stated in early 2009 that Greenland still intended to remain part of Denmark for "20 or 30 more years".

The Inuit, who reside in Siberia, Alaska, Canada and Greenland, emigrated from Asia around 3000 BC via the Bering Strait, in various waves through 2500 BC, reaching Greenland by 1000 AD. The common term "Eskimo" is regarded as derogatory by the Inuit ("people"), who are descended from the Mongols. Their original, nomadic lifestyle, based on fishing and hunting marine mammals such as seals, whales and polar bears, was denied by the influence of the animal and nature conservancy movements, trade boycotts, and to an increasing extent, climate change. While the Inuit could once fish four months on solid ice, they are now limited to a single month. In the other months, the ice is too thick for boats and too thin for dog sleds. On the other hand, the warmer climate allows for the extraction of minerals and the search for oil off the coastline. The restructuring of social problems continues on course.

Denmark and Canada have both made attempts to allow the Inuit economic and cultural survival by granting them powers of self-government. In 1999, Canada gave back the region of "Nunavut" ("Our Homeland"), which is six times the size of Germany and is home to some 31,000 inhabitants, 85 percent of whom are Inuit. Trade in arts and crafts, hunting and fishing as well as the preservation of tradition, both in Nunavut and Greenland, are the main functions of the autonomous self-government. The great challenge for the Inuit political representatives in Canada and Greenland will

be to balance between preserving traditional culture and modern lifestyles. Adapting to global warming and a responsible mining of the abundant mineral, gas and oil deposits, however, can be ensured only through transnational action.

Indigenous peoples are marginalized population groups descended from the first inhabitants of a given territory, to which they have retained a close connection. According to UN estimates and self-definition, there are 400 million members of indigenous peoples worldwide, including diasporas and refugees. For the Sami and Inuit, the largest indigenous peoples of Europe, the greatest challenges are the preservation of language and culture, environmental protection, use of natural resources and the maintenance of their traditions. The ongoing climate change in these ecologically highly sensitive areas is probably the greatest threat to the survival of these indigenous peoples.

Judiciary: The Role of Courts in Minority Protection

The proceedings and findings of the courts are referred to as "jurisprudence", and the courts themselves are one of the three branches of government. In his famous 1784 book The Spirit of the Laws ("De l'esprit des lois") Baron de Montesquieu stated that the freedom of citizens can be measured by the division of powers of its government, which is the only way to avoid abuse of power. The three traditional powers of the state, namely the legislature (legislative), administration (executive) and courts (judiciary) must each be independent in order to keep each other in check - "Le pouvoir le pouvoir arrête", in Montesquieu's words. This has not changed since his time. Perhaps today we recognize the importance not only of this "horizontal" separation of powers, but a "vertical" separation as well: the division of power between the national, regional local levels (→ Autonomies). Further, we recognize another political force on the horizontal plane, sometimes called the "fourth estate": the power of the media (→ Media).

The judiciary's role is to monitor the state administration and apply the law to individual cases. In the application of the law to actual situations - i.e. people's concrete life circumstance - the jurisdiction is bound to the laws themselves. The so-called "third estate power" (judiciary) thus does not operate in a legal vacuum. n contrast to the executive and legislative, it is relatively removed from the political process of a society. The deciding judges are independent. They are not subject to orders, answerable only to their reputations for legal expertise. In addition, it is within the court's jurisdiction to judge whether legislation is constitutional or contradictory to the constitution. When one regards the constitution fundamentally as a constraint of values to which society is obligated in abstraction, and simple laws as products of the political struggle to achieve majorities in Parliament, it is immediately clear why the judiciary is essential for the protection of minorities - be they eth-

nic minorities, language minorities, sexual minorities or others: It is the judiciary, which oversees that the majority-led democracy is not denying minorities their rights. This also applies to cases where societies use instruments of direct democracy such as referendums to deal with minority-related issues (→ Media, → The Veil).

The European Court of Human Rights in Strasbourg (Council of Europe)

At the European level, the Jurisprudence of the European Court of Human Rights in Strasbourg is particularly important to the development of minority rights. The Court in Strasbourg monitors the compliance of the Member States of the Council of Europe with the European Convention on Human Rights (ECHR, → Organisations). Cases involving the actions of states and falling within the scope of the ECHR can be brought before the Court at the point when domestic remedies have been exhausted. Although the ECHR contains no specific provisions for the protection of minorities, its human rights standards are a central concern in the court's interpretation of issues pertaining to minorities.

As a full-time Court, the European Court of Human Rights has only existed since 1998. It has been called upon with increasing frequency ever since. Trials have lasted longer and longer, to the point that the Court has become the victim of its own success. On 18 September 2008, it announced its ten thousandth ruling. At the end of 2011 151,624 cases were pending before the Court. In the tradition of the Court, well over half of these cases were from four countries, namely Russia (40,225=26.6%), Turkey (15,940=10.5%), Italy (13,741=9.1%) and Romania (12,286=8.1%). Out of the 1157 judgments the Court delivered in 2011, the following five rights enshrined in the Convention were most frequently at stage: length of proceedings (341 judgments), right to liberty and security (261 judgments), right to a fair trial (211 judgments), right to an effective remedy (187 judgments) and inhuman or degrading treatment (183 judgments). Since the Court was founded, the applications

have become more numerous from year to year. Whereas 8,400 applications were accepted by the Court in 1999, the figure rose to 64,500 in 2011. In addition to the 47 judges (18 of them women), some 270 attorneys are employed at the Tribunal, supported by another 370 employees. For all the Court's activities in 2012, it has to operate on a meager budget of just € 67 million. The situation thus remains tense. The number of procedures is as high as ever. Against this background, the 2012 UK Chairmanship of the Council of Europe held a Ministerial Conference on the Future of the European Court of Human Rights in Brighton from 18 to 20 April 2012. The Conference adopted the Brighton Declaration, proposing a variety of reforms to the Court. Some of these proposals send ambivalent signals but at least the States commit to better implement in the future judgments of the Strasbourg Court. And in fact it is the underperformance of fundamental rights protection at the national level that generates the considerable pressure imposed on the European Court.

From the abstract and institutional to individual cases, in the following we shall take a short stroll through selected rulings of the European Court of Human Rights of particular relevance to the protection of minority rights.

Equality: What does it take to assure discrimination-free law?

In general, the discrimination ban in Article 14 of the European Convention on Human Rights (ECHR) is enforceable only together with other, specific ECHR-assured fundamental rights (→ Discrimination). It was unclear whether this prohibition of discrimination only prohibited treating like situations differently or whether it also banned the equal treatment of different situations. In its 2000 ruling on the case of Thlimmenos v. Greece, 34369/97, the Court stated that equal treatment of inequality constitutes discrimination. Specifically, a state imposing measures regarding objections to compulsory military service (in this case Greece), had discriminated on the basis of not taking the differing motivations in the objections

into account. Mr. Thlimmenos, an avowed Jehovah's Witness, was refused appointment as a certified accountant because of his criminal conviction for refusing compulsory military service on the basis of his religious and moral beliefs. The Court criticised Greece for being unfair in "failing to introduce appropriate exceptions to the rule barring persons convicted of a serious crime from the profession of chartered accountants". A distinction has to be made between simple failure to fulfill a civic duty and the compulsion to violate one's inner convictions. If all are sheared with the same comb, then the equality principle is violated (→ Formal Equality). In other words, egalitarianism sometimes leads to violation of equality!

The case of Nachova v. Bulgaria, 43577/98 and 43579/98, concerned the killing of two Roma by the military police. The two victims, who had absconded from military service, were denied prosecution and shot in broad daylight even though it was known that they were neither armed nor dangerous. Immediately after the shooting, the policeman yelled "Fucking Gypsies!" at witnessing bystanders. It is legally interesting that the Court, in its 2005 ruling, stated that the dubious actions of the authorities in handling this case constituted not only a case of the right to life being violated, but also that the authorities had failed to meet their obligation to take preventative measures against discrimination on the basis of ethnicity. They would have had to carefully investigate whether the shooting of Misters Angelov and Petkov (the two Roma victims) was not motivated by racism. The Court ruled the same in the 2007 case of Petropoulou-Tsakiris v. Greece (44803/04), which also involved Roma citizens: A pregnant woman had lost her child when kicked by a policeman. Here too, the Court reached the conclusion that the racial aspect of the case was not properly investigated. In the course of the trial, the Greek Deputy Police Chief had opined publicly that the Roma generally exaggerated complaints, and that this was part of a character assassination tactic that made it difficult for police to perform their work. Understandably, such details could give rise to doubt regarding the quality of criminal trials. The ban on different treatment applies well in the prosecution of crimes.

Firstly, crimes that are racially motivated are not to be treated identically with those not committed with racist motives (→ Xenophobia). On the other hand, the authorities must do everything possible to find out the true motivations of the perpetrators, and not suppress facts in the trial that might indicate racial motivation.

That the discrimination prohibited by Article 14 of the Convention may also prohibit unequal treatment based on citizenship has also become evident in jurisprudence. Thus, in its 2009 ruling on the case of Andrejeva v. Latvia (55707/00), the Court held that it constituted a violation of the right to peaceful enjoyment of property (Article 1 of ECHR Protocol 1) in relation to Article 14 of the Convention, if a person residing in Latvia is denied pension rights solely because the person is not a Latvian citizen. Although Member States are entitled to a broad degree of interpretation of social freedom, unequal treatment of a person solely because of their nationality or citizenship cannot be justified.

The right to privacy as a protection for the lifestyle of the Roma?

Article 8 ECHR grants every individual the right to respect for his private and family life, home and his correspondence. In a number of cases, members of the Roma minority have sought protection for their "caravan culture" under this article. Indeed, the Court seems to recognize in principle that ECHR Article 8 protects the "way of life" of a minority. In any case, the Court ruled in 2001 that limitations on parking caravans can affect not only the inviolability of the home, but also limit the preservation of Roma identity and, in turn, their private and family life connected to their tradition (Chapman v. United Kingdom, 7238/95). Further, the ruling indicated an "emerging international consensus" among the Council of Europe nations recognising the obligation to protect the security, identity and lifestyle of minorities, "not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community". At the same time, however, the Court in that case noted that this interna-

tional consensus is not yet concrete enough to compel the individual states in one direction or another in any given situation.

The court also found a violation of the right to privacy in a 2009 ruling involving an accusation of sterilization without the patient's consent. The eight plaintiffs were Slovakian Roma who gave birth by caesarean section in a public hospital and were rendered infertile after the surgery. Suspected to have been secretly sterilised on purpose, they demanded the medical records. They were refused, which the Court saw as a violation of ECHR Article 8 (K.H. v. Slovakia, 32881/04).

Freedom of religion: The state as a neutral broker between religious groups

Article 9 of the ECHR guarantees freedom of thought, conscience and, above all, religion. Everyone can thus avow his religion individually or together with others, publicly or privately. Particularly in this context, the question has been raised as to whether the state can enter into the aegis of the churches. The state must refrain from making certain restrictions, such as on the appointment of priests. On the other hand, it is quite possible - according to the Court - to limit the communication channels of certain faiths by, for instance, awarding radio licenses to some religious groups but not others. In the case of United Christian Broadcasting v. United Kingdom (44802/98) it was stressed that such restrictions can be considered particularly necessary in a democratic society if that society is characterized by religious diversity. For then - as the Court ruled in 2000 - it is the obligation of the state to seek a fair, balanced relationship between the religions. At the same time, it is not the state's role to take sides in the event of conflict between religious (splinter-) groups. In connection with a dispute over the succession of the late Mufti of Rodopi in Greece, the Court stressed that the state is to restore harmony without trading pluralism for forced homogeneity (1997 ruling on the case of Serif v. Greece, 38178/9). To comply with this duty of neutrality under ECHR Article 9, mere tol-

erance by the State is not enough. The state must allow the establishment of institutions and recognize the various communities. This does not mean that any special recognition or funding must be provided for every specific group. A small, strict splitting of the Jewish community in France was not granted approval for its special means of butchering. In its related 2000 ruling, the Court found no violation of ECHR Article 9 in conjunction with ECHR Article 14, because it was possible for this group to obtain meat that satisfied their (strict) slaughter rules even without such self-government (case of Jewish Liturgical Association, Cha'are Shalom Ve Tsedek v. France, 27417/95).

Freedom of expression and of assembly: the demands of minorities are no danger to society

Article 11 ECHR grants freedom of assembly and of association. As is apparent from the decisions in the 1998 cases of Sidiropoulos and others v. Greece (26695/95), Stankov and the United Macedonian Organisation Ilinden v. Bulgaria (29221 and 29225/95), this freedom may not be denied with regard to specific political demands of the respective groups. As stated in the Sidiropoulos verdict, neither territorial integrity nor national security were put at risk, and organisations that call for the promotion of minority cultures were appropriate, as "the existence of minorities was a historical fact that a 'democratic society" had to tolerate and even protect and support according to the principles of international law". In connection to this ruling, the Court referred to the OSCE Charter of Paris and the Copenhagen Document (→ Organisations). In the Stankov case, the Court maintained that calling for secession did not automatically justify the prohibition of the group in question.

In the so-called "Kurdish cases", the Court had to address the issue of terrorism in the minority context. In balancing between human rights and political order, the Court took into consideration the nature of a particular publication, its dissemination, and the

threatened punishment. The Court identified a violation of Article 10 in eleven out of 13 cases (the judgments date from 2009). In the two cases in which no human rights violation was found, the Court identified an incitement of violence in the expressed opinions of each plaintiff, as they actively endangered specific individuals. Also in 2009, the Court ruled that an association cannot be dissolved solely because it refuses the national identity of the state. This case concerned an association in Macedonia that denied the identification of ethnic Macedonians as Bulgarians. (Association of Citizens Radko and Paunkovki v. The Former Yugoslav Republic of Macedonia, 74651/01).

Article 10 ECHR guarantees freedom of expression, which includes the freedom "to receive and impart information and ideas without interference by public authority and regardless of frontiers". The Court stressed that not only majority- or system-friendly ideas are covered by freedom of expression, "but also those that offend, shock or disturb; such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'" (stated in the 199 ruling in the case of Arslan v. Turkey, 23462/94).

Right to Education: No right to mother tongue instruction, but protection against segregation

On the subject of mother tongue instruction in school, the Court noted that Article 2 of the first Additional Protocol to the ECHR, which grants the right to education, does not include education in the mother tongue (→ Education). Although the state is obliged to respect the right of parents to ensure such education and teaching in conformity with their religious and philosophical convictions, the Court has stressed that this does not amount to the consideration of the parents' linguistic preferences (see, for example, the 2000 ruling on the case of Skender v. The Former Yugoslav Republic of Macedonia, 62059/00). In the case of Cyprus, it was determined that the closure of an existing school offering may well

constitute a violation of law (the 2001 ruling in case of Cyprus v. Turkey, 25781/94).

After initial hesitation, the Court also made it clear that a segregation-like concentration of Roma children in special schools would be an injury to the right to education in the context of Article 14 ECHR. The key ruling was issued by the Grand Chamber of the Court in 2007 on the case of D.H. v. Czech Republic (57325/00). This circumstances of the case involved eight special-education schools and 69 elementary schools in Ostrava in which the distribution of Roma and non-Roma children was striking. The chance of a Roma child being enrolled in a special-education school was 27 times higher than that of a non-Roma child. The Advisory Committee of the Framework Convention for the Protection of National Minorities noted in 2005 that an estimated 70 percent of Roma children in the Czech Republic are enrolled in special-education schools. The Court accepted that the data are not 100 percent reliable (→ Organisations). It emphasizes, however, that it is concerned about the general trend, and that governments are not able to present any facts that might invalidate this picture. When a plaintiff presents plausible evidence that indirect discrimination has taken place, it is up to the responding State to prove the contrary (this reversal of the burden of proof was established in the Nachova v. Bulgaria judgement). Accordingly, the Czech Republic was found to violate the ECHR.

The European Court of Justice in Luxembourg (European Union)

The Court of Justice of the European Union situated in Luxembourg (CJEU) is significantly different from the European Court of Human Rights in Strasbourg. It is not a court specialised in human rights, but one that monitors the entire breadth of EU law, and therefore deals with economic regulatory, institutional or other topical issues, such as agriculture and the environment. In fact, the number of judgments on human rights issues is traditionally very low. For instance the Court referred to the Charter of Fundamental

Rights only 66 times between early 2001 and late 2008. The fact that the Charter became legally binding with the treaty of Lisbon has changed the picture: increasingly the Court is making reference to human rights (→ The Lisbon Treaty). In 2011, the number of decisions quoting the Charter rose by more than 50 percent compared with 2010, namely from 27 to 42. When addressing questions to the Court of Justice (so-called preliminary rulings), national courts have also increasingly referred to the Charter: in 2011, such references rose by 50 percent compared with 2010, from 18 to 27.

Apart from the degree of specialisation, the Courts also differ greatly in size. The CJEU itself is composed of 27 judges and eight advocates-general. In addition, there are 27 judges in the General Court as well as seven judges in the Civil Service Tribunal, which deals with official matters. Thus, the three EU judicial courts consist of 69 individuals, 16 of them women. Altogether, the CJEU employs about 2000 people, and its 2010 budget was € 341 million. At the end of 2011 there were 849 cases pending, and over the year 444 judgments were issued. Because of this, compared to the Strasbourg court, with its substantially less intense caseload, the CJEU can also handle its cases in a fairly short time frame - with an average length of about 16 months, its proceedings are relatively short.

The CJEU has developed a dense body of jurisprudence on Anti-Discrimination Law (→ Discrimination). But regarding the protection of minorities in the narrow sense, the Court has thus far hardly been called to comment. To date, only with regard to minority language use has a relationship between EU law and minority protection been recognized. In its 1989 ruling on the Groener case, the Court sent two messages. On the one hand it declared that policies for minority protection may well come within the scope of EU law, and thus sometimes be subject to certain EU legal limitations (→ Yin and Yang). On the other, it appears very flexible, finding in the case at hand that citizens of other EU states could bear the burden of a protection system. Specifically, the case was about Ms. Anita Groener, a Dutch citizen who wanted to teach art at a college in Dublin, but who was not accepted into its faculty because she lacked

sufficient knowledge of Irish. She invoked EU law on the grounds that the obligation to be able to speak Irish excluded her from taking up the position she had applied for and thereby limited her right as a worker to freedom of movement: that is, the possibility to freely travel and find employment anywhere in the EU. The Court disagreed, finding Ireland's requirement of language skills legitimate, although in the particular design course Ms. Groener would have had to teach, had she received the job, they were not even required since the course in question was to be conducted in English. The Court thus respected the Irish Government's intention to preserve and promote the Irish language. The Court deemed it necessary to require skill in a language other than the language of instruction, stressing that teachers such as Ms. Groener not only play an essential role in teaching, but also through their participation in the day-to-day activity of the school as well as their privileged relationship with their students. Therefore, it is not unreasonable to require of those teachers a certain competency in its first official language. One view of this somewhat convoluted argument is that the Court was avoiding the touchy subject of the Irish language policy (→ Speaking of Languages). Nevertheless, the Court stated that States do not have unlimited discretion to use their respective protection systems if EU citizens are burdened by it. Literally, the CJEU said: "The EEC Treaty does not prohibit the adoption of a policy for the protection and promotion of a language of a Member State which is both the national language and the first official language. However, the implementation of such a policy must not encroach upon a fundamental freedom such as that of the free movement of workers. Therefore, the requirements deriving from measures intended to implement such a policy must not in any circumstances be disproportionate in relation to the aim pursued and the manner in which they are applied must not bring about discrimination against nationals of other Member States" (Case C-379/87).

In 1998 the Court issued another ruling in the area of minority language protection, but this time it was not about whether EU citizens might be affected by the burden of such a system (an extension of the linguistic duty), but whether the privileges of such sys-

tems have to be extended to EU citizens, simply because they happen to live in the same area as the minority to be protected (an extension of a linguistic right). The cases in question involved Mr. Bickel, an Austrian citizen who in 1994, as a truck driver passing through South Tyrol, was stopped in Kastelbell by a carabinieri patrol, and Mr. Franz, a German national, who visited Taufers in 1995 while on holiday in South Tyrol. (Case C-274/96). Both of these EU citizens faced criminal charges: Mr. Franz for possession of a prohibited knife that exceeded the legally allowed length, and Mr. Bickel for drunk driving. Both defendants were not strong in the Italian language, and demanded that they, like the residents of South Tyrol, were entitled to use German in their proceedings, even though they were not members of the minority for which this linguistic protection was actually conceived. The Court found in favour of the EU citizens in both cases. If only those based in South Tyrol could claim the privilege of bilingualism, this would exclude all German and Austrian nationals, even though they speak the same language as the South Tyrolean minority. So such an exclusive rule would result in protecting only German speakers from South Tyrol, who are predominantly Italian citizens. Such an indirect discrimination based on citizenship is not acceptable, especially when the extension of the right in question to other German speakers (from Germany or Austria) does not endanger the South Tyrolean minority. The "Bickel/Franz-effect" will therefore result in some of the advantages arising from a regional minority protection system being extended to all EU citizens who are in a similar position to the minority members. However, when it comes to the allocation of scarce resources such as jobs, social housing and the like, the extension of benefits would indeed endanger the protective system. It is therefore clear that in such constellations EU law will not work at all costs to promote expansion of such a system to all EU citizens who are in a comparable situation as those persons who belong to the protected minority.

Of the three branches of government, the judiciary is that which operates most independently of the respective political majorities, and is therefore of particular importance for the protection of persons belonging to minorities. At the European level in particular, there is the Court of Human Rights in Strasbourg, which contributes to the development of European standards in the area of minority protection, despite the fact that the European Convention on Human Rights (ECHR) contains no special rights for minorities. The European Court for Human Rights shows in various contexts to which degree special needs and problems of minorities have to be taken into account and hence provides guidelines for interpretation. The Court of Justice of the European situated in Luxembourg (CJEU) has rarely been faced with minority legal issues, only with a few cases regarding issues of minority language use. However, with the Treaty of Lisbon in force since end of 2009, case law at the Court of Justice is expected to be increasingly relevant for the protection of fundamental rights, including the rights of persons belonging to minorities.

Kaleidoscope of Demographic Change: Immigration and its Challenges

America is a country of immigration; Europe is not. That is the received continental wisdom. More than 33 million American citizens (well above one tenth) were not born there. And America has 37 million immigrants without citizenship who were not born there, either. Nor should we forget the twin-digit millions of individuals who are in America illegally but also contribute to its diversity. Given such figures, it is surprising there are so few problems with the social integration of newly arrived population groups. The figures for 2012, however, show that, in spite of its huge population, the United States only comes 26th in terms of relative net immigration (3.62 immigrants per 1000 inhabitants). Of the EU's 27 Member States, only Cyprus (10.75), Luxembourg (8.15), Spain (5.02) and Italy (4.67) are ahead of the US whereas most of the other EU Member States have, in relative terms, considerably less net immigration compared to the US. The statistic also lists the countries that have negative immigration (i.e. emigration). That also includes a number of EU Member States, namely Romania (-0.26), Poland (-0.47), Lithuania (-0.73), Latvia (-2.34), Bulgaria (-2.84) and Estonia (-3.33). With close to six emigrants per 100 inhabitants, the autonomous Danish territory of Greenland (→ Autonomies) comes at the top of the European emigration league (only exceeded by a single European country, namely Moldova with a rate of -10.02). All these figures are estimates taken from the CIA's "World Factbook". At all events, America's capacity to absorb immigrants is impressive. On the other hand, the social barriers in America have always been lower than in Europe. That is nicely illustrated by the case of the man who left Austria as a bodybuilder and became one of the most powerful men in the United States. The fact that immigration is part of the American self-image is perhaps one of the reasons why immigration is not automatically seen as a problem or danger.

Comparing demographic developments in America with those in Europe, we see that the US population grew by 23.1 percent between 1990 and 2009 whereas demographic growth for the same period in the 27 countries that now make up the EU was a modest 5.7 percent on average (by way of comparison: at 3.2%, growth for the period in Germany was below average, while Austria's 9% growth was above average; for Switzerland the figure was 12.9%). Inward migration is gaining in importance for demographic developments in Europe, and there is growing awareness for the fact that our continent has become a region of immigration after all. The days when Europe was clearly a population exporter are over, even though this paradigm shift is still waiting for a convincing European response (→ Yin and Yang).

Demographic developments in the EU in the past and the future

Demographic developments are determined by two factors: natural developments resulting from the difference between births and deaths on the one hand and migration on the other. In general, the rate of natural demographic growth has slowed in the EU (with a slight improvement to be seen since 2004). According to Eurostat, the EU had a total population of 499.8 million at 1 January 2009. Compared with 497.7 million at 1 January 2008, that is an increase of 2.1 million or 0.4 percent. This increase is comprised of 0.6 million in natural demographic growth (with 5.4 million babies born in 2008) and a migration balance of +1.5 million. With the baby boomers now growing older, however, European death rates cannot be expected to remain constant any longer but to increase. Future growth will therefore depend even more than at present on inward migration, although the picture varies considerably from one EU Member State to another.

The EU statistics for the nine years from 2000 to 2009 show the great variety in demographic developments in the Member States. On average the population of the EU grew by 3.4 percent in those nine years. In four countries the rates of growth were well above

ten percent, namely Ireland (17.2%), Cyprus (15.6%), Spain (14.7%) and Luxembourg (13.6%). Austria ranks in an average position with 4.5 percent, while Germany, with a slightly negative growth rate of -0.3 percent is among the one third of the 27 EU Member States whose population has declined. The losses were greatest in Bulgaria (-7.2%), Latvia (-5%), Lithuania (-4.6%) and Romania (-4.4%). On the basis of the available data and identified trends, the European Commission took a look into the future in 2008 (EUROPOP2008 convergence scenario). The calculations suggest that the population of the EU will increase to 521 million by 2035 and will then decline step by step, reaching 506 million in 2060.

The above-mentioned study assumes that, starting in 2015, the number of deaths will exceed the number of births. That will be the end of demographic growth on the basis of natural population growth, leaving a positive migration balance as the sole source of demographic growth in the European Union. As of 2035, however, it is expected that this migration surplus will no longer be enough to fully compensate the shortfall in the natural population figures, i.e. the population will probably shrink. Moreover, the EU continues to move in the direction of an ageing society; the share of older persons aged 65 and above is expected to increase from 17.1 percent in 2008 to 30 percent in 2060, i.e. one third of the population will be pensioners (by current standards). However, as the past, the future will bring great variety in terms of demographic change within the EU, with population growth predicted for thirteen Member States and population decline for fourteen from 2008 to 2060. The strongest growth is expected in Cyprus (+66%), Ireland (+53%), Luxembourg (+52%), the United Kingdom (+25%) and Sweden (+18%), with the biggest decreases in Bulgaria (-28%), Latvia (-26%), Lithuania (-24%), Romania (-21%) and Poland (-18%). According to this scenario, the United Kingdom, with 77 million inhabitants, will be the biggest of the current Member States in 2060, with Germany (71 million) relegated to third place after France.

Forms of immigration and their developments

Immigration comprises three distinct phenomena: the inward migration of third-country nationals, the settlement of EU citizens from other EU states, and the return of the country's own citizens. The statistics for 2006 show the relative importance of these three aspects. In 2006 a total of 3.5 million people migrated to one of the 27 Member States of the EU. Of this total, 86 percent were non-nationals of the country concerned (i.e. only 14% were returnees). 1.8 million of all immigrants (more than half) were third-country nationals (i.e. persons without EU citizenship). The remaining 1.7 million immigrants were EU citizens with the right to move freely within the EU and choosing to settle in a Member State (half of which were returnees). This shows that the internal mobility of EU citizens has become a significant factor.

According to the EU Commission, a total of slightly more than eight million EU citizens - about 1.6 percent of the EU population - had made use of their right to settle in another Member State in 2008. It is also estimated that, as a result of inward migration from non-European countries, about 18.5 million third-country nationals are now living in the EU. The share of non-EU nationals in the EU is thus 3.8 percent of the total EU population. To this figure we must also add those third-country nationals who are illegal immigrants. This group is naturally hard to quantify; most estimates have varied between 4.5 and 8 million. In October 2009, however, an EU research project (Clandestino) attracted attention with new figures, which were much lower than the previous estimates. According to these statistics for 2008, there are between 1.9 and 3.8 million illegal immigrants in the EU (0.39-0.77 % of the population of the EU and 7-13% of the total for non-EU nationals). In some countries, like Spain, there have been occasional legalisation programmes for "irregular" immigrants. That makes sense when such persons can neither be granted asylum nor returned to their countries of origin for practical reasons (e.g. unclear identity or lack of cooperation on the part of the country of origin). Legalisation programmes are reflected in the immigration balance, even though no physical inward

migration has occurred (as the persons concerned were already in the country).

Most EU countries now have a positive migration balance. Of course, there was significant outward migration from the new EU Member States after the beginning of the 1990s but the situation has changed and most of those countries, too, now attract immigrants. In absolute terms (i.e. not relative to the size of the population), the biggest inward migration countries in the EU are currently Spain, Germany, Italy and Great Britain. In 2006 Spain, Germany and Great Britain alone accounted for more than two million of the EU total of 3.5 million immigrants, with Spain at the top of the inward migration league with approximately 841,000 arrivals. In general, inward migration to Spain has risen significantly since the end of the 1990s and has increased more than tenfold on an annual basis over the last ten years. With 662,000 arrivals in 2006, Germany was the second most frequent choice for inward migration in the EU, although the figures for the previous years were much higher. That is the reverse of the case in Italy, where the figures have increased in the last few years. With about 470,000 arrivals, inward migration to Italy reached a new height in 2003. The figures declined in the following years but rose steeply again to 558,000 in 2007. Since the mid-1990s, there has also been a pronounced increase in the figures for migration to the United Kingdom. Since 2002 the country has attracted over 500,000 immigrants a year, a large proportion of them coming from the new EU Member States and especially from Poland. Since the beginning of 2000 there has also been an increase in inward migration to the Czech Republic as another new EU Member State and also to Austria. For 2004, Austria reported 127,399 arrivals, although the numbers have since declined. In 2006, the figure for migration to Austria was 100,972 compared with 73,495 for outward migration.

The challenges behind immigration movements

When people move across borders, the ideas and culture that every individual and every group has move with them. The host society and the immigrants must then enter into a process of communication, whether they want to or not. So far mobility within the EU has rarely been addressed with reference to the subject of minority protection. And yet immigrants with EU citizenship can certainly become a group in the public eye (→ Case Studies), as in the recent case of Polish immigrants to Great Britain. With well above 200,000 citizens abroad, the Poles constitute the biggest group of mobile EU citizens, and they are particularly numerous in Great Britain, where Polish-language newspapers have appeared on the market. The economic crisis has led to occasional cases of conflict (→ Business and Economic Crises), and there have been reports of written and, in a few instances, physical aggression. The same applies to members of the Roma, who have taken advantage of the EU's internal mobility rule to migrate from the new Member States in the East to Great Britain, Spain, France or Italy in order to escape poverty (and sometimes racism) in their countries of origin (→ The Roma). A recent report published by the EU Agency for Fundamental Rights (→ Organisations) points out that internal mobility is not yet receiving the attention it deserves from the Member States with regard to social coexistence and integration. This is an area where work still needs to be done to support the process of integration for mobile EU citizens and breathe life into EU citizenship.

An even bigger challenge is of course inward migration from non-EU countries, where the culture gap is considerable (and the legal implications also differ since they are not EU citizens). The ongoing debate in Germany on the subject of parallel societies, the willingness to integrate, radicalisation, the vision of "Euro-Islam" and the question of the right response shows how complex and difficult the subject is. Little use can be made of standard solutions in view of the differences between the various cases and situations. All that can be said is that the two poles of integration strategy, namely the French assimilation model and the British coexistence

approach have both produced extremely poor results. Neither strict assimilation nor rigid segregation can be the response to immigration. Every society needs a cross-societal dialogue, with bilateral acculturation as the order of the day. The host society must closely examine its old rule books for "cultural shadows", which impose a disproportionate burden on immigrants and their culture (→ The Veil). At the same time the immigrants must internalise the basic values of the host society. This approach is also to be found in the "eleven common basic principles" for the integration of third-country nationals adopted by Council of the European Union in November 2004 (→ Organisations).

What the integration debate requires is the courage to recognise cultural change in an increasingly pluralistic society. What we also need is trust in our own legal systems; they are most certainly capable of defining the limits of mutual acculturation where they are rooted in the European consensus on fundamental rights. The suggestion that the willingness of Germany's Federal Constitutional Court to recognise religious principles of slaughtering animals (halal) is a first step on the path to permitting criminals to be sentenced by Muslim courts to have their hands chopped off on German soil shows how great is the need for information and education. Legal systems are living organisms; they adapt to new situations without discarding their basic principles.

Integration is a two-sided task. For integration to be successful, it must be attractive to both the majority society and the immigrant community. It must be worthwhile for the host society in that the immigrants come to recognise the basic principles on which that society is based, and it must be positive for the immigrants insofar as it opens the door to them to upward social mobility in the host country. A recent report of the German Centre for Turkish Studies entitled "Successes and Deficits in the Integration of Ethnic Turkish Immigrants: Developments in their Living Situation from 1999 to 2008", for example, says that second- generation Turkish immigrants are better integrated than the first generation but that this has not been accompanied by an improvement in social standing.

What Europe can perhaps learn from America is the need to prove that an open attitude towards the host society pays off.

In comparison to America, the population of Europe is growing only slowly. Immigration is at a low level, too. The population is decreasing in one third of the EU Member States. Immigration, however, is increasing, and Europe has become an immigration continent. By 2015 deaths will outnumber births, bringing natural demographic growth to an end for the EU. Inward migration will then be the sole growth factor, but it is estimated that by 2035 it will not be enough to fully compensate negative demographic growth. There are currently half a billion people in the EU, most of them nationals of the EU country they live in. About eight million people, or 1.6 percent of the EU population, are EU citizens who have settled in an EU Member State that is not their home country. 18.5 million people, or 3.8 percent of the EU population, are third-country nationals; they are nationals of a non-EU country living legally in the EU. To them must be added between two and four million third-country nationals living in the EU illegally.

Today's immigration challenge is management of the processes of communication and integration for immigrants and host society alike. Neither of the two poles of integration strategy - assimilation in France and coexistence in the UK - is a blueprint for success; the solution to immigration can be neither assimilation nor segregation. What is needed is a two-sided process, which is based on mutual adaptation as the guiding principle, which does not call into question the fundamental values of society, but which shows that opening up to society pays off in social terms.

The Lisbon Treaty: New Developments in the EU System

Those who are not regularly involved with the EU can perhaps be excused a degree of confusion when it comes to the names of the various treaties generated in the history of European integration. But the wood can be seen in spite of the trees: Today's EU catchwords like "Treaty of Maastricht" (1991), "Treaty of Amsterdam" (1997), "Treaty of Nice" (2001) and "Treaty of Lisbon" (2007) are simply amendments adopted as further developments of the fundamental treaties of the EU, namely the EU Treaty and the EC Treaty. To that extent one is tempted to say that the constitutional development of the EU is something of a patchwork, the result of increasingly frequent attempts to adopt the EU system to changing circumstances. The Treaty of Lisbon seeks to eliminate one specific source of the resulting complexity: Co-operation in the field of criminal law is no longer assigned to the Third Pillar with its special regime (→ Xenophobia) but is subject to the rules of procedure of the Single Market (First Pillar). For our subject, this means that decisions in the field of criminal law, which is of relevance for human rights, now no longer presuppose unanimity in the Council. They also require the approval of the European Parliament and fall within the competence of the European Court of Justice in Luxembourg.

The complex genesis of the Treaty of Lisbon

In a departure from the usual policy of small steps, the leaders of the EU decided at the beginning of the new millennium that it was time for a great leap forward in the form of a new overall treaty - a "treaty establishing a constitution of Europe" - to replace all the earlier treaties. Under the influence of the history of the USA, a Constitutional Convention was convened, which developed a constitution for Europe between February 2002 and July 2003. One interesting detail of the process is the fact that this was the first

time an EU treaty was not created by the heads of state and government of the EU Member States (working in camera and unhindered by parliamentary involvement). After the draft constitution had been unveiled in July 2003, it had to be approved by the heads of state and government. That was no easy task and - not surprisingly - a number of changes had to be made to the draft for it to receive the blessing of the (many) men and (few) women in charge of the various public administrations who watch Argus-eyed over the interests of their individual states. Once it had been signed in October 2004, the Constitutional Treaty - like any other amendment to the EU Treaty - had to be ratified at the national level in all the (then 25) Member States in accordance with the provisions of their respective constitutions. With the negative results of the referenda held in France and the Netherlands in the summer of 2005, this hurdle in the acceptance procedure proved too high, and the new EU constitution was dead before it saw the light of legal effect.

The following two years in the constitutional history of Europe are officially classified as a pause for thought, although critics saw it more as a pause from thought. It was not until the summer of 2007, during the German Presidency, that a new way forward was found. The Intergovernmental Conference (i.e. the heads of state and government of the Union) was mandated to negotiate a new treaty which was, as far as possible, to be a replica of the failed draft constitution. The result of that negotiation process is the Treaty of Lisbon, which was signed in December 2007. In terms of content it is a 90 percent copy of the failed EU constitution but it is formulated without any constitutional pathos, this underscoring the fact that the Member States remain the "Masters of the Treaties". Following the positive result of the (second) referendum held in Ireland and the signing of the document by the Czech President Klaus (→ Zero Tolerance), the Treaty of Lisbon entered into force at the end of 2009.

The new treaty brought a number of significant changes with regard to the protection of human and minority rights including the fact that the EU as a whole could now become a party to the Coun-

cil of Europe's European Convention on Human Rights (ECHR). This was the first time the European Union had accepted any form of external control, namely by the European Court of Human Rights in Strasbourg (Article 6 paragraph 2 of the EU Treaty). And that is just one side of the twin strategy of Lisbon: In addition to being a party to the ECHR, the EU was also given its very own Charter of Fundamental Rights.

The heady Charter of Fundamental Rights

Like the draft constitution, the Charter of Fundamental Rights was also drawn up in a convention, which was chaired by the former German President Roman Herzog and worked from December 1999 to October 2000. The Charter was signed by representatives of the Portuguese EU Presidency and the Presidents of the EU Commission and Parliament at a formal ceremony held in December 2000. As Part II of the Constitutional Treaty, the Charter was an integral part of the constitution project. When that ground to a halt in the summer of 2005, hopes of a legally binding EU Charter of Fundamental Rights had to be temporarily abandoned, too, but they revived with the signing of the Treaty of Lisbon at the end of 2007. In order to avoid all constitutional pathos, the Lisbon Treaty does not include the Charter but only makes apologetic reference to it as a separate document. Juridically speaking, this makes no difference as it is explicitly stated that the Charter has the same legal force as the Treaty itself (see Art. 6 para. 1 of the EU Treaty). The Charter was accordingly proclaimed with some minor changes in December 2007 and entered into law at the same time as the Treaty of Lisbon. Previously the EU's Court in Luxembourg had based its decisions on the provisions of the Council of Europe's ECHR and developed corresponding fundamental EU rights in its case law (→ Judiciary), but now the EU, for the first time ever, had its own written catalogue of fundamental rights.

The Charter comprises seven chapters, which address the following items: dignity (Articles 1-5 on human dignity, the right to life

and integrity of the person, prohibition of torture, prohibition of forced labour); freedoms (Articles 6-19 on respect for private and family life, protection of personal data, the right to found a family, freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association, freedom of the arts and sciences, the right to education, freedom to choose an occupation and the right to engage in work, freedom to conduct a business, the right to property, the right to asylum, protection in the event of removal, expulsion or extradition); equality (Articles 20-26 on equality before the law, non-discrimination, diversity, equality between men and women, the rights of the child, the rights of the elderly, integration of persons with disabilities); solidarity (Articles 27-38 on the workers' right to information and consultation within the undertaking, the right of collective action, the right of access to placement services, protection in the event of unjustified dismissal, fair and just working conditions, prohibition of child labour and protection of young people at work, compatibility of family and working life, social security and social assistance, health care, access to services of general economic interest, environmental protection, consumer protection); citizens' rights (Articles 39-46 on the right to vote and stand as a candidate at elections to the European Parliament and at municipal elections, the right to good administration, the right of access to documents, the European Ombudsman, the right to petition, freedom of movement and residence, diplomatic and consular protection), and justice (Articles 47-50 on the right to an effective remedy and fair trial, presumption of innocence and the right of defence, principles of legality and proportionality for criminal offences and penalties, the right not to be tried or punished twice for the same criminal offence). Following the treatment of all these items relating to dignity, freedoms, equality, solidarity, citizens' rights and justice, the last chapter comprises four general provisions that are basic to interpretation of the Charter.

Although the assessment of the Charter has been clearly positive in both academic and political circles, it must be said that it often appears overladen with content and in some cases - naturally

enough - is the victim of compromise formulations. With regard to citizen's entitlements in the fields of education, employee rights and social security, the Charter reflects the distribution of competence between the EU and the Member States with a trying number of references to "national law and practices". That has considerable potential for disappointment and frustration. The greatest achievement of the Charter is doubtless the fact that it brings together citizens' fundamental rights in a single high-profile document, thus making them clearer and more visible. The primary objective of the Charter is to reiterate the rights that derive from the constitutional traditions common to EU countries and from Member States' international obligations, especially with reference to the ECHR.

First minority protection clause in an EU treaty

A number of delegates, especially from Hungary, Germany and Austria argued for a minority protection clause to be included in the Charter of Fundamental Rights, but a Europe-wide consensus on the subject was not forthcoming. The result of their endeavours was accordingly weak: a vague diversity clause in Article 22 of the Charter to the effect that the Union "shall respect cultural, religious and linguistic diversity". Only those who are familiar with the genesis of the Charter will see a minority protection clause in this formulation; the text itself speaks only of "diversity", and that can refer to diversity within the states (protection of endangered cultures, religions and lesser used languages) as well as to diversity between the states (protection of national cultures, or the official religion or language of a state). Moreover, the Union merely has to respect diversity. Such a general diversity clause cannot be deemed to establish a specific duty of promotion nor any enforceable individual rights, not to mention group rights (→ Yin and Yang). What the Charter does contain, however, is a ban on discrimination on the basis of "membership of a national minority" (Article 21 of the Charter). The term "national minority" has thus become part of EU terminology and as such can be interpreted by the European Court of Justice.

It is equally remarkable that the EU Treaty itself now makes explicit reference to minorities: Respect for human rights "including the rights of persons belonging to minorities" is one of the values on which the Union is founded (Article 2 of the EU Treaty). In comparison with the Charter, the term "minorities" is more general in the EU Treaty, but that is not to say that national minorities are not covered as well. Even though the Treaty of Lisbon does not confer any additional authority on the EU to define standards of minority protection, the new EU Treaty does make it clear that minority protection is a value that is common to the Member States and the Union itself. With regard to the "Treaty on the Functioning of the European Union" (which corresponds to the earlier EC Treaty), the Treaty of Lisbon added a new provision obliging the European Union, "in defining and implementing its policies and activities" (i.e. in all its functions) to work "to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation" (Article 10 of the Treaty on the Functioning of the EU). The active avoidance and prevention of discrimination has thus become a permanent focus of EU policy to which due consideration must be given in Brussels in all contexts and at all times. And what can we conclude from that?

For decades the European Parliament has worked to have minority protection enshrined in the EU Treaties. There was a growing feeling at the political level that the EU's commitment to minorities abroad and its determination to ignore the subject in its own Member States was an embarrassing case of double standards (→ Organisations). This may help explain why the Italian EU Presidency was successful with a proposal suddenly introduced in November 2003 to incorporate the dreaded word "minorities" in EU treaty law, although diplomatic finesse was doubtless also involved. The amendment proposed to include in Article 2 of the EU Treaty not only respect for "the rights of persons belonging to minorities" but also the principle of "equality between women and men". Perhaps it was this clever combination of a political bogey (minorities) with a political soft-sell item (gender equality) that brought the breakthrough. Of course, a value anchored at the level of the constitution

is not something that immediately changes the situation of minorities in Europe. Nevertheless the changes introduced by the Treaty of Lisbon provide a useful basis - especially when viewed in combination with other recent developments at EU level like the EU Agency for Fundamental Rights established in 2007, the method of open co-ordination, other fields of policy supportive of members of minorities (→ Organisations), and the designation of a member of the European Commission specifically responsible for the protection of fundamental rights. At all events, at the level of the EU Treaties at least, the long silence on the subject of minority protection in the EU has definitely been broken.

The Treaty of Lisbon is the latest amendment to the EU treaties. It was signed by all 27 Member States on 13 December 2007 and entered into force on 1 December 2009. The Treaty of Lisbon is the equivalent of the constitution of the EU. Previously the EU was not meant to became a party to the ECHR nor did it have a binding catalogue of fundamental rights of its own. That changed in both cases with the coming into force of the Treaty of Lisbon, which was accompanied by the EU Charter of Fundamental Rights. In accordance with the Charter, the EU now has a duty to "respect cultural, religious and linguistic diversity". In addition, discrimination on the basis of "membership of a national minority" is prohibited. The Treaty of Lisbon also makes protection for "persons belonging to minorities" a constitutional requirement of the EU. This means that the term "minority" is now a legal concept within the EU. To that extent the Treaty of Lisbon provides legitimation for the protection of the rights of persons belonging to minorities.

Media: Minorities and Public Perception

After the Second World War, television, radio and other mass media were instrumental in shaping state identities. Media also play an important role in the preservation and promotion of minority cultures and languages. A homogenised media market, new media and mass communications, on the other hand, lead to the standardisation of media culture and information. That in turn promotes a process of concentration on a few world languages at the expense of smaller national and minority languages. The world's most commonly used languages account for 81 percent of all Internet content, from 30 percent in English to 2 percent in Russian. Moreover, the media have a strong influence on the relationship between minority communities and majority societies through their reporting. The media therefore have an important role to play in creating a positive and tolerant environment for minorities so that mutual trust can be promoted and interethnic barriers overcome (→ Xenophobia). Reducing prejudice and hence ethnic tensions is one of the main tasks not only in the political world but also for the media.

The status of minorities and their media in Europe

Press and media funding on the one hand and the protection of minorities on the other are interrelated matters. International instruments like the Framework Convention for the Protection of National Minorities adopted by the Council of Europe in 1992 and the European Charter for Regional or Minority Languages make it easier for minorities to form networks and obtain a minimum standard of guarantees (→ NGOs). The Language Charter, for example, is also explicitly targeted at minority media. It calls upon the states to ensure a minimum standard of access to the media for minorities and to provide them with the necessary help.

Print media are especially important for the survival of a minority because they also serve as a tool of language acquisition (→ Speaking of Languages). In view of their usually limited circulation and low advertising revenues, minority newspapers are dependent on financial support. The countries of Europe do not have a standard system of support for the press, but a rough distinction can be made between direct and indirect forms of support. In addition to direct government subsidies, indirect measures are common, including preferential taxes and a zero printed paper rate for dispatch by post (→ Formal Equality). In view of the special situation of minorities, the educational role of the print media and the growing problem of media concentrations, such support must be considered legitimate for certain selected media even though adverse effects on free competition are possible in some cases.

According to a 2006 study commissioned by the Council of Europe, in spite of the efforts made at the national and European levels, less than ten European minorities enjoy a full media offering. A choice of daily newspapers and periodicals as well as 24-hour radio and television programmes in the minority language produced by the minority communities themselves are only available to the Basques and Catalans in Spain, the German-speaking minority in Italy, the Russians in Estonia and Latvia, the Swedes in Finland, and the Hungarians in Romania. Within the EU, at least twenty minority communities have print and electronic media that report regularly in the minority language concerned. Others, like the Welsh speakers in Great Britain, the Irish speakers in Ireland and the Frisians in the Netherlands, have no daily newspapers but are fully catered for with electronic media. In 10 percent of the 56 countries of the OSCE there are no legal requirements to provide minority media; in the remaining ninety percent there are at least a few general provisions for radio and television in minority languages, while just under 20 percent have provisions for television channels for minorities. Those minorities that have been separated from their mother countries as a result of changes to national borders are normally able to consume media in their mother tongue from across the border but are usually excluded from active involvement in their editorial content

(→ Transnational Cooperation). The opportunities for minority languages presented by the Internet are exemplified by online news agencies working in Catalan (Vilaweb), Irish (Beo) and Cornish (Nowodhow Kernow). The same applies to the e-paper formats of minority dailies and periodicals, which facilitate media access outside of the minority area, too.

Perspectives for a European Public Space

In today's information society, the media offering has been extended from the standard repertoire of television, radio and press to include new digital platforms. That means far greater choice in the European public sphere. This new variety in the media offering, however, has been accompanied by a process of market concentration deriving from alliances and mergers at the national and European levels. The fundamental task of public service broadcasting, namely to provide all citizens with a varied quality offering of correct, objective and neutral information, is now almost beyond the public broadcasting corporations. All the greater then is the contribution of regional and local media to the protection of linguistic diversity.

As experience at the national level shows, the development of a European identity presupposes a European public service medium offering print, electronic and new digital media products. Theoretically, shared interests within Europe and the need for an exchange of information should be conducive to the establishment of such a public service. But it did not take the spectacular failure of Robert Maxwell's newspaper project in the 1990s ("The European", which was hailed as the first European newspaper but disappeared after less than ten years on the market) to confirm the difficulties of establishing a European public sphere. A European media sphere can only exist in the languages of the citizens and hence also in the minority languages. The situation is indicative of the neglect of the role of small cultural groups: Existing regional and local media net-

works represent the capillaries that can be used to reach many citizens of Europe.

The tender plant of a European public sphere is also being nurtured by minority organisations and their media (→ NGOs). European integration is leading to greater networking among minorities and to common cross-border projects (→ Transnational Cooperation). The European Bureau for Lesser Used Languages (EBLUL), for example, has been using its minority press agency Eurolang to report on EU topics of relevance to minorities since 2000; the European MIDAS association provides networking for daily newspapers written in regional and minority languages; Cafe Babel provides young Europeans with well written multilingual articles from the Member States including Catalan, and Mercator Media collects, disseminates and analyses reports on minorities throughout Europe.

Minorities in the public perception

Objective reporting is an axiomatic principle of serious journalism. In ethnically divided societies, however, after a bloody war as on the Balkans, for example, the media are often partisan and make no positive contribution to peaceful coexistence. And even beyond such traumatic social contexts, apparently independent and objective media are often selective in their reporting. In such cases, ethnic minorities like the Roma or migrants tend to be presented in the context of crime, poverty, unemployment or as a threat to the majority. The stereotypes employed reinforce prejudice and the negative clichés associated with other cultures (→ The Veil), while positive reporting is either almost non-existent or is reduced to a few "good foreigners" or to folklore trimmings. In view of the poor performance often to be seen in the media, there is a convincing case for training and awareness-building for the players in the media industry - for example with the help of diversity toolkits of the type offered by the EU's Fundamental Rights Agency. According to an EU poll, the diversity of European societies is poorly represented in the media (Eurobarometer 317, November 2009). Less than half of all

Europeans (48%), for example, feel that the social realities are adequately reflected in the media in the case of persons with special needs, and with regard to religion, ethnic origins and sexual orientation, only just over half of all Europeans (52%, 55% and 56% respectively) believe that today's diversity is sufficiently covered in the media (although with regard to gender, two thirds do consider that the diversity of male-female relationships is adequately reflected). Of course there is considerable variation at the national level. The countries where there is least satisfaction with the degree of ethnic diversity presented in the media are Spain, Italy and Greece, where over 45 percent say that the media fail to do justice to ethnic diversity. At the other end of the scale, we find countries like Great Britain, Cyprus and Romania, where this view is held by only a quarter of the population.

Admittedly, polls of this type are not designed to analyse media content as much as the attitudes of media consumers. But one thing is clear, and that is the need for more media attention to be paid to the large number of positive topics relating to minorities that do exist. The goal here must be to have minority representatives participating in the editorial processes at the majority media and so helping to set the record straight. Of course, the ethnic composition of the editorial offices alone will not be sufficient; social diversity must also be visibly reflected on the screen in the case of media like television. Otherwise the television programmes now available in Europe via satellite (almost 200 channels), which supply migrants with around-the-clock information from their home countries like Turkey and various Arab-Asian states, will further encourage the development of parallel societies.

Media have a function to fulfil with regard to information and identification. This is especially true with regard to and vis-à-vis minority population groups. For minorities, objective and balanced reporting in the majority media is therefore particularly important.

In terms of identity, and language acquisition and preservation, media reports written in the minority languages in the minorities' own media are of central importance. The Council of Europe's conventions provide some guidance in this regard. However, only a very small number of European minorities benefit from a full media offering in their respective languages. Given the EU's lack of powers in the field and the continued absence of a European public sphere, the EU's contribution in the field is rather limited. However, a number of promising initiatives have been launched by NGOs some of which receive EU funding.

NGOs: Minorities and Civil Society

The term "civil society" refers to the public space in which individuals come together on a voluntary basis and establish a large number of more or less independent groupings with varying degrees of organisation. Such initiatives, societies or associations are known as non-governmental organisations (NGOs). NGOs often work autonomously across national borders and thus play a role as international actors in addition to nation states and international organisations (→ Organisations). Immediately after World War II, hundreds of minority organisations were formed in what were often multinational states to protect and promote minority languages and cultures in Western Europe. Although working initially in isolation and with little governmental recognition, these organisations made rapid progress in networking beyond their national borders. Following the fall of the Iron Curtain and in response to the civil war in Yugoslavia, transnational organisations suddenly established themselves as the first bridge builders between East and West and obtained observer status with various international organisations. In the everyday political workings of the EU, too, one can observe the growing role of the NGOs. Following the last round of reforms to the EU Treaty the new Article 11 explicitly states that EU institutions must give "representative associations the opportunity to make known and publicly exchange their views in all areas of Union action" (→ The Lisbon Treaty). The EU must also "maintain an open, transparent and regular dialogue with representative associations and civil society" and "carry out broad consultations". An example of this new tendency serves the Fundamental Rights Platform of the European Union Fundamental Rights Agency (FRA) bringing together hundreds of NGOs dealing with human rights issues.

With regard to minority issues, a wide range of NGOs are active at the European level, and only a few of the most important are presented below by way of example. For the biggest minority in Europe, mention should be made of the European Roma Rights Cen-

tre (ERRC) in Budapest, where racist attacks on Roma are investigated and documented and legal assistance provided (→ The Roma). Since 1996 the Minority Rights Group International has had an office in Budapest. As the MRG European regional office, it promotes and protects the rights of minorities and indigenous peoples across Europe and Central Asia. At the scientific level there are the European Center for Minority Issues (ECMI) in Flensburg, Germany and the Institute for Minority Rights at the European Academy in Bolzano (EURAC) in South Tyrol, two competence centres in the field of minority protection which work in close cooperation with civil society, government structures and international organisations.

FUEN - the biggest umbrella association of autochthonous national minorities in Europe

In October 2009 the Federal Union of European Nationalities (FUEN) celebrated its 60th anniversary. The organisation, which was founded in 1949 in the French city of Versailles, today has more than 84 members in 32 European states and is based in Flensburg. It was established as a platform for regions, linguistic communities and minorities in order to address questions of special importance to regions with minorities. This regional approach was later abandoned and by 1955 FUEN had become an association of minority organisations. According to its statutes, FUEN stands in the service of Europe's autochthonous national minorities/ethnic groups and works with exclusively peaceful means for the preservation and promotion of their identity, language, culture and history. FUEN is opposed to separatism and the use of force to change national borders and supports good neighbourly relations and peaceful coexistence between minorities and majority populations. The occasionally voiced criticism of FUEN for pursuing "nationalist" policies is accordingly unfounded. The FUEN Presidium is currently comprised of representatives of seven autochthonous national minorities from six different countries. The incumbent President is an ethnic North Schleswig German from Denmark. The Presidium also includes one representative each of the Croats in Austria, South Tyroleans in Italy, Rhaeto-

Romans in Switzerland, Cornish in Great Britain, and Sorbs and Danes in Germany (→ What is a "Minority"?).

Apart from supporting its member organisations at the local and national levels, FUEN emphasises the minorities' positive contributions to European diversity and integration. In this context FUEN is the political mouthpiece of national minorities vis à vis the UN, OSCE, Council of Europe and the EU. In 1956, 1967 and again in 1985 FUEN presented its latest revised basic principles for European ethnic group law. Starting in 1991 FUEN developed those principles into a draft convention on the fundamental rights of Europe's ethnic groups and provided input with these ideas to the international work of the Conference for Security and Cooperation in Europe (CSCE), the UN, the Council of Europe and the European Parliament. In March 2009 the European Dialogue Forum established by FUEN in collaboration with the European Parliament's Minority Intergroup (→ Organisations) started its work. The Forum meets twice a year to discuss current challenges, problems and long-term strategies for minorities in Europe. FUEN also plays an official institutional role in the context of the Council of Europe through its participatory status.

In addition to involving young people through the European umbrella organisation YEN (Youth of European Nationalities), FUEN also works to formulate the self-image of the European minorities and to define their common goals and demands. In the Charter for the Autochthonous National Minorities in Europe adopted in 2006, FUEN postulates thirteen fundamental rights related to the protection of minorities. Of the thirteen, the right to education (→ Education), media (→ Media) and participation (→ Participation) have now been further elaborated with the help of case studies so as to supplement the Charter with a detailed compendium of minority protection in Europe.

STP - Society for Threatened Peoples

The international human rights organisation Society for Threatened Peoples (STP) works in support of threatened and persecuted ethnic and religious minorities, nationalities and indigenous peoples (→ Indigenous Peoples). The STP has its roots in "Aktion Biafra-Hilfe". This public campaign against genocide in Biafra, today's Nigeria, was launched in Hamburg in 1968. In 1970 it was transformed into the STP with its headquarters in Göttingen. The organisation also has groups in Austria, Switzerland, South Tyrol / Italy, Luxembourg, Bosnia-Herzegovina and Chile, and representatives in London and New York. It is currently in the process of setting up an office in Iraqi Kurdistan. Since 1993 the STP has had advisory status with the UN Economic and Social Council (ECOSOC) and it has been working in close collaboration with the Council of Europe since 2005.

The STP makes use of press releases and interviews for the press, radio and television, its magazine "Threatened Peoples - Pogrom", the Internet, exhibitions, talks and discussions to provide the general public with information about the persecution of minorities and violations of their rights (→ Media). The organisation brings pressure to bear on political decision-makers, publishes human rights reports, documents and memoranda, writes expert opinions, recruits experts and solicits aid for the persecuted and for people in need. The STP helps ensure that the voices of the victims are heard by the appropriate national, European and international bodies with the objective of exposing war crimes and preventing further human rights abuses.

At the beginning of the trial before the International Criminal Court in the Hague against the suspected war criminal and former President of Republika Srpska, Radovan Karadžic, the STP demonstrated against the division of Bosnia. Together with refugee and survivor associations from Bosnia-Herzegovina, the STP opposed the division of Bosnia-Herzegovina engineered by Karadžic and confirmed in the Dayton Constitution (→ Zero Tolerance). A further initiative was directed against the planned return of over 10,000 Roma

from Germany to Kosovo (→ The Roma). The Roma families that had been expelled from Kosovo following its liberation by NATO in 1999 were to be returned to Kosovo after ten years in Germany, although there had been no significant change to the situation of the Roma there in the meantime. The unemployment rate for the Roma is still almost twice as high as for the Albanian population, health care is as good as non-existent for members of the Roma community, and schools are hardly accessible to Roma children (→ Discrimination).

EBLUL - European Bureau for Lesser Used Languages

In 1983, at the request of the first elected European Parliament, the Commission established budget line B3-1006, in which funds were allocated for the preservation and promotion of cultural and linguistic diversity in Europe (→ Organisations). This budget line, which was operative up to the end of the 1990s, benefited the European Bureau for Lesser Used Languages (EBLUL). The network, which was established - also in response to an initiative put forward by the European Parliament - by representatives of a number of minority organisations in Dublin in 1982, took advantage of this financial support to lay the groundwork and perform lobbying for Europe's regional and minority languages.

EBLUL used to run national committees in the various EU Member States representing the country's minority organisations. These national committees formed the basis for the important role played by EBLUL in the collection of information and exchange of knowledge in the field of minority language support. In cooperation with the European Commission EBLUL created a visitor programme that has enabled more than a thousand experts from various linguistic communities to share their experience with others and to take home with them new findings relating to the use of minority languages. In addition, the Euroschool project has benefitted more than 400 young people from ten different linguistic communities, who have visited other young people and their families or have been involved in joint school projects. At the local level, EBLUL initiated

the Partnership for Diversity, which is designed to help multilingual regions in Europe to improve their language policies through the enhanced exchange of information (→ Transnational Cooperation). At the beginning of 2010, after a quarter century spent promoting the cause of Lesser Used Languages in the EU, EBLUL was closed down due to funding problems. EBLUL's Brussels office has run information campaigns to improve the image of minorities and their languages. For a number of years a minority press agency by the name of Eurolang, which was located in Brussels, has been publishing well researched objective reports on the situation of minorities (→ Media). One of the objectives of both EBLUL and Eurolang was to disseminate information about Europe, e.g. on EU policies and funding programmes, in minority communities. EBLUL also played a role in the creation of the EU's three information and documentation centres Mercator Education in Leeuwarden (Netherlands), Mercator Legislation in Barcelona (Catalonia) and Mercator Media in Aberystwyth (Wales). Finally, EBLUL played an advisory role in drafting the European Charter for Regional or Minority Languages and the European Charter of Fundamental Rights. In collaboration with other organisations and individuals, EBLUL successfully lobbied for a ban on discrimination on the basis of language to be included in Article 21 of the Charter of Fundamental Rights (→ The Lisbon Treaty).

In the last fifty years, with the tragic exception of the war on the Balkans, Europe has been able to snuff out smouldering conflicts deriving from ethnic differences. That requires not only cooperation between states and international organisations but also the involvement of civil society.

In cooperation with research institutions, minority organisations like FUEN or STP have succeeded in the last few years in positioning themselves to play a role as observers and advisors at the national and European levels, where they perform lobbying and provide expertise for human rights, minorities and lesser used languages.

Basically these NGOs have much in common: On the one hand they help members of minorities to appreciate the advantages they derive from their competence in more than one culture and language, and on the other they make the majority population, states and international organisations aware of the cultural, economic and social potential of minorities.

Organisations: The Roles of the OSCE, the Council of Europe and the EU

The subject of minority protection involves questions of social participation (→ Participation), the prevention of discrimination (→ Discrimination), the establishment of equal opportunities (→ Formal Equality), the protection of minority languages (→ Speaking of Languages), the provision of a minority-friendly school system (→ Education), the creation of structures of civil society (→ NGOs), public awareness building (→ Media), and in some cases the provision of group rights (→ Quota and Proportional Systems) or even rights of self-determination (→ Autonomies). It is not difficult to see that all these elements relate to political fields that can be considered sensitive. The nation-states of the 19th and 20th centuries typically saw minority protection as a purely internal matter; how a state dealt with its minorities was the concern of that state alone. Interference from above (international organisations, for example), from below (like the affected regions and/or municipalities), let alone from left or right (i.e. neighbouring countries, → Transnational Cooperation), was neither usual nor welcome. In the last few decades, the picture has changed, however. In Europe especially, countries have been increasingly embedded in international networks; they have become "integrated states" and as such have accepted the transfer of sovereignty both upwards (in particular to the European level) and downwards (through processes of regionalisation). Europe has become an interconnected system of multilevel governance. Even though the individual European state remains the first port of call with primary responsibility for its minorities (→ Case Studies, → Autonomies), it is clear that competence in minority matters is now distributed in a complex pattern among a variety of policy-makers (→ Yin and Yang). The purpose of this chapter is to show how three major international organisations have responded to the subject and have developed European Standards of minority protection in the process.

Raising the Iron Curtain on the Europeanisation of minority protection

Churchill's metaphor of the Iron Curtain was apt in several respects: The East-West divide lay like a lead blanket with suffocating effects on developments in international law and coexistence. The threat of a "njet" from Moscow had paralysed the UN Security Council and all the other international bodies. The collapse of this bipolar world accordingly had the effect of a liberating blow and put an end to a long period of stagnation. This is particularly clear in the case of European minority protection. Although all three organisations treated here, namely the Council of Europe (established 1949), the European Community (established 1957) and the Organisation for Security and Cooperation in Europe (OSCE, launched 1975), were created decades earlier, it was not until the magical decade following the fall of the wall that the subject of minority protection was permanently raised to the international level.

That can be demonstrated with the help of a few facts: In 1992, only three years after the fall of the wall, the European Charter of Regional or Minority Languages was drawn up by the Council of Europe. Three years later, in 1995, the Framework Convention for the Protection of National Minorities, the flagship of minority protection in Europe, was adopted. These two key documents came into force in 1998, ten years after the end of the division of Europe. And only one year later, the Council of Europe established the office of the European Commissioner of Human Rights in Geneva. At the OSCE, too, the minorities agenda was tightly packed following the 1989 annus mirabilis: One year after the fall of the wall, the Office for Democratic Institutions and Human Rights (ODIHR) was opened in Warsaw and the OSCE's participating states signed the Copenhagen Document (see below). Two years after that, in 1992, the Office of the High Commissioner on National Minorities (HCNM) was opened in The Hague. And finally, the dynamics triggered by the fall of the wall are also reflected in developments within the EU: the prospect of the accession of eight young post-Soviet democracies motivated the Union to include respect and protection for

minorities as a criterion for membership in the Community and to monitor the progress made by the candidate countries in this field (the Copenhagen Criteria). Thus, in the decade following the fall of the Iron Curtain, the minority protection agenda was removed from the sole authority of the state and europeanised.

Twenty years after the fall of the wall, the countries of Europe are integrated states with a duty to respect decisions taken by the international organisations to which they are affiliated. These organisations' circles of members are concentric. All EU Member States participate in the OSCE and are members of the Council of Europe. The OSCE comprises 56 participating states, while the Council of Europe has 47 Member States (with no fewer than 750 million inhabitants) and the EU now has 27 member countries (with some 500 million inhabitants). The three organisations differ greatly in terms of approach, subject matter and normative force. With its Office of the High Commissioner, the OSCE is active in the field of crisis diplomacy and in that context makes use of covert diplomacy and the development of (purely) political guidelines. The Council of Europe, on the other hand, sees itself as a legal norm-setter. It produces legal norms, which are binding on all the members states that ratify the corresponding treaties. Such instruments, however, have their normative status in international law alone: They must be implemented by the Member States, but the latter have considerable freedom in this regard. The European Union, for its part, only has regulatory powers in selected areas, and minority protection at the EU level is more of a concomitant political objective than an autonomous policy area (→ The Lisbon Treaty). On the other hand, the EU's scope for intervention is broad and is supported by considerable political power and a juridical punch that is not to be found in classic international law (→ Discrimination).

The outer circle: The political focus of the OSCE

In June 1990, 35 heads of state and government came together in Copenhagen and agreed on rights and duties relating to minori-

ties. Although the Copenhagen Document is not legally binding, it is both specific and comprehensive to a degree that must be considered revolutionary. It states that minorities are entitled to fully and effectively exercise their human rights and recognises that "special measures" may be required for that purpose, which the states should adopt if necessary. The document stresses that belonging to a minority is a matter of individual choice and that no disadvantages may derive from the choices made. It also states that members of minorities have the right to freely express, preserve and develop their identity. The heads of state and government agreed that the right to a minority identity constitutes a duty on the part of the states. This positive duty is formulated only very indirectly, however, as a duty to create conditions for the promotion of the identity of the minority. The politicians also underlined that such measures had to be in conformity with the principles of equality and non-discrimination, thus guaranteeing "protection from protection" for the majority populations. With regard to language, the Copenhagen Document stipulates that the states must endeavour to ensure that members of minorities have "adequate opportunities" for instruction in their mother tongue and, "wherever possible and necessary", for its use in dealings with public authorities (→ Speaking of Languages). With regard to education, the document also refers to the need to take account of the history and culture of national minorities (→ Education). On the subject of political participation, finally, the Copenhagen Document calls upon the states to "respect the right of persons belonging to national minorities to effective participation in public affairs" (→ Participation). In this context, forms of local or autonomous administration are described as "one of the possible means to achieve these aims" as long as they correspond to the specific historical and territorial circumstances and are "in accordance with the policies of the State concerned" (→ Autonomies).

In July 1991, an OSCE meeting of experts took place and produced the Geneva Document, which was adopted by 35 representatives of the participating states. The signatories also included the European Community represented by the Dutch EU Presidency. The

representatives of the states underlined that minorities are "an integral part of the society of the States in which they live", where they are "a factor of enrichment". The document also stresses the significance of special measures taken in support of minorities and includes a list of measures that can produce positive results:

- advisory bodies in which minorities are represented, in particular in the fields of education, culture and religion;
- elected bodies for national minority affairs;
- forms of territorial autonomy;
- self-administration of aspects concerning identity where there is no autonomy on a territorial basis;
- bilateral and multilateral agreements;
- adequate education in the mother tongue with due regard to the numbers, geographic settlement patterns and cultural traditions of minorities;
- funding for the teaching of minority languages to the general public;
- recognition of diplomas issued abroad for study programmes held in the language of the minority;
- government research agencies to review legislation and disseminate information related to equal rights and non-discrimination;
- financial and technical assistance for the establishment of cultural associations;
- governmental assistance for addressing local difficulties relating to discriminatory practices;
- support for communication between minority communities and between majority and minority communities, and for transnational communication, and finally the creation of permanent mixed commissions in border regions.

At the same time the states note that not all ethnic, cultural, linguistic or religious differences necessarily lead to the creation of national minorities. This Geneva Document is not legally binding on the participating states, but it explicitly acknowledged back in 1991 that minority affairs are not an exclusively internal matter.

In the middle of the 1990s it seemed that the quest for common standards was over in the OSCE countries, but in the following years the search for a common denominator in European minority protection took on a new form with the drafting of various Recommendations. They differ significantly from the documents described above. On the one hand they were prepared by groups of experts. The official involvement of the OSCE was limited to the fact that they were drawn up at the request of the High Commissioner, i.e. an office of the OSCE, and on the other hand they offer a structured and concentrated treatment of standards relating to one clearly defined area of minority rights. The recommendations released so far address education rights (The Hague Recommendations, October 1996), linguistic rights (Oslo Recommendations, February 1998), participation in public life (Lund Recommendations, September 1999) and the use of minority languages in broadcast media (October 2003). The latest recommendations, which were the first to be issued explicitly in the name of the High Commissioner, address the role of the kin state in interstate relations (Bolzano/Bozen Recommendations, October 2008, → Transnational Cooperation). Although these recommendations are very useful as objective standards at the political level, and especially in the context of the High Commissioner's diplomatic interventions, they are simply recommendations and as such have no power to commit countries to a certain course of action. The objective of the Council of Europe, on the other hand, is to establish state obligations with due legal force.

The middle circle: The legal focus of the Council of Europe

The Council of Europe had already made a significant contribution to minority protection in Europe with the decisions taken by the European Court of Human Rights in Strasbourg based on the European Convention on Human Rights (→ Judiciary). Following the annus mirabilis of 1989, however, the Council of Europe wanted to go still further and create an instrument of protection for minority rights. In 1990 the Parliamentary Assembly of the Council of Europe recommended the adoption of a legally binding protocol to the Con-

vention dealing specifically with linguistic and national minorities (Recommendation 1134). On the other hand, the Assembly rejected a draft for a separate agreement in international law submitted by the Venice Commission in March 1991, which defined the concept of "minorities", combined individual and collective rights, proposed a European Committee for the Protection of Minorities, and provided for rights of state and individual application. In 1991 Austria submitted a detailed proposal for a protocol to the European Convention on Human Rights which provided amongst other things for the mandatory observance of ethnic proportionality in the public services (→ Quota and Proportional Systems), but the negotiations failed at the Vienna summit conference held in October 1993. The heads of state and government thereupon mandated the Committee of Ministers to elaborate a framework convention which would also be open to non-Member States. The idea of an independent agreement in international law was thus back on the agenda.

The document was completed on 14 October 1994 and opened for signature on 1 February 1995. Following ratification by the mandatory minimum of twelve national parliaments, the Framework Convention for the Protection of National Minorities (FCNM) entered into force on 1 February 1998. Unlike the originally planned protocol to the ECHR, the Framework Convention makes no mention of rights of autonomy and no effective rights of complaint for members of minorities. Its control mechanisms are politically dominated and weak in terms of legal remedies. In certain parts, individual rights are so diluted by the conditions attached as to be unrecognisable as rights and lacking in force. It must nevertheless be considered a substantial achievement that, with the Framework Convention, a legally binding instrument has been created that obliges the states to maintain a permanent internationalised dialogue on the subject of the protection afforded to their minorities. In view of this dialogue and the monopoly position of the Framework Convention as a European legal instrument, it is predestined to function as a catalyst for the development of generally accepted European standards in the field of minority protection.

With regard to the control mechanisms (i.e. monitoring) of the Framework Convention, the states are obliged to submit a report every five years to the Secretary General of the Council of Europe, which he forwards to the Council's Committee of Ministers. In evaluating the "adequacy of the measures taken by the Parties" (Article 26 FCNM), the Committee of Ministers is assisted by an Advisory Committee. This group of experts has a maximum of eighteen members, half of whom are renewed or replaced every two years. The Committee of Ministers is entitled to request ad hoc reports. The dialogue between the Council and states that ensues when a report is requested can be divided into a reporting phase and a two-part evaluation phase. In the reporting phase, the state concerned produces a comprehensive report on the situation of its national minorities and the relevant legislation and forwards it to the General Secretariat of the Council of Europe, which publishes the report. In a first evaluation phase, the activities of the state as described in the report and in other sources, e.g. shadow reports (i.e. reports from NGOs or interviews and reports from other reporting systems), are discussed in a working group of the Advisory Committee. The Committee may also request additional information from the reporting state. The working group produces a questionnaire, which the state must answer within a reasonable period of time. The Advisory Committee may also hold working sessions in the reporting country and meet representatives of its government and civil society. Indeed, such meetings have become standard practice. The part of the evaluation phase that is dominated by the Advisory Committee comes to an end when the working group's report is adopted in plenary session and forwarded to the Committee of Ministers. The second part of the evaluation phase is dominated by the Committee of Ministers of the Council of Europe, who are free to accept the findings of the Advisory Committee or not. The conclusions produced by the Committee of Ministers mark the end of the evaluation phase of the round of reporting.

Article 1 of the Framework Convention states: "The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the interna-

tional protection of human rights, and as such falls within the scope of international co-operation." Here, for the first time the internationalisation of the protection of national minorities, as expressed at the political level in the context of the OSCE, was incorporated in a legally binding text. The Framework Convention contains no definition of the term "minority", however (→ What is a "Minority"?). This "pragmatic approach" can be explained in terms of the absence of agreement on the subject among the countries of the Council of Europe. The definition of "minority" ultimately relates to the general problem of the question to whom the Framework Convention applies - a question which prima facie is left to the states to answer. In fact the states tend to include as few (groups of) persons in the scope of the Convention as possible. Latvia, for example, has defined the concept so as to to exclude its Russian speakers without Latvian citizenship. The Advisory Committee responds to these restrictive tendencies with what it sees as a "pragmatic and flexible approach". What this means is that, although the Committee respects the latitude available to the states in recognising minorities within the terms of the Framework Convention, it also emphasises that this latitude must nevertheless be applied in line with general legal principles. After all, Article 3 of the Framework Convention concedes all individuals the right to freely decide whether they wish to be treated as members of minorities or not (→ Uncounted). For that reason, the Advisory Committee considers it one its duties to scrutinise the definitions applied by the states so as to avoid "arbitrary and unjustified distinctions". In the case of Denmark, for example, the Advisory Committee stated that the Faroese, Greenlanders, Roma and Germans living outside of South Jutland could not be excluded a priori from the scope of the Framework Convention. In short, it is an approach based on cooperation. In general, however, the Committee stresses that it has a clear preference for an inclusive interpretation. This is also relevant for religious minorities, whose treatment as national minorities is unclear in international law; both the Advisory Committee and the Committee of Ministers share the view held by Northern Cyprus that the Framework Convention also refers to religious minorities. Finally, the Advisory Committee rejects the standpoint that classification of an ethnic

group as an indigenous people is tantamount to exclusion from the scope of the Framework Convention.

On the subject of protection from discrimination, Article 4 para. 1 Framework Convention contains a formal ban on discrimination, which is accompanied in para. 2 by the duty of the state parties "to adopt, where necessary, adequate measures in order to promote ... full and effective equality". Mention is also made of the need to "take due account of the specific conditions of the ... minorities". The states specifically have to undertake "to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture" (Article 5 para. 1 FCNM). In its commentary, the Advisory Committee particularly stresses the position of smaller minorities like the Roma or Irish Travellers (→ The Roma), and the need for adequate involvement of the people concerned in the relevant programmes. The Convention states that assimilation should not be the objective of general integration policies, and that members of minorities are to be protected from assimilation (Article 5 para. 2 FCNM) and against "threats or acts of discrimination, hostility or violence" with the help of "appropriate measures" (Article 6 para. 2 FCNM). The Committee also underscores the role of the press and makes reference to a corresponding resolution of the Council of Europe. Article 9 Framework Convention provides for non-discriminatory accesses to the media (→ Media). In particular, minorities are not to be hindered in the creation and use of printed media. A positive duty can be seen in the requirements for states to "adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism" (Article 9 para. 4 FCNM). At all events, the Advisory Committee is of the opinion that the fact that a minority has transnational access to media in its own language (e.g. from the kin state) cannot be an argument against the need for the minority to have its own media.

The Convention guarantees freedom of peaceful assembly and freedom of expression (Article 7 FCNM) as well as religion or belief (Article 8 FCNM). On this point the Advisory Committee points out

that there is no obligation to provide financial support for religious activities and that the principle of equality must apply to any funding provided. Article 10 Framework Convention addresses the use of minority languages, which must be permitted "in private and in public" (para. 1). A duty to make it possible for a minority language to be used in dealings with the "administrative authorities" is dependent on conditions of "real need" (para. 2). In this context, the Advisory Committee says that the necessary "substantial numbers" of members of minorities should be ten percent and that a threshold of fifty percent is definitely too high (→ Speaking of Languages). The Convention also states that all members of minorities have the right to use their names "in the minority language" and a right to official recognition of their names "according to modalities provided for in their legal system" (Article 11 para. 1 FCNM). Members of minorities are also given the right to public display of signs "and other information of a private nature" in their minority language (para. 2). Topographical indications can be displayed "also in the minority language", although the relevant duty of the state parties is conditional in more than one respect: It is limited to "areas traditionally inhabited by substantial numbers of persons" belonging to the minority and even then only "in the framework of their legal system" and "taking into account their specific conditions" and "when there is a sufficient demand" (Article 11 para. 3 FCNM). In terms of hard figures, the Advisory Committee holds a threshold of twenty percent of the local inhabitants (with half of them supporting minority language place names) to be acceptable but considers the requirement of a majority to be excessive.

Articles 12ff Framework Convention deal with protection for minority identities and access to education. The states have a duty "where appropriate" to take measures "to foster knowledge of the culture, history, language and religion of their national minorities and of the majority" (Article 12 para. 1 FCNM). In addition the states undertake "to promote equal opportunities for access to education" for members of minorities (Article 12 para. 3 FCNM). In this context the Advisory Committee has criticised the practice of assigning Roma children to special schools. With regard to the minori-

ties' right to their own educational facilities, the Convention expressly states that this may not "entail any financial obligation for the Parties" (Article 13 para. 2 FCNM). The Convention recognises the right of members of minorities to learn their own language (Article 14 para. 1 FCNM), but this obligation to perform on the part of the states is made so heavily conditional as to significantly undermine the legal duty. The Advisory Committee is nevertheless of the opinion that bilingual education is the best solution for implementation of Article 14 Framework Convention.

In Article 15, the Framework Convention commits the states parties to creating the "conditions necessary" for "effective" minority participation in "cultural, social and economic life and in public affairs, in particular those affecting them". Article 16 Framework Convention forbids the states from making changes to the proportions of the population groups in minority areas. Finally, the Convention forbids the states to interfere in the rights of members of minorities to establish and maintain transnational contacts (Article 17 para. 1 FCNM) and to participate in the national and international activities of NGOs (Article 17 para. 2 FCNM), while Article 18 FCNM contains a general requirement for the states to enter into bi- and multilateral agreements in the interest of minority protection and to encourage cross-border cooperation (→ Transnational Cooperation).

By the middle of 2012, the Framework Convention had entered into force in 39 states, and all EU Member States had ratified except Belgium, France, Greece and Luxembourg (see the table and pie charts in the Annex). The Framework Convention can be considered the most comprehensive legally binding instrument in the field of multilateral minority protection. Unlike the European Charter for Regional or Minority Languages, which opened for signing in November 1992 and entered into force in 1998, the Framework Convention has also played a not insignificant role in the context of the EU (→ Speaking of Languages).

The inner circle: The legal and political commitment to minorities of the European Union

It is a useful simplification to divide EU activities on behalf of the minorities of Europe into three phases. In an early phase (from about 1980 to 1993), it was primarily the European Parliament that sought to arouse interest in the question of minorities, calling mainly for measures to be taken - without resort to legal force - in the fields of culture and language policy. Attempts by a number of MEPs such as Count Stauffenberg and Mr. Alber to have an EU Charter establishing the rights of European ethnic groups drawn up in the Parliament's Legal Affairs Committee soon failed. Work in the Culture and Education Committee, however, was more successful and a whole handful of much-quoted resolutions were adopted. The European Parliament itself was successful with three practical and highly visible measures: In 1982 a NGO was founded - and accepted for funding by the Commission - to work in support of minority languages in Europe, namely the European Bureau for Lesser Used Languages (EBLUL; → NGOs). Second, a budget line was created, providing for the regular flow of EC funds for the promotion of minority languages from 1982 to 1999 (→ Speaking of Languages). And third, a minorities Intergroup was established in the Parliament. Intergroups are unofficial working groups comprised of parliamentarians from several political groupings who come together to address a certain issue regardless of their political affiliations; they have to be reconstituted after every election to the European Parliament. The Intergroup (the group "Traditional National Minorities, Constitutional Regions and Regional Languages" has currently over 40 members) made the Parliament the first and only EU institution to have a dedicated platform for minority agendas. All these developments in the early phase of minority protection in the EU helped to make the Parliament a prominent advocate of minority interests on the territory of the EU.

Following this early phase of commitment to minority policy in the EU came the phase of conditionality from 1993 to 2004. As mentioned above, the heads of state and government of the European

Community formulated the Copenhagen Criteria in June 1993, stipulating a number of conditions of accession to be met by EU candidate countries. At the political level, they have to have achieved the institutional stability needed to ensure "respect for human rights, as well as respect for and the protection of minorities" before they can accede to the EU (conditionality). Four years later this political condition of accession was raised to the juridical nobility of treaty law: Article 49 EU Treaty explicitly grants the right to apply for membership to the Union to those states that respect the principles set out in Article 6 EU Treaty. That in turn contains all the elements of the political condition for accession from the Copenhagen Criteria - with one exception: minority protection! Obviously, the Member States were not (yet) ready to risk formulating an explicit written commitment for the EU's internal regime in an area that seemed to be particularly sensitive and not yet fully defined. It is true that in the decade of enlargement, the candidate countries were groomed by the EU Commission in the direction of minority protection, but no attempt was made to impose such values within the Union itself. In this context, the well known expert on European law Bruno de Witte made the ironical comment that the Europe of the EU saw minority protection as an export item that was not designed for domestic consumption.

All together, the conditionality phase differs from the early phase of commitment to minorities in the EU in two ways: On the one hand it was not dominated by the Parliament but by the European Commission, namely in its assessment and reporting functions vis à vis the candidate countries, and on the other it was influenced, not by considerations of cultural and language policy but by an objective based in security policy: The fifteen "old" Member States (and the Union itself) wanted to see the various ethnic tensions overcome in the states of Central and Eastern Europe before the latter were to accede to the Union.

Of course, these phases are not completely distinct; the conditionality phase also involved the further development of certain activities from the early phase. This is due to the fact that the 1992

Treaty of Maastricht added a new item to the Treaty relating to EC cultural policy. The new Article 151 of the EC Treaty provided for the Community to "contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore". In summer 2003, on the basis of a report submitted by the South Tyrolean MEP Michl Ebner, the European Parliament accordingly proposed the creation of a European Agency for Linguistic Diversity and Language Learning as well as a separate funding programme for linguistic diversity. His proposals met with little response on the part of the other organs of the EU. Nevertheless the field of minority protection has not stagnated at the level of the EU and we are justified in speaking of a third phase in the EU's commitment, a phase of internalisation, in which a commitment that originally expressed itself as a purely external strategy began increasingly to impact the domestic agenda of the Union and the minorities in its Member States.

A good example of this internalisation of commitment to minorities can be seen in the adoption of the Racial Equality Directive on the basis of the new Article 13 of the EC Treaty (→ Xenophobia), as a result of which ethnic discrimination moved centre stage in Community equality law (→ Discrimination). The legislative focus in the field of anti-discrimination also attracted the necessary funding. Almost a hundred million euros was earmarked for an anti-discrimination programme created for the 2000-2006 funding period, and another 15 million euros were allocated to the European Year of Equal Opportunities for All in 2007, which was followed in 2008 by the European Year of Intercultural Dialogue. In this, the most recent phase of EU commitment, minority protection plays a role not only in the legislative area (legally binding provisions) and funding via EU programmes and European year campaigns; account is also being taken of minorities and their needs in the form of impact assessments for planned European legislation (i.e. the Commission's duty to assess the impacts that measures taken in the EU could have on minorities). Minority interests also play a role in the context of the European Employment Strategy and the process of

social integration (→ Business and Economic Crises), although the role of minorities is naturally even more apparent in the EU's rapidly developing migration and integration policy (→ Kaleidoscope of Demographic Change). The EU's interest in minority questions was also apparent in the establishment of the EU Agency for Fundamental Rights in Vienna in 2007, since minorities are a focus of its work. This EU institution operates as a European competence centre, counselling other institutions and Member States (in their implementation of EU law) on questions of fundamental rights. Evidence-based policy advice is what the Agency offers its clients. Its mandate covers the complete field of the protection of fundamental rights in Europe. The first large-scale poll conducted by the Agency, with almost 25,000 responders, related to the situation of members of minorities in Europe (the EU MIDIS study, → Discrimination). Between 2012 and 2020 the Agency is running a Roma programme, including major surveys on the situation of the Roma populations within the EU in order to monitor progress (or lack of progress) on the ground.

What distinguishes the internalisation phase from the two earlier phases is that all EU institutions are now involved in the subject - some relatively low-key, others more vociferously - and that minority affairs are being increasingly recognised as a transversal commitment, a fact that is also reflected in the new EU Treaty (→ The Lisbon Treaty). In addition to the EU Commission, the Council has also become active in minority agendas, while the European Parliament has maintained its political commitment to minority protection after the last big round of enlargement. In June 2006, the Parliament stressed that in some cases it will be necessary to temporarily depart from a concept of equality that is related to the individual in favour of a group-based view (→ Formal Equality), and at the national level the Parliament is calling for traditional minorities to be protected by various forms of self-government or autonomy (→ Autonomies). Following the 2004 round of enlargement, in a resolution on the subject of minority protection submitted in the summer of 2006, the Committee of the Regions also spoke of the usefulness of positive measures and of positive discrimination. In

spite of such developments at the political level, the fact remains that the legal reading of the concept of equality employed by the EU itself (and especially by the European Court of Justice in Luxembourg) is still purely formal in character (→ Discrimination). Finally, it should not be forgotten that the EU only has powers in certain areas of minority affairs and that diversity management in the EU is dependent on complex interaction between the local, regional, national and European levels (→ Yin and Yang).

The new challenge: "Interorganisational" cooperation

The countries of Europe have been cooperating at the international level for over half a century now and have become integrated states in the process. As the example of minority protection shows, this international cooperation takes place in a variety of international organisations, where there is an increasing degree of overlap with regard to membership and objectives. In order to avoid inefficiencies and ultimately the waste of public money as a result of egotisms and duplications of effort, it is important that the international organisations should coordinate their efforts and work together. Following decades of international cooperation, interorganisational cooperation is now the order of the day, and there are in fact clear signs of a growing interest in coordination. In the last two decades, the three organisations OSCE, Council of Europe and EU have been linked via an increasing number of cooperation platforms and mechanisms. The EU, which is channelling more and more of its integration dynamics in the direction of human rights and minorities (and attracting occasional suspicion from other organisations in the process), stresses that it is employing the standards formulated in the framework of the OSCE and the Council of Europe and strengthening them at the same time. The EU Commission has for example installed the Council of Europe's Framework Convention as the yardstick of European minority protection when applying the above mentioned Copenhagen accession criterion. In fact, the political influence of the EU is not to be underestimated for the consolidation of minority standards as developed by the Council of Europe. Prior

to the big wave of EU enlargement to the East, the Council of Europe's Framework Convention was binding on just under one third of the Member States. But with ratification of the Framework Convention promoted to a de facto condition of accession, nine of the ten newcomers (all except Latvia) signed the Convention prior to accession. On the official day of Eastern enlargement (1 May 2004), therefore, the share of the EU Member States formally committed to observing the Framework Convention increased from just under two thirds to a good four fifths.

For its evaluation of the minority policies of the candidate countries, the EU Commission often referred to the reports prepared by the Advisory Committee of the Framework Convention. In addition, the EU Commission regularly consulted the High Commissioner of the OSCE in that context. This approach received general confirmation at a meeting of heads of state and government held in Warsaw: The guidelines drawn up in May 2005 for the EU's future relationship with the Council of Europe specified that the European Union should try to incorporate in Community law those provisions of the Council of Europe conventions that relate to the powers of the Union. The question of cooperation between the EU and the Council of Europe was also an important topic in the case of the above mentioned EU Agency for Fundamental Rights in Vienna. For some self-proclaimed advocates of the Council of Europe, this new EU orientation represented a dangerous incursion into traditional Council of Europe territory. The emotions were only calmed when it was made clear that the remit of the Agency for Fundamental Rights did not extend to third countries and that the Agency would not be responsible for producing country-by-country reports but rather would issue thematic reports relevant for the specific EU context. In the founding regulation, the EU agency undertakes to collaborate with the Council of Europe and to refer to its findings. The Council of Europe was even conceded the right to appoint a representative to the Agency's Management Board. Experience so far shows that there is in fact no duplication of effort and that, on the contrary, the Agency is promoting interorganisational cooperation and awareness about the other players. For example, the Agency has per-

formed a study of inner European migration by Roma - in collaboration with the Council of Europe's Commissioner of Human Rights, the OSCE's High Commissioner for National Minorities, and the OSCE Office for Democratic Institutions and Human Rights. All this shows that not only states but also international organisations are becoming increasingly integrated - a development that benefits the cause of minority protection, too.

The collapse of Soviet Communism and the end of the east-west divide in Europe stimulated developments in international organisations which increasingly shaped the face of Europe, namely the Organisation for Security and Cooperation in Europe (OSCE), the Council of Europe and the European Union. In the field of minority protection, the 1990s were a period of great activity and exciting developments. With the Framework Convention for the Protection of National Minorities, for example, the Council of Europe has established the most important agreement in international law in the field of minority protection to date. In the meantime it has been ratified by 39 European countries and is now binding on all EU member countries with the exception of Belgium, France, Greece and Luxembourg. In addition to this very significant contribution made by the Council of Europe to legal standards in the field, the OSCE has taken a big step forward at the diplomatic level with the establishment of the Office of the High Commissioner for National Minorities in The Hague. The EU for its part took advantage of the two organisations, the Council of Europe and OSCE, to flesh out its accession criterion relating to "respect for and protection of minorities", which was also announced in the 1990s. At the same time, the pull-effects of the prospect of accession to the EU have promoted other international organisations' interest in minority matters. After an extremely active decade of international cooperation between states in the field of minority protection, it is one of the challenges of the 21st century to build greater cooperation between the international organisations so

as to make further progress with regard to minority protection in Europe ("interorganisational" cooperation).

Participation: How Minorities Engage in Society

The goal of participation for members of minorities is their integration in political, cultural, social and economic life (→ NGOs). This applies not only to matters of direct concern to the minorities themselves but to public life in general. That is a precondition that must be met if a minority is to develop a sense of belonging and loyalty to the state. The integration of ethnic minorities in mainstream society can only succeed on the basis of a continuous dialogue between the minorities and the institutions of the state. Individual involvement alone is not sufficient (→ Yin and Yang). What is needed is the possibility to form groups representing the political and economic interests of the minority and participating in the decision-making process.

The basic political right needed to ensure political participation is the right to vote and to stand for election. For political minorities, the right to establish an ethnic party is also of fundamental importance. Since minority communities are normally small in number, instruments are needed to facilitate political participation and the election of minority representatives. Such instruments include exceptions from election thresholds in proportional representation systems and consideration of the demographic strength of minorities when defining constituencies. Many countries also have a system of reserved seats, which ensures the inclusion of minorities in legislative bodies regardless of the result of the election (→ Quota and Proportional Systems). Whatever the differences in the electoral systems, the respective governments thus seek to ensure that equality of opportunities is established between the minority and majority populations (→ Discrimination).

Exceptions from election thresholds

Purely proportional representation ensures that even the smallest parties can be represented in parliament. In the interest of greater parliamentary stability and less risk of fragmentation, however, a percentage threshold is often defined that parties must exceed in order to gain a seat. The negative side effect of such election thresholds is that they tend to exclude minorities and their parties from parliament. To ensure that they will nevertheless be represented, the election thresholds are sometimes lowered or completely eliminated for minority parties. Unlike the reserved seat system, this does not automatically guarantee representation in parliament but it greatly facilitates it.

In Germany, the Südschleswigsche Wählerverband (SSW), as the organisation representing the Danish minority living in Schleswig-Holstein, was exempted from the election threshold back in the 1950s (→ Case Studies). For all other parties, the five percent hurdle continues to apply or they have to win a direct mandate in order to be represented in the state parliament in Kiel. Similar rules apply to the Sorbs in Brandenburg and to all parties representing national minorities (Danes, Sorbs and Frisians) in German national elections.

In the Italian region of Trentino-South Tyrol, the introduction of a percentage threshold for elections to the Regional Council in 1998 was rejected as unconstitutional by the Italian Constitutional Court. The proposed five percent hurdle would have jeopardised the chances of a seat for the Ladins, who account for only 4.37 percent of the local population. With its ruling, the Constitutional Court confirmed the right of a minority to establish a party to represent its members' interests. In 1999 the Austrian Constitutional Court also ruled that it would be unconstitutional to set an election threshold so high that the result would be tantamount to changing from a proportional to a majoritarian system. In the case of the ten percent hurdle that long applied in the Austrian region of Carinthia, however, the Constitutional Court saw no danger of a change of sys-

tem even though the threshold effectively deprived the Carinthian Slovenes of representation at the regional level.

In a number of comparative studies at the European level - carried out for example by the Council of Europe - five percent threshold levels are considered justifiable whereas ten percent is found to be particularly harsh (→ Organisations). In the 2007 elections in Turkey, for example, only three parties gained more than ten percent of the total vote, and all the Kurdish parties were excluded from parliament as a result. In the 2008 ruling of the European Court of Human Rights (Yumak and Sadak v. Turkey, App.No. 10226/03, decision of January 2008), Turkey was called upon by the European Court of Human Rights to lower the threshold level so as to ensure representation of a variety of political movements.

Drawing constituency borders

Decisions relating to the size and geographical borders of constituencies have a decisive influence on election results. As with a high election threshold, a small number of seats to be won in a constituency reduces the proportionality of the result and thus the chances for smaller parties to gain a seat in the body concerned. If the number of seats to be won is increased, on the other hand, the chances of election for small party candidates also increase. But if the borders of the constituency are drawn so as to precisely encompass the area of settlement of a minority, the minority can win a seat even in a small constituency. Establishing constituency borders in such a way that the territory of the minority is divided up amongst several constituencies, making it impossible for the minority to win a seat, runs counter to the relevant recommendations of the Council of Europe and the OSCE.

According to the Autonomy Statute of the Italian region of Trentino-South Tyrol, one seat in the Trentino regional parliament is to be assigned to the territory of the municipalities that are home to the Dolomite Ladins. This is a de facto guarantee that at least one

Ladin will be elected to the regional parliament. Similarly, in South Tyrol, where the German linguistic group is in the majority, the electoral law of 1993 relating to elections to the Italian national parliament provides for a separate constituency for the Italian population. As the Italians account for only 26.47 percent of the population at the provincial level, the main city of Bolzano was combined with the municipality of Laives, which has a high proportion of Italian residents, to form a single constituency in which Italian-speakers can be sure of being elected.

For elections to its regional parliament, the region of Carinthia in Austria is divided into four constituencies, which include the borders of several political districts. As a result of these demarcations, the area of settlement of the Carinthian Slovenes is divided up between all four constituencies. As the Carinthian Slovenes constitute less than two percent of the population and are additionally distributed over all four constituencies, it is practically impossible for them to win a seat in any of the constituencies.

Reserved seats

Another alternative for guaranteeing minorities representation in elections at the national, regional or local level is the system of reserved seats for defined groups. Reserved seats are the subject of constitutional provisions for the parliaments of Croatia, Slovenia and, in less robust form, Romania. The Kosovo constitution approved on 8 April 2008 stipulates that of the 120 seats in the parliament at least ten must be allocated to the Serb minority, one each to the Roma, Ashkali and Egyptians, three to the Bosniaks, two to the Turks and also one to the Gorani. These figures are the minimum guaranteed numbers; more seats can be allocated where that reflects the result of the election.

Guaranteed but flexible representation is provided for in the Croatian Law on the Rights of Minorities, with a total of between five and eight seats reserved for the country's minorities on the fol-

lowing basis: between one and three seats for minorities that account for more than 1.5 percent of the population, and at least four seats in total for those minorities that account for less than 1.5 percent of the population. The total at present is eight members of parliament representing the country's minorities as follows: three Serbs, one Hungarian, one Italian, one member for the Czechs and Slovaks together, one for the Albanians, Bosniaks, Montenegrins, Macedonians and Slovenes together, and one for the Austrians, Bulgarians, Germans, Poles, Roma, Romanians, Russians, Ruthenes, Turks, Ukrainians, Vlachs and Jews together. In Slovenia only two of the country's autochthonous minorities, the Hungarians and the Italians, have constitutional guarantees of one seat each in the national parliament. Unlike the Croatian system, in which a member of a minority has only one vote, two votes can be cast in Slovenia. One vote is cast at the national level in the normal way, while the second vote is cast in special constituencies with separate electoral rolls to elect the representatives of the autochthonous minorities. In both the Croatian and the Slovene system, anyone who wishes to exercise the right to elect a representative of a minority must first register as a member of the minority concerned.

In Romania, all legally recognised minority organisations, which have the same status as political parties in elections, have a right to one seat in parliament (→ NGOs) as long as they receive in total all over the country - irrespective of the country's constituency structure - at least five percent of the votes needed to win a seat in the normal case. Apart from the Hungarians, whose numerical strength means they have no need of this preferential treatment, seventeen minorities are represented in parliament on the basis of this rule.

The practical workings of the system in Romania and Slovenia show that the effectiveness of guaranteed representation with one seat in the national parliament, i.e. with just one delegate for the national minority involved, is relatively limited. Although the Slovenian constitution provides for a right of veto for the autochthonous minorities in the case of laws, decrees and other legal acts relating to the rights of minorities, that only applies to complete legal acts

and not to individual provisions of other laws that also affect minorities. It is therefore important not only to guarantee minority representation on elected bodies but also to ensure that the elected representatives of the minorities are in a position to influence the decisions taken. A special form of influence is the quasi legal personality attributed to the linguistic groups in the South Tyrolean Parliament and the Regional Council of Trentino-South Tyrol. Where a bill violates the principle of equal rights among citizens or the ethnic-cultural distinctiveness of the linguistic groups, a majority of the members representing one of the linguistic groups can call for a vote by linguistic groups and can even lodge a complaint with the Constitutional Court against a current law. This shows that minority representation at the regional or local level may be preferable to what is sometimes purely symbolic representation in the national parliament as the smaller representative body will offer greater potential in terms of influence for minorities for structural reasons alone.

For effective participation, it is not enough to target individual members of minorities. Individuals must be able to combine into groups capable of representing the minorities' political and economic interests, and those groups must be empowered to play an effective role in the decision-making processes. At the level of political representation, the electoral systems must be in line with the general principle of equality and the specific principle of electoral equality, while the integration of minorities must give them access to an adequate degree of political representation. In many cases, the percentage thresholds provided for in most proportional systems of representation are waived or at least lowered to guarantee the members of minorities adequate and effective participation in the political process.

In addition, constituency borders can be drawn to create constituencies where the minorities are the numerically strongest group. Guaranteed seats on national or regional legislative bod-

ies are especially meaningful where the representatives of minorities have the power of veto over matters concerning those minorities.

Quota and Proportional Systems: Preliminary Compensation for Past Discrimination

The protection of people's individual rights will be found to be inadequate where minorities are confronted with a historical wrong or structural disadvantages. Whereas the legal entity in the case of individual legal protection is the individual member of the minority, measures relating to group rights are targeted at the group as the legal entity, although the distinction between individual and group protection is not always clearly defined. Positive measures in support of equal opportunities for minorities in administrative, economic, social or cultural fields are designed to establish material equality. Their legitimacy is derived from the de facto discrimination of a certain group without making the group itself the legal entity (→ Formal Equality). The concession of rigid quotas, which automatically benefit representatives of certain groups, on the other hand, is a question of group rights. In the first phase they are usually targeted at remediation of a historical wrong (allocation of resources, segregation), for example following an interethnic conflict. They have a peace-keeping function in that they tend to separate the groups involved in the conflict. In a second phase such quotas can be seen as confidence-building measures with regard to access to employment in the public services and can have an integrative function at the level of political participation (→ Participation). On the other hand, rigid quotas tend to have segregational effects in the long term. Rigid quotas are particularly problematical and lose their original justification where the structural disadvantages of the group concerned have already been compensated through the quota system. In such cases the objective must be to overcome the phase of segregation and institute a final phase of integration.

Ethnic proportionality as a generally accepted instrument of protection in South Tyrol

Ethnic proportionality ("Proporz" in German) and the Declaration of Affiliation to a Linguistic Group are the backbones of minority protection in South Tyrol; they are the key to access to certain public offices and entitlement to certain rights of representation (→ Autonomies). Ethnic proportionality is practised in the public service (staffing), the allocation of budgetary funds, and the composition of provincial and regional government bodies. The purpose of ethnic proportionality is to mitigate an earlier wrong by defining entitlements in the above sectors for members of the German, Italian and Ladin linguistic groups in proportion to their relative numerical strengths according to the Declaration of Affiliation to a Linguistic Group (→ Uncounted).

As a vehicle for reversing the policy of italianisation practised under the Fascists, the 1946 Gruber-De Gasperi Agreement provided for "equal opportunities with regard to employment in the public services in order to achieve a satisfactory distribution of posts between the two ethnic groups". Even after conclusion of the 2nd Autonomy Statute in the 1970s, however, proportional representation of the ethnic groups in public services, political office and the judiciary was still far from reality. In 1975, for example, of the 6000 positions in the public services subject to the proportionality rule only about 14 percent were held by representatives of the German and Ladin linguistic groups, although together they accounted for two thirds of the resident population of South Tyrol. Also with regard to the mandatory representation of the linguistic groups in the various elected public bodies and the allocation of budgetary funds proportionate to the relative strength of the linguistic groups, improvements had to wait until the 1976 Proportionality Decree was issued and the results became available from the 1981 census. Today the equitable distribution of government funds and proportionate representation has been largely achieved in the regional administration, the regional parliament, the local authorities and national government offices and comes with various supporting measures in-

cluding mandatory bilingual or trilingual skills for public service employees (→ Speaking of Languages). Mandatory bilingualism does not discriminate against the Italian-speaking majority; like the basic principle of ethnic proportionality, it is merely designed to mitigate the de facto discrimination of the German and Ladin linguistic groups.

A question that is often discussed today is whether ethnic proportionality as an instrument of redress is still justified now that the numerical quotas have been reached. With vacancies in the public services filled with more than their share of members of the German and Ladin ethnic groups, ethnic proportionality had finally been achieved in most sectors by 2006. To that extent, this instrument of protection has lost its justification, but all linguistic groups continue to support it as a vehicle of ethnic peace and orderly coexistence. The rule of ethnic proportionality with its rigid quotas appears to remain in force as a decisive contribution to social peace and the equitable allocation of resources among the linguistic groups of South Tyrol. A certain degree of flexibility has been introduced, however, and will be needed in future to ensure that posts for which no suitable person has been found from one linguistic group can nevertheless be filled in the long term by an applicant from another. Given such flexibility on the one hand and fears of declining resources on the other, there is widespread support for the view that ethnic proportionality is likely to continue to be beneficial to peaceful coexistence in South Tyrol (→ Business and Economic Crises). Even though proportionality in South Tyrol may also have segregational effects, therefore, in practise it also plays an integrative role in combination with a relatively efficient public administration and other multilingual services and a general consensus on the subject of regional autonomy (→ Autonomies).

Bosnia-Herzegovina: The failure of a state in the face of ethnic proportionality

Before the civil war, Bosnia and Herzegovina was the republic of Yugoslavia that best reflected the ethnic composition of the multinational state that collapsed in the 1990s. In the last census held there in 1991, the population was 44 percent Muslim (Bosniaks), 31 percent Serb, 17 percent Croat and 6 percent Yugoslav. As a result of forced displacement and ethnic cleansing during the war from 1992 to 1995, 250,000 people died or are still missing, and 1.2 million people became refugees in their own country (→ Zero Tolerance). The homogenisation of the population caused by the war was formally confirmed in the Dayton Peace Accords signed in December 1995. The federal republic comprises two political entities: Republika Srpska (Serbian entity) with 51 percent of the territory, and the Federation of Bosnia and Herzegovina (Muslim-Croat entity) with 49 percent. With a total population of just over 4 million, the percentage ethnic mix is similar to the result of the 1991 census, though with a number of focal centres for the ethnic groups.

The centralist Republika Srpska and the Federation of Bosnia and Herzegovina with its ten cantons are the two constituent entities of the country and have considerable powers, whereas those of central government are limited. In addition, the rule of ethnic proportionality introduced for the Bosniaks, Serbs and Croats in the parliament, presidency, government and even the constitutional court has created a bloated and inefficient government apparatus with no fewer than thirteen prime ministers, 180 ministers and hundreds of deputies right down to the level of local government. The proportionality rules for the public services are also problematical as precise figures on which to base representation of the three ethnic groups are lacking (→ Uncounted). The judiciary comprises courts at the level of the state and the entities, and within the entities at the cantonal and local levels, i.e. the country has four parallel systems of jurisdiction. In the last few years, reforms have been initiated with the aim of strengthening the central powers and thus improving the efficiency of the system. Law enforcement, for ex-

ample, is organised at the level of the two entities and also at the cantonal level. For effective policing, it would be necessary to create a central police organisation independent of the borders of the entities. However, the proposal only meets with the approval of the Bosniaks; the Serbs wish to maintain the powers of the entities, and the Croats prefer further regionalisation.

The organisational structure of the state is reflected in that of the legal system. According to the constitution of the state and that of the entities, the members of all three constitutive ethnicities are equal before the law in the territory of the whole country. Individuals and groups who are not part of the three ethnic groups of Bosniaks, Serbs and Croats do not benefit from this policy of non-discrimination, however. As a result of the proportionality system in the public services, decisive importance is attached to ethnic affiliation and membership in the political parties with their primarily ethnic structure. Only the Social Democrats and a fairly new small party called Radom za Boljitak have a non-ethnic structure, although even their membership and supporters are largely drawn from one of the three big ethnic groups. A constitutional reform is thus urgently needed to overcome the identification of territory with ethnicity and to guarantee equality before the law for all citizens, regardless of their ethnic affiliations - all the more so as, seventeen years after Dayton, one of the functions of ethnic proportionality, namely confidence building between the entities, has failed and has merely reinforced segregation between the groups. Rigid quotas, a paralysing administration and mono-ethnic political parties have failed to generate any signs of integration, so that the Serbs and Croats especially are lacking in loyalty and identification with the state.

Against this background, the European Court of Human Rights in Strasbourg (→ Judiciary) has found in the case Sejdic and Finci v. Bosnia and Herzegovina that the system as it was designed in Dayton is not sustainable. In the judgement delivered at the very end of 2009 the Court held that while 'the time may still not be ripe for a political system which would be a simple reflection of majority

rule', other methods of power-sharing exist which do not automatically lead to the total exclusion of representatives of the other communities (that is those that are not recognised as 'constitutive' as is the case with the Bosniaks, Serbs and Croats). In view of the 'possibility of alternative means of achieving the same end', the exclusionary effects of the system are classified as discriminatory under the European Convention of Human Rights.

Quota systems in defence of disadvantaged ethnic groups and their limitations

Countless cases of racial discrimination heard by the Supreme Court in the USA have involved government support measures for groups of people who were disadvantaged in the past. The rulings of the court led to the introduction of quotas for minorities and other disadvantaged ethnic groups in US law and in some cases to the voluntary application of quotas relating to such matters as university admissions, appointments in the private and public sectors and also procurement (→ Formal Equality). Attempts to count minorities for the very purpose of allowing for positive discrimination measures like quotas may easily fail. This is due to the fact that, as a result of their experience with discrimination, members of minority groups are increasingly unwilling to answer questions about their origins and to publicly recognise their affiliation to a minority. In the case of recruitment for the police or prison services, preferential treatment in the public interest for certain ethnic groups including migrants in the hope that they will play a positive role with regard to integration in view of the ghetto situation in the cities and the above-average numbers of migrants among the US prison population can actually have the reverse effect if practised to excess. Such quotas can even reinforce existing discrimination and lead, not to equal opportunities but to the segregation of whole ethnic communities at the margins of public life. For that reason the US Supreme Court has spoken out against rigid quotas because, although they may be useful in defining targets, they risk being disproportionate and can be substituted by other means such as specific support

measures. In general the latter can always be open to all, but at the same time they can be tailored to the needs of a certain group. Instead of rigid quotas, preference is accordingly to be given to flexible objectives, thereby avoiding disproportionate measures to compensate for disadvantages. The rulings of the European Court of Justice show certain parallels to the US situation; in Europe, too, the principle is a "yes" to quotas but only under very limited circumstances (→ Formal Equality).

Quotas or proportionality rules are measures designed to compensate minorities for disadvantageous treatment and to guarantee their survival. Rather than privileging a group vis-à-vis the majority population, they in fact merely place the two groups on an equal material footing. Once the desired effect has been achieved, however, rigid quotas are an infringement of the principle of equality.

Unlike the failed policy of ethnic proportionality introduced at all levels in Bosnia Herzegovina, proportionality in South Tyrol has become an instrument of peaceful coexistence between the three linguistic groups. After over thirty years of implementation, the goal of ethnic proportionality has largely been achieved and continues to enjoy the support of a large majority in all linguistic groups as a key for the allocation of public goods.

The Roma: An European Minority

Roma migration to Europe from India via the Middle East and Eastern Europe started in the 13th century. Today Roma minorities made up of mainly settled communities are to be found in varying numbers in every European country. Estimates of the total number of Roma in Europe vary between 10 and 15 million. The precarious situation of the Roma in economic, social and cultural terms is still linked to the many prejudices faced by a minority that has been a target of discrimination for centuries (→ Discrimination). Their apparent lack of willingness to integrate, which is still criticised today, is due to the fact that they were denied rights of residence and work in the past. As a nomadic people with no rights, they were subject to massive pressures of assimilation. The marginalisation of the Roma practised since the Middle Ages brought about a degree of social exclusion and prejudice that culminated in the genocide of at least 250,000 Roma under the Nazi regime.

Special status: Prejudice past and present

The name Roma derives from the word "rom" meaning "man". Their language, Romanes, is an Indo-European language and is related to Sanskrit. The Roma, who came from northern India, never lived in a state of their own; they were enslaved by the Seljuks, a Muslim Turkish people who ruled over Syria, Mesopotamia, Persia and Asia Minor for three centuries. With the incorporation of the region in the Ottoman Empire and the growing influence of the latter in Central Europe, the first Roma appeared in the Balkans. The Roma, who were still partly enslaved in the Ottoman Empire, spread through southeast Europe and at the beginning of the 15th century arrived as refugees in Central Europe. During the Turkish invasions the Roma, some of whom were Muslim, were wrongly suspected of being Turkish soldiers or spies. Another myth relating to this enig-

matic people is reflected in the word "gypsy", which derives from "Egyptians" and was intended to indicate Egyptian origins. In much of continental Europe, Roma have been known by - no longer politically correct - names cognate to the Greek τσιγγάνοι (tsigani), which relates to the Old Turkish word "tschigan" meaning "poor people". Over the centuries, the Roma living in northwestern Europe introduced many German loan words into their language, while the Roma dialects employed in southeast Europe and the Balkans contain many words from Armenian, Persian or Greek. The traditional clan structures of the Roma, which still survive in some places today, are reflected in old clan names, some of which reflect their traditional occupations. The Kalderash, for example, were smiths and metal workers, the Churari grinders and the Lovara horse drivers. These names come from southeast Europe, where three quarters of the Roma live today.

At all events, the foreign element reinforced the prejudices of the local populations, and the immigrant minority of the Roma had no choice but to remain on the move (→ Kaleidoscope of Demographic Change). At the same time their nomadic way of life attracted criticism, too, and in the 18th century especially, under Empress Maria Theresia and Joseph II, they were subjected to a rigid programme of assimilation. The instruments of forced settlement included a ban on their language, adoption of their children and obligatory mixed marriage. On the territories of today's Bulgaria and Romania, thousands of Roma were not finally liberated from slavery until 1864. In response to these coercive measures and general discrimination and marginalisation, the Roma moved on, finding casual work as basket weavers, grinders, broom makers, itinerant musicians or seasonal farm workers.

Behaviour of public authorities: Between support and repression

After 1900 the Roma were systematically persecuted at the national and international level as the pariah of Europe. The powers of Central Europe signed bilateral treaties providing for information

sharing and the creation of Roma files complete with personal data, photographs and fingerprints in an attempt to solve their Roma problem. The measures have striking parallels with the Roma and migration policies practised against a background of cultural prejudice in most majority societies in Europe today (→ Xenophobia). As a result of this widespread rejection, the accession of Central and Eastern European countries to the EU in 2004 had to be accompanied by measures to protect the Roma, who mainly live there. The main legislative measures relate to improvements in healthcare, integration in the labour market, training for teachers of the Roma language, help for Roma children attending normal schools and the involvement of representatives of the Roma in matters of local interest and additional political participation. The Roma are now a recognised minority in most countries of Europe, although there are still grave shortcomings in the implementation of the legal provisions and prosecution of offenders.

At the local level especially, politicians and officials often seek to instrumentalise the tensions that exist between the Roma and the majority population (→ Media). In 1999, for example, the mayor of a Czech town decided to build a four-metre-high fence around a Roma settlement. The European Court of Human Rights (ECtHR) found Romania and Bulgaria guilty of omission, in 2007 and 2004 respectively, in cases where Roma had not had their rights upheld (Gergely v. Romania; Kalanyos and Others v. Romania and Nachova v. Bulgaria). According to a ruling of the ECtHR in a case in the Czech Republic (D.H. and Others v. the Czech Republic, 2007), a policy of relegating Roma children to special schools is a violation of their right to education and of the ban on discrimination (→ Judiciary). The summer 2010 was dominated by what has become known as "l'affaire des Roms", in which the French government expelled almost 1000 Romanian and Bulgarian nationals of Roma origin living in France. This decision provoked massive protest at EU level and raised doubts as to its compatibility with EU law. Roma in many other countries, including Croatia, were also found to be victims of segregation in the education system, and of discrimination on the employment and housing markets. Such discriminatory or simply

tardy measures taken by the authorities frequently create situations in which the local people seek to take the law into their own hands and attack members of the Roma community. The following is just a selection of attacks and wrongs inflicted on Roma in recent years: bomb attack in Oberwart, Austria, in 1995, causing the death of four Roma; sterilisation of Roma women in Slovakia in 2003; stigmatisation and wholesale condemnation of Roma by Italian politicians followed by attacks on Roma settlements in autumn 2008; arson attack combined with the murder of father and son in Hungary in spring 2009. In 2011 the European Roma Rights Centre (→ NGOs) published a report that looked into the State response to 44 selected cases of anti-Roma violence in the Czech Republic, Hungary and Slovakia showing that many Romani victims of violent crimes do not secure justice. This might have negative impacts on the will of Romani individuals to report crimes committed against them to law enforcement authorities. In fact, a major survey carried out by the European Union Fundamental Rights Agency (FRA) showed that Roma hardly ever report discrimination and assaults committed against them.

European measures for a European minority

The frequent phenomenon of social marginalisation of Roma in the fields of education, employment, health and housing falls within the wide-ranging scope of the EU Racial Equality Directive, although implementation in national law by the Member States is a slow process. Various measures taken by the Council of Europe and the EU, including the 1997 European Year against Racism and the 2007 European Year of Equal Opportunities for All, are also designed to demonstrate to members of the Roma communities that they can respond to discrimination and demand their rights (→ Xenophobia). In addition to the monitoring instruments of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, the European Commission against Racism and Intolerance (ECRI) conducts visits to Member States of the Council of Europe and makes recommendations on

the situation of the Roma there. In addition, the OSCE (Organisation for Security and Cooperation in Europe) has an agency in Warsaw (ODIHR - Office for Democratic Institutions and Human Rights) with a Roma contact office, which supports governments in the field of Roma policy and operates a conflict prevention programme. Good progress has been made with regard to collaboration between these bodies of the Council of Europe, the OSCE and the EU, especially in the fields of human and minority rights and reconstruction in the former Yugoslavia (→ Organisations).

In addition to this legal anti-discrimination work (→ Discrimination), the EU has also adopted structural measures in support of better integration of the Roma in economic and social life. Such initiatives are taken in the framework of the European Structural Fund and Social Fund, in which € 275 million were allocated to Roma projects in the 2000-2006 Financial Perspective, with a main focus on employment, education, healthcare, housing, access to public services, and gender equality. Under the aegis of the Directorate-General for Employment, Social Affairs and Inclusion, an interservice group was established in 2004 to coordinate these matters as a cross-sectional strategy within the Commission. In the current Financial Perspective for 2007-2013 funding has been made available for the first time for social housing through the European Regional Development Fund, and increased participation in the creation and implementation of the operative programmes is provided for the Roma themselves, along with non-governmental organisations, local authorities and the social partners (→ NGOs).

In April 2005, the European Parliament adopted a resolution on the situation of the Roma setting out clear guidelines against discrimination for member and candidate states and for special measures to improve the situation of the Roma in Europe. Many other EU initiatives and documents followed. Not all of the calls - like the proposal to nominate a dedicated Commissioner for the Roma as suggested by MEP Hannes Swoboda (SPÖ) - were successful. However, in 2011 a new EU policy document signalled a major breakthrough at least at the level of policies: On 5 April 2011, the Euro-

pean Commission issued a Communication on an EU Framework for National Roma Integration Strategies up to 2020. This policy document links the need to tackle poverty and exclusion, while protecting and promoting fundamental rights. The fact that in June 2011 the Council of the European Union endorsed this new EU Framework for coordinating national Roma strategies shows that there is a shared concern amongst the EU Member States, and that it is high time to finally let words be followed by deeds. The new EU framework sets EU-wide goals for the integration of Roma across the EU, focusing particularly on improving their situation in healthcare, education, employment and housing at the local, regional and national levels. Even if there is now a strong will to coordinate Roma policies at the EU level, the major responsibility for the destiny of the Roma remains at the national level.

Already at the beginning of 2005 nine European countries committed themselves at the bilateral level to fight discrimination against the Roma in their respective countries (→ Transnational Cooperation). This Decade of Roma Inclusion initiative (2005-2015) was launched by the governments of Bulgaria, Croatia, Macedonia, Romania, Serbia, Montenegro, Slovakia, Czech Republic and Hungary and is supported by the European Commission, the World Bank, the UN, the Council of Europe, the OSCE and the Open Society Institute. Given the unique history of the Roma in Europe, going back over more than 700 years, however, there is room for doubt whether a ten-year programme can be enough to bring significant change to the lives of the Roma and reduce the current level of prejudice.

In the official terminology, the word "gypsy" has been replaced by "Roma" and "Sinti", although the latter are actually a subgroup of the former. Eighty percent of the Roma live in countries of the EU including the new Member States on the Balkans. Their standard of living is often compared with the Third World. Recently the EU has increased its activities in support of Roma in various ways. The most recent developments set the EU and its Member States in a shared framework aimed at coordi-

nating the national integration strategies. In the last few years, however, in spite of a massive awareness-building effort and numerous projects designed to improve the situation of the Roma, the socio-economic situation of the Roma has not substantially improved. Moreover, there has been a pronounced increase in the number of attacks on Roma in the old and new Member States of the EU.

Speaking of Languages: The Role of Lesser-spoken Languages

The United Nations (UN) is a big organisation with a membership of almost two hundred countries and yet it has only five official languages. The EU has a membership that is only one eighth the size of the UN (27 countries) but almost five times more official languages, namely 23! One of the reasons for this seemingly paradoxical situation is the fact that, unlike normal international law, EU legislation directly affects the member countries' legal systems. Therefore EU law measures adopted in Brussels do not all have to be transposed into national law. Against this background it is important that the translation of these acts has to be supplied by Brussels. Another explanation is the fact that the EU, which attracts much suspicion for its wealth of central powers, has to take the sensitivities of the Member States seriously and is at pains not to offend their national identities. It is explicitly stated in Article 22 of the EU Charter of Fundamental Rights, for example, that the EU must respect linguistic diversity. If we are to take the concept of European diversity seriously, however, protection is required not only for diversity between the states but also within the states. And Europe has considerably more languages than it has states, namely about 250. In a global comparison, this number is nevertheless small, and that makes it all the more important to preserve Europe's linguistic diversity. Worldwide there are about 6,000 languages, and the really big languages like Chinese with more than one billion speakers or Hindi with 250 million have their roots outside of Europe. With 200 million speakers, Arabic is another of the big languages, but in spite of the many Arabic-speaking migrants in Europe it has no official status anywhere on the European continent (→ The Veil). Nor is Turkish recognised in any form, neither at the national level nor at the level of the EU, even though some six million Turks live in the EU, and Turkish - together with Greek - is the official language of Cyprus, a Member State of the European Union.

Who speaks what: Multilingualism in today's European Union

Following the last round of enlargement, the EU has 500 million inhabitants in 27 Member States with 3 alphabets (Latin, Greek and Cyrillic) and 23 official languages (Bulgarian, Danish, Czech, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Swedish, Slovak, Slovene and Spanish). Irish became an official language on 1 January 2007 but not Luxembourgish, which was not declared one of the country's official languages until 1984. The much criticised total of 23 official languages, which the EU uses to communicate with its citizens and which permit almost every citizen to participate in the life of the EU in his or her mother tongue, costs a mere € 2.50 per citizen per year. In the case of the smaller official languages, however, the relevance of translations can sometimes be questioned, as in the case of Maltese where there were no translators available following the country's accession.

In addition to the speakers of the official languages, it is estimated that a further 175 nationalities live as immigrants in the EU. For that reason and in the context of ten million EU citizens living in a Member State that is not their home country, the Commission, in collaboration with the Member States, started work on the Barcelona Process in 2002 with the aim of encouraging EU citizens to learn to communicate in two languages in addition to their mother tongue (→ Education). In the face of increasing mobility and migration, learning the language of the host country is of decisive importance for the successful integration of migrants and EU citizens. On the basis of the principle of mother tongue plus two other languages, the objective is for all Europeans to learn not only a language with international status but also a "personal adoptive language". These language skills are to include knowledge of the relevant culture, literature and history. In the framework of cultural policy, funding is also available for literary translations with the aim of promoting intercultural dialogue and communicating Europe's cultural heritage. Europe's school curricula already include two foreign languages for over fifty percent of all pupils, and the goal is to

have at least 80 percent of pupils in the first form of secondary schools learning two foreign languages.

According to a 2005 Eurobarometer poll, 56 percent of all EU citizens can communicate in a language other than their mother tongue. Twenty-eight percent of respondees said they spoke two foreign languages well enough to do so (Luxembourg 92%, Netherlands 75% and Slovenia 71%), while eleven percent said that they spoke at least three foreign languages in addition to their mother tongue. On the other hand, 44 percent only speak their mother tongue. In six Member States, the majority of citizens are in this group, namely Ireland (66%), the United Kingdom (62%), Italy (59%), Hungary (58%), Portugal (58%) and Spain (56%). Nevertheless, every country included in the poll has at least one minority whose members speak either another official EU language or a non-European language as their mother tongue in addition to the official language of the country involved. In Luxembourg, for example, with its many international institutions and a Portuguese minority accounting for nine percent of the population, fourteen percent of respondees speak an EU language other than one of the country's three official languages. In Slovakia, Hungarian is the mother tongue of no less than ten percent of respondees. German is the most commonly spoken mother tongue in the EU (18%), while English is the most frequently spoken language (51%), followed by German (32%), French (26%), Italian (16%), Spanish (15%) and Polish (10%). With regard to non-EU languages, Latvia and Estonia have a significant proportion of citizens of Russian mother tongue (26% and 17% respectively), while eight percent of Bulgarians speak Turkish as their mother tongue.

How do you protect regional and minority languages?

In the EU of the 27 it is possible to distinguish more than a hundred minority groups (→ What is a "Minority"?). In more than half of the new Member States, minorities account for more than ten percent of the total population. Whereas Malta is almost one hundred

percent Maltese, Latvia, for example, officially has only 59.7 percent Latvian speakers. With 9 million speakers, the Catalans in Spain constitute the biggest regional or minority language group, followed - depending on the source - by 5-8 million Roma and 3 million Hungarians. Of the 1.2 million Russian speakers in the Baltic states, half live in Latvia, where ethnic minorities account for over forty percent of the population, while in Estonia and Lithuania over fifteen percent of the population speak a regional or minority language as their mother tongue.

In terms of territorial distribution, the regional and minority language groups are widely distributed in the countries of Central and Eastern Europe whereas this is less the case in other areas: speakers of Catalan and Basque in Spain, Friulian and Sardinian in Italy, Friesian in the Netherlands and Welsh in the United Kingdom have compact areas of settlement, which facilitates the implementation of language policies. There is also an east-west differential with regard to the presence of minorities and their languages in capital cities such as Bratislava, Budapest or Vilnius compared with the peripheral areas of settlement, usually along national borders, to be found in the old EU Member States.

At the European level, there has been a variety of reactions to these quite heterogeneous language situations. The EU Charter of Fundamental Right, for example, calls for respect for the diversity of cultures, religions and languages. In 2001 the EU launched a variety of programmes in the framework of the European Year of Languages, and following the last round of enlargement with Romania and Bulgaria in 2007, the EU appointed a Commissioner for Multilingualism. With its Framework Convention for the Protection of National Minorities and the Language Charter, the Council of Europe has created two legally binding documents with provisions relating to the use of languages which must be implemented at the national level (→ Organisations). Finally, the Organisation for Security and Cooperation in Europe (OSCE) issues recommendations on the subject of legislation for national minorities.

Language policy has to chart a course between the calls of freedom of language as the fundamental human right of every member of a linguistic community on the one hand and the interest of the state in language harmonisation at the national level on the other. The powers of decision rest primarily with the Member States, also with reference to their regional and minority languages. The diplomatic tension that tends to surface at regular intervals between Bratislava and Budapest, for example, is primarily a result of the restrictive language policy adopted by Slovakia with regard to its Hungarian minority.

One of the big challenges for future language policy will be to promote cultural and linguistic diversity. Language acquisition and preservation are a sine qua non for the exercise of other rights including the use of a language in public or the media (→ Education). The use of regional or minority languages in schools and government offices, and their importance as a source of identification depend on the language's legal status, the existence of linguistic norms, the availability of teaching materials and the geographic distribution of the language group.

Positive and negative changes in language development can be identified not only from census statistics but also through the language users' own estimates, estimates of the use of the language in public and the media, and school enrolment statistics (→ Uncounted). A decline in language group affiliation and a high average age of the speakers are clear indications of a language shift through assimilation. The use of a minority or regional language will often decline in the private and public spheres in spite of a high standard of knowledge of the language concerned, although the phenomenon is not so common where the lesser used language is linguistically close to the official language. Where endogamy rates are high (marriage within the language group), the language will also be used in practically all situations.

A decisive factor for language acquisition and preservation is the existence of a kin state, i.e. a home country in which the re-

gional or minority language is an official language and which can play a supportive role in the fields of education, media and culture. Most minorities have a kin state. This is the case in Estonia, Latvia, Lithuania, Poland, die Czech Republic, Slovakia, Hungary, Slovenia, Bulgaria, Romania, Greece, Italy, Austria, Germany, Finland and Sweden, which in the ideal case borders on the territory of the minority concerned (→ Transnational Cooperation). But there are also non-territorial, less widespread or "stateless" languages such as Yiddish, Karaim, Kashubian, Romani, Ruthenian, Tatar, Basque, Breton, Friesian, Friulian, Gaelic, Galician, Catalan, Ladin, Occitan, Sami, Sardinian, Sorbian and Welsh.

In order to draw attention to the importance of such languages for the European cultural heritage, the Council of Europe, acting in response to an initiative put forward by the Conference of Local and Regional Authorities of Europe, adopted the European Charter for Regional and Minority Languages in 1992. Following ratification by the mandatory minimum of five countries, the Language Charter came into force on 1 March 1998 and has now been ratified by 25 countries, 16 of which are Member States of the European Union. Unlike the Framework Convention for the Protection of National Minorities, the Language Charter is not an instrument for the protection of minorities; its subject is regional and minority languages, non-territorial languages and lesser used languages. As stated in the Language Charter itself, its objective is not to protect the languages of migrants or dialects of official national languages. With regard to education, access to and support for the media, the use of regional and minority languages in dealings with the courts and administrative authorities, and also economic, cultural and social life, the states parties undertake to implement at least 35 measures of their choice out of a total of 68 listed in the charter.

The charter also has a monitoring mechanism: Every three years the states parties are required to submit a report to the charter's Committee of Experts. On the basis of the state reports and information received from NGOs and the findings of on-the-spot visits, the committee writes an evaluation report for each country. This

report supplies the basis for deliberation by the Committee of Ministers of the Council of Europe, which may then make recommendations for implementation of the Language Charter at the national level.

Support from the kin state and close political relations with the minority concerned are of additional decisive significance for language development and are often the subject of bilateral treaties. In a few cases, kin states do not exercise this protective role, as in the case of the Swedish-speaking Finns, who do not consider themselves Swedes and are not the subject of an active Swedish policy (→ Autonomies), or Italy, which was only able to provide support to the Italian minorities in Slovenia and Croatia following the collapse of Yugoslavia. Another major factor for the lesser used languages is membership in the European Union; a minority may already benefit from the simple fact that its language is an official language in a neighbouring EU country and thus an official language of the EU even.

In several countries of the EU, minority languages enjoy co-official status at the local, regional or national level. Where permitted by decentralisation, the official status of a minority language may even lead to a strict division between the minority and the majority language, for example in the field of education as in South Tyrol, and even to unilateral prioritisation of the regional language as in the case of Catalan.

The EU is becoming increasingly polyglot, on the one hand because the process of enlargement means more and more mother tongues are spoken (territorial dimension) and on the other because Europeans are increasingly learning languages (personal dimension). From 2001 to 2005, the number of EU citizens who speak at least one foreign language increased from 47 percent to 56 percent. English is the most common foreign language.

Regional and minority languages also benefit from the process of European unification, because they are often an official language in a neighbouring Member State and thus one of the EU's 23 official languages. Otherwise, active support for minority languages is the responsibility of the individual Member State. The Council of Europe and the OSCE have defined certain principles in the form of recommendations and multilateral agreements such as the Language Charter, which national language policies are expected to follow. In general, language acquisition and support in the case of minorities whose language is an official language in another country are greatly facilitated through cross-border cooperation.

Stateless languages on the other hand run the risk of dying out as the result of assimilation except where the number of speakers is high and they have achieved co-official status as in the case of Catalan.

Transnational Cooperation: The Transnational Nature of Minority Protection

Diversity in Europe has diverse causes. Usually they involve movement: Either people moved from their traditional territories to new areas and added ethnic or linguistic diversity in the process (→ Kaleidoscope of Demographic Change), or the borders moved and produced the same effect. Shifting borders are usually a side product of national power politics. Politicians have always invested considerable intellectual energy in explaining why political borders are also natural borders, but their political marketing efforts have rarely been convincing. It is true that Mother Nature placed a mighty obstacle on the road between Innsbruck in Austria and Bozen/Bolzano in Italy (for almost a hundred years now) in the form of the Brenner Pass. But there are no natural designs behind the Brenner as a political border, which in many places was rightly seen as an illegitimate border; it transformed the German-speaking South Tyroleans against their will into a minority in Italy. But if all such minorities were to be given their own state by moving the borders once again, little would change in the overall situation: new borders lead to new minorities (→ What is a "Minority"?). It is not unlike a Matrioska doll, with a new minority face underneath every border layer.

Before Kosovo gained independence, the Albanians (who accounted for almost 90 percent of the population of the Autonomous Province of Kosovo and Metohija), were a minority in Serbia. Since February 2008, Kosovo has been an independent state and is recognised as such by about one third of the 192 members of the United Nations. Within the new state borders, the Albanians form the dominant majority population while the Serbs are now a minority in Kosovo. If a new dwarf state were to be created for the Serbs within the territory of Kosovo, that would in turn produce new minorities within that mini-state. In other words, minority situations are not eliminated by redrawing borders; that leads to a reversal of roles at

best. The principle challenge for minority protection is therefore co-operation across old borders rather than the creation of new ones.

The role of bilateral agreements

Europe offers countless examples of cultural territories dissected by borders of nation-states. Such transnational ethnic groups live on both sides of the border and do not have a parent state, as in the case of the Friesians in Germany and the Netherlands, and the Basques and the Catalans in Spain and France. But national minorities, who live in one state but enjoy special relations with another state, their parent country, also have a transnational element due to that special relationship. It is only logical, for example, that Austria should show an interest in the South Tyroleans, Greece and Turkey in their ethnic groups on Cyprus, and Hungary in the Hungarians in Romania, Slovakia and Serbia.

Such interests have often been made the subject of bilateral agreements between the states concerned. Several were concluded in the interwar period (like the German-Polish Convention on Upper Silesia), but they were rarely successful, mainly because of the lack of political stability in the interwar years and the weakness of the League of Nations. Moreover, many of the agreements have negative connotations. A number of bilateral treaties were concluded in Europe for the exchange of populations, for example, and not always with the consent of the people concerned, as in the case of the population exchange treaty concluded between the Greeks and Turks on 30 January 1923 (→ Zero Tolerance). But there are also some positive examples involving the successful bilateralisation of minority conflicts such as the agreement on autonomy for the Aaland Islands signed by Finland and Sweden in the 1920s. And shortly after the end of the 2nd World War, Austria and Italy signed an accord for a form of autonomy for South Tyrol (→ Autonomies). In these two positive cases it must be admitted, however, that bilateralisation was only successful because bilateral negotiations were accompanied by debate at the level of the League of Nations

and later the United Nations. It was ultimately the risk of internationalisation of the problems that persuaded Finland and Italy to move away from their principal negotiating position, namely that the Aaland Islands and South Tyrol were the internal affairs of those two countries alone. It is also worth noting that Europe did not play a role in either case; both were addressed at the level of the League of Nations and the United Nations. The Council of Europe and the European Union only became major players in the field of minority protection after the fall of the Iron Curtain (→ Organisations).

The Council of Europe's Framework Convention for the Protection of National Minorities, which entered into force in 1998, speaks of the "right of persons belonging to national minorities to establish and maintain ... contacts across frontiers". But the formulation only defines a passive duty on the part of the states not to interfere with this right; no mention is made of an active duty to take concrete steps in support of transnational mobility. An overview of the bilateral agreements signed in Europe reveals a similar picture. The early Bonn-Copenhagen Declarations only provide for recognition of the special interest of the Danish and German minorities in regular contact with their respective parent states. The situation is similar with the numerous bilateral minority agreements concluded - in response to pressure from the EU and OSCE - between the young democracies in Eastern Europe following the fall of the Berlin Wall. At least the Hungarian-Slovak and Hungarian-Romanian agreements specifically provide for additional border crossings. But in general the potential of the agreements signed in the 1990s to erode national borders is limited. The same can be said of the texts of the more recent bilateral agreements concluded on the Balkans. The 2002 Romanian-Yugoslav agreement, for example, calls for recognition of the bridge function of national minorities and mentions the possible creation of transnational Euroregions, while the agreements concluded between Serbia-Montenegro and Hungary in 2003 and between Serbia-Montenegro and Croatia in 2004 make only very general reference to full and direct relations with the states' respective minorities.

The pioneer role of the Austro-Italian Accordino

South Tyrol provides an example of an agreement that goes well beyond the normal international standard: The Gruber-De Gasperi Agreement signed by the foreign ministers of Austria and Italy in 1946 was not limited to the recognition of minority and autonomy rights (and both can be interpreted as an expression of the principle of autonomy); in Article 3 the agreement also provided for the strengthening of transnational relations and cross-border movements between Austria and Italy (→ Autonomies). The call for cross-border mobility was formulated to supplement the rights of autonomy. While autonomy permitted a degree of disengagement from Rome (by conferring special rights), the inclusion of transnational mobility held promise of a degree of (renewed) linkage with Innsbruck and Vienna. The two states were required to conclude an "agreement on the mutual recognition of the validity of certain academic titles and university diplomas", "agreement[s] for the free movement of persons and goods in transit between North and East Tyrol by rail and as far as possible also by road", and "special agreements to facilitate extended cross-border movements and the local exchange of certain quantities of characteristic products and goods between Austria and Italy". It can accordingly be said that in the Gruber-De Gasperi Agreement the free movement of persons and goods is seen as an agent of osmosis for the border on the Brenner Pass.

This focus on mobility is most clearly developed in the Accordino, which was signed by Italy and Austria on 12 May 1949 as a follow-up to the Gruber-De Gasperi Agreement. The Accordino called for the establishment in the Trentino and South Tyrol in Italy and North Tyrol and Vorarlberg in Austria of a regional customs regime offering the privileged mobility of a transnational market for "characteristic products and goods". That was far from normal in post-war Europe and anticipated the later development of the European Single Market. Back in 1949 - at a time when every element of national sovereignty was a holy cow - the agreement provided for quotas of goods for the preferential regime to be laid

down, not on a national basis by Italy and Austria but by a Joint Commission on a quasi-supranational basis. With this significant reduction to trade barriers, the Accordino continued in the spirit of the Gruber-De Gasperi Agreement as a border-blurring experiment. At the same time the Accordino reveals the European dimension of the regime proposed by the Ministers Gruber and De Gasperi, as it soon became clear that enhanced cross-border mobility would also be at the heart of the process of European integration. To that extent, the Accordino - as a regional cross-border agreement - can be said to have anticipated developments in Europe before being absorbed and ultimately made obsolete by those developments.

The border-blurring effects of the process of European integration

Back in 1957, the EEC Member States expressed their conviction in Article 2 of the EEC Treaty that it was the task of the Community to promote "closer relations between the states belonging to it". As the European Single Market serves to eliminate the barrier effect of national borders, it is clearly also in the interest of transnational minorities living on either side of such borders. This was made even more clear in the 1980s when the EEC became increasingly active at the regional level and at the beginning of the 1990s when the first Interreg programme was launched and cross-border contacts at the regional level were actively supported through financial stimulus from Brussels. Regional cross-border cooperation thus became a declared goal of European regional policy.

Since Austria was not a member of the EEC, however, these developments in Europe did not at first have any direct impacts on the relationship between Italy and Austria. Nevertheless, the powerful gravitational forces of the European integration project soon made themselves felt. Every step that Austria took in the direction of the EEC reduced the practical significance of the Accordino; with tariff reductions agreed in the framework of the free trade agreement concluded between Austria and the European Communities, the Ac-

cordino lost many of its practical benefits and hence its political importance. The step-by-step abolition of the Brenner border reached a new climax at the level of the EU with a trio of highly political steps towards integration: the creation of European Union citizenship in the Treaty of Maastricht (applicable to Austria as of 1995), the discontinuation of border controls on the Brenner following the introduction of the Schengen regime (1998), and introduction of a common currency in the framework of Economic and Monetary Union (2002).

Scope for the institutionalisation of regional cross-border cooperation

Although neither the Council of Europe nor the European Union have established detailed standards for transnational codes for minority protection, the two organisations are nevertheless key facilitators in the creation of transnational authorities that are relevant for the transnational dialogue in minority affairs. Since the beginning of the 1970s at the latest, cross-border cooperation between European regions has been a clear priority of the Council of Europe. It was not until 1980, however, that these endeavours bore fruit at the legal level in the form of the European Framework Convention on Cross-Border Cooperation of Territorial Communities and Authorities, which now has legal force in the majority of EU Member States. In the eyes of the Council of Europe's Parliamentary Assembly, this established the basis for a "new doctrine" in international law. A closer inspection of the Convention, however, reveals that even in the 1980s there was little willingness on the part of the states to cede control in the field of cross-border cooperation. The Convention is basically a polite request to the states parties - accompanied by a number of sample agreements - to promote cross-border cooperation. The much more strongly worded protocol to the Framework Convention did not enter into force until the end of 1998. In that document the states go so far as to recognise an explicit right of territorial authorities to conclude agreements on cross-border cooperation with territorial authorities in other states.

In addition, the signatory states agree that such agreements can be furnished with organs of their own (also with their own legal personality) and that measures taken by such organs have the same legal status as those taken by domestic territorial authorities. On the other hand, it must be conceded that the protocol has not entered into force in more than half of the EU Member States. Moreover, these activities in the framework of the Council of Europe have been superseded by more recent activities at the level of the European Union.

With its 2006 regulation on European Groupings for Territorial Cooperation (EGTC), the European Union has for the first time set supranational standards for reinforced cross-border cooperation and in doing so has freed transregional structures from the tutelage of diplomatic negotiation and the constraints of international law treaties and cast them in a supranational legal form that is valid throughout Europe. As a result, it is now possible to establish an EGTC in Europe that automatically enjoys practically the same legal capacity as is accorded to legal persons by their respective national laws. A transregional grouping does not have to wait for an international agreement to come into force in order to attain this legal status but rather acquires its legal personality on the day of registration and announcement of its legal domicile. The EU Member States only have the authority to forbid the establishment of an EGTC in cases where a legal norm has been violated. In spite of that, the EGTC is an asymmetrical instrument insofar as its activities must remain within the limits of the domestic mandates of each of its members (local, regional or other public authorities), and on no account may an EGTC exercise sovereign powers such as "police and regulatory powers, justice and foreign policy". To date, only a small number of EGTCs have been created. One is now being established for the cross-border region Tyrol-South Tyrol-Trentino.

The bottom line: The emotional intelligence of the actors

From the recent history of neighbourhood conflicts triggered by questions of minority protection, it is hard to avoid the impression that structures and legal standards alone are not sufficient; another factor is the emotional intelligence and diplomacy of the actors. The scandal surrounding the 2001 Hungarian Status Law, with which the Hungarian Parliament afforded privileges on Hungarian territory to Hungarians living abroad as nationals of neighbour states is a case in point. Although the law addressed one or two points that were quite reasonable, the question remains whether the outbreak of tensions with Hungary's neighbours could not have been largely avoided through grater empathy in Hungary's foreign policy and intensive upstream consultations. The picture is similar on the Slovak side: The 2009 Slovak language law, which led to mass demonstrations of Hungarians living in Slovakia, Romania and in Hungary itself, seems to have been enacted under unfavourable conditions (→ Speaking of Languages). The OSCE's High Commissioner on National Minorities pointed out that it would have been better to revise the Slovak language law together with the country's minority protection law so as to prevent a number of misunderstandings from the start. Similarly, the Slovak government's decision in August 2009 to refuse Hungary's President László Sólyom entry to the border town of Komárno because of an alleged security risk can only be considered anachronistic in the age of the Single Market (Sólyom wanted to attend the unveiling of a monument to Stephen I, Hungary's first king and patron saint). Mutual provocations can perhaps be avoided with the help of the recommendations made by the High Commissioner of the OSCE in October 2008 in the form of the Bolzano/Bozen Recommendations for transnational minority policy. Ultimately, of course, the climate between two states is also dependent on the sense of responsibility and professionalism shown by the main actors.

For minorities, borders often have traumatic or at least negative associations. When borders are moved as in the case of South Tyrol following the 1st World War, populations may become minorities cut off from their parent state. Transnational ethnic groups like the Basques, on the other hand, have no parent state from which they have been separated, but their area of settlement is often dissected by national borders. The thinking behind European minority law is to prevent national borders becoming sealed cultural borders, causing minorities to lose their traditional contacts and their role as cultural mediators. The relevant provisions in the Framework Convention of the Council of Europe and in various bilateral agreements are very vague. But the process of European integration has greatly helped to deprive national borders within Europe of their power to divide. Freedom of movement, the abolition of border controls and the single currency have made national borders permeable, and that is a big advantage for minorities living on Europe's national borders. In addition, both the Council of Europe and the EU have developed instruments to institutionalise transregional cooperation. In its 2008 Bolzano/Bozen Recommendations, the OSCE presented proposals for transnational minority protection. Ultimately, however, it depends on policymakers and the actors concerned whether transregional cooperation can develop, and whether old divisions can be overcome in a spirit of harmony.

Uncounted: The Problem of Censuses

A national census is the usual instrument for counting a country's population, including its minority groups. Empirical data on the linguistic, ethnic or religious composition of the population is a source of guidance for government and an adequate minority policy. A regular survey of the ethnic composition of the population is therefore a meaningful measure in the interest of peaceful coexistence. Moreover, most minority protection measures like the use of two (or more) official languages or bilingual signs for place names are linked directly to the results of the censuses. In some cases the distribution of resources, including employment and subsidised housing, is dependent on the statistics obtained. The relevant question in a census can simply relate to affiliation to a certain minority, i.e. respondents can acknowledge membership in a minority of their own free will and without proof based on objective criteria. Alternatively, the question can involve objective facts, although in that case no verification process or sanctions on the part of the state are allowed. A knowledge of the minority language or the individual's descent are examples of such objective criteria. The question of the respondent's mother tongue or vernacular language involves an objective declaration of fact, but one that cannot be verified by the authorities. Such minority counts, the choice of questions asked and the related rights are especially problematical for small minorities that are at risk of assimilation; even in the context of an anonymous survey the minority's social status has a strong influence on its members' willingness to be counted as members of that minority (rather than as members of the majority population).

Minority counts are necessary and problematical at the same time

The minorities in Austria reject linking legal entitlements to the results of censuses for the simple reason that their numbers have continually decreased. Decades of non-implementation of minority rights and strong pressures to assimilate have led to a pronounced drop in the number of people willing to officially acknowledge their affiliation to a minority. For that reason, the results of the censuses do not reflect the true strength of the minorities, which is why it is problematical to link them to legal entitlements. In the face of much resistance, an anonymous mother tongue survey was conducted in the whole of Austria as a form of minority count in 1976. The result of the count was to form the basis for the use of bilingual place name signs in Carinthia (→ Case Studies). Even the question relating to the objective feature mother tongue was controversial. One individual who grew up as a German speaker but considered himself a member of the Slovene minority petitioned the Austrian Constitutional Court to rule against the inclusion of mother tongue in the census because a truthful answer would falsify the result of the count and because it deprived him of his right to freely identify with the minority without reference to objective features. For this reason, too, the minority census, in which mother tongue was nevertheless a criterion, was boycotted by most members of the minority.

The Carinthian Slovenes, especially, reject all forms of census including those based on a declaration as an expression of free will without any form of objective proof. They suspect all minority counts to have the basic function of counting the minority out, as its members are subjected to strong, politically inspired anti-minority pressures and have linguistic and cultural feelings of inferiority. This is exacerbated by the fact that in the context of the national census held every ten years since the Second World War, the answer to the question of vernacular language has always been interpreted as a subjective statement of membership in the minority. Slovene-speaking Carinthians who do not wish to make such a

statement therefore tend to enter German as their vernacular language regardless of their true language habits. Those who enter Slovene, on the other hand, make a clear statement of membership in the Slovene minority (→ What is a "Minority"?). The resulting floating minority situation in the ethnically mixed areas of Carinthia has been used to create a political split within the minority, with the Slovenes who are willing to be counted on the one hand and the so-called Windisch group, who speak Slovene but do not identify with the minority, on the other. For the representatives of the Slovene minority, the only acceptable form of enumeration would be a count based on such objective items as area of residence, descent, surname or school enrolment statistics.

A census as affirmative action for minorities

The South Tyrol census and the related Declaration of Affiliation to a Linguistic Group has direct legal implications for the members of South Tyrol's three linguistic groups. The declaration is used to define the respective size of the groups, which serves in turn as the key to the allocation of public goods within the South Tyrolean system of ethnic proportionality (→ Quota and Proportional Systems) ensuring equal treatment in public life for all linguistic groups (→ Formal Equality). On the basis of the results of the count and their personal language declarations, individual citizens can claim the rights to which their respective linguistic groups are entitled in the public, social and cultural fields.

1981 was the first year in which the mandatory declaration for one of the linguistic groups that accompanies the census was not used for purely statistical purposes. Every citizen over the age of fourteen had to make a personal declaration of affiliation to the Italian, German or Ladin language group. Because of the mandatory character of the declaration, with classification in one of the three linguistic groups, and the consequent danger of having to make an untrue statement, the regulation was challenged in a petition to the Council of State in Rome. In response to the Council's decision, an

additional category was introduced for other or mixed language speakers. In the 1991 census those South Tyroleans could select this fourth option who did not consider themselves to belong to any of the three named groups (Italian speakers, German speakers and Ladin speakers). However, they still have to select the linguistic group to which they wish to be aggregated. These declarations of aggregation are not included in the statistics and thus have no influence on the respective strengths of the three groups, which are calculated solely on the basis of the declarations of affiliation to a linguistic group. The declaration of aggregation is necessary, however, to ensure that the individual has a claim to public goods proportional to the strength of the chosen group. Those who select the German linguistic group, for example, can apply for one of the posts in the public services that are reserved for that group on the basis of its numerical strength. The declarations of affiliation/aggregation to a linguistic group that underpin South Tyrol's system of ethnic proportionality (→ Autonomies) have so far had to be made every ten years as part of the South Tyrolean census.

The declarations of affiliation/aggregation to a linguistic group are made in triplicate. Two of the forms are anonymous; one is not. The latter can be used by a respondent wishing to claim a public good in the context of the proportionality system. As less than one quarter of all those who make the declaration as part of the census will later wish to claim a public resource, e.g. in the form of employment in the public services or a subsidised apartment, the question arises whether it is reasonable to oblige the whole population to make a non-anonymous declaration. In response to concerns expressed by the EU Commission with regard to community data protection norms, the system was reformed in 2005 with the result that the anonymous declaration of affiliation to a linguistic group is now separate from the ad hoc individual declaration of aggregation to a group needed to take advantage of a public good (which is then binding). The new system was applied at the census 2011. The reform shows that the system selected for the exercise of group rights (in this case ethnic proportionality) must satisfy the requirements of the legal norms of the EU. Whether such a system should be intro-

duced at all, however, is at the discretion of the individual Member State (→ Yin and Yang).

Census questions: A variety of approaches

The census conducted in the US in 2000 included questions on name, gender, age, Hispanic descent and race. In the 2002 census in the Russian Federation, there was a voluntary question on the subject of national affiliation although, as in the US, the answer did not involve any legal entitlements. Optional questions on subjects like religion or knowledge of the Irish language were also to be found in the Northern Irish census. In Canada, on the other hand, the results of the national census relating to mono- and bilinguals are used to justify minority protection norms, although they have no direct legal consequences as in Austria nor do they involve any individual legal rights as in South Tyrol.

In Belgium, on the other hand, it is illegal to make the numbers of language users the subject of a survey. Belgium consists of three federal communities, each administered in its own language, namely French, Dutch and German (→ Grisons). It seems that any attempt to investigate the Belgians' true linguistic status and the real distribution of the country's linguistic groups is seen as a threat to this monolingual division of the territory of the state. Nor does France seek to officially quantify its various linguistic groups (let alone ethnic groups), although traditional regional languages are just as common, in private use at least, as the many languages spoken by the large numbers of migrants from North Africa (→ Kaleidoscope of Demographic Change).

The regular censuses typically held to determine the numerical strength of minorities are based either on questions relating to a subjective sense of identity or to objective criteria such as mother tongue or vernacular language. The resulting data can either be used for purely statistical purposes or they may be

linked to collective (e.g. bilingual place name signs) or individual legal rights (e.g. entitlement to subsidised housing).

A growing number of individuals are finding it increasingly difficult, however, to define themselves unequivocally in terms of one ethnic or linguistic group. That makes it all the more important that such a census should always be based on a voluntary and non-verifiable declaration of will. Direct links between the exercise of individual rights and a mandatory declaration of affiliation may secure the rights of a minority and its members but only at the expense of those who have no desire to be categorised. That explains the need for suitable measures to be taken in the handling of sensitive data and as far as possible for anonymity for members of minorities. Depending on the questions asked, a census can be used as an instrument of a pro- or anti-minority policy.

The Veil: Religious Diversity and Islam in Europe

Headscarves are once again en vogue in Europe - and not just for working on the farm or riding in open cars. The revival is due to the increasing presence in Europe of women of the Muslim faith. Before people knew exactly what had happened, the headscarf was there as the symbol of a new culture and faith. Obviously, scarves themselves are nothing new. From farm women throughout Europe to Catholic nuns, the headscarf or veil has been with us since time immemorial, and in many parts of Eastern Europe it is still a common sight today. Nor is Islam anything new on European soil. For centuries the popular holiday destination of Spain - as its magnificent architectural heritage bears witness - was Muslim in character, and the Balkans are the cradle of European history and Muslim-populated in many areas at the same time. In this context, the proposed accession to the EU of Macedonia (one-third Muslim) and Bosnia (40% Muslim) are not considered problematical with regard to religion any more than was the accession of Bulgaria (almost 13% Muslim) in 2007 or Cyprus, with its almost exclusively Muslim north, in 2004 (→ Zero Tolerance). That contrasts with the ongoing debate - often with a strongly religious or at least cultural element - on the subject of EU membership for Turkey. The difference can doubtless be explained in terms of the country's relative size. Claims - often doubted by experts - of the huge migration potential of a country with a population of 72 million inhabitants (and growing rapidly) seem to trigger defensive reflexes. As long as Islam is not in our backyard, there is apparently no cause for European alarm; the social frictions arise where Muslim culture and religion are making their mark on Europe's cities. A clear example of how such defensive attitudes can be articulated at the political level was provided in Austria's 2006 national elections by the Austrian Freedom Party (FPÖ) with its gut-reaction slogan "Daham statt Islam" (home instead of Islam) (→ Xenophobia). Another more recent example can be taken from the 2012 local election in the city of Innsbruck where

the same party used election posters postulating "Heimatliebe statt Marokkaner Diebe" (patriotism instead of thieves from Morocco). The statement, which - according to the party concerned - was "not meant to insult anyone" was later withdrawn from the election campaign due to international protest. The ongoing debate on the Muslim presence in Europe unfortunately often degenerates into an irrational and xenophobic exercise and thus illustrates a leitmotif of this ABC: Diversity is a fine but delicate thing. Where the political establishment fails to think ahead and take the prophylactic measures needed for rational support for diversity, it can easily be crushed under the heavy weight of populism and ultimately become its own victim in ethnic-religious conflict (→ Yin and Yang).

Religion in Europe

There can be no doubt that religion has always been a powerful factor in Europe and will almost certainly remain one. Equally, it must be said that religion has not always been a unifying force on our continent. That is relevant for the process of European integration. Recent sociodemographic polls, for example, show that the huge differences in the status of religion in society derive from national (i.e. territorial) rather than social (individual) factors. According to the 2006 Eurobarometer and the European Values Study for the year 2000, 46 percent of Europeans are of the opinion that too much importance is attached to religion, while 48 percent say that this is not the case. The distinctive feature for the two groups is not age, education or political affiliation but nationality; there are clear differences in the religious involvement of the various countries' populations. In this context it can be said that the populations of the older Member States (EU-15) attach much less importance to religion than their counterparts in the newer Member States (i.e. the eight countries of Central and Eastern Europe plus Cyprus and Malta). An even bigger role is assigned to religion by the populations of the latest members of the EU, namely Romania and Bulgaria. Their high levels of approval of religious involvement are in turn clearly exceeded in Turkey. Thus the share of responders

who said religion was "very important" in their lives was 17.9 percent in the old EU Member States, 23.1 percent in the newer Member States, 34.1 percent in the most recent Member States, and a huge 81.9 percent in the candidate country Turkey!

Nor is it only people's attitudes that differ within the EU; there is great variety within Europe in terms of legislation, too. With regard to the relationship between state and religion, it can be said that the two spheres are clearly kept apart in the EU, but the specific relationship between state and church still varies considerably. Here, too, diversity seems to be a basic principle of the EU. The German constitution, for example, speaks of "responsibility before God", while the Irish constitution is promulgated "in the name of the Most Holy Trinity", to which "all actions both of men and States must be referred". In the preamble to the Irish constitution, the Irish acknowledge their "obligations to our Divine Lord, Jesus Christ". Such veneration of God is absolutely unthinkable in other constitutional traditions in Europe. This is especially clear in the case of the secular constitutional tradition of France. In Article 2 of the French constitution, France is specifically defined as a secular republic. An even more comprehensive commitment to secularism is to be found in the preamble to the Turkish constitution, in which it is explicitly stated that, in line with the principles of the secular state, there shall be no interference whatsoever by sacred religious feelings in state affairs and politics. There are similar differences between the various constitutions with regard to organised religiosity, i.e. the churches, too. While some constitutions prescribe strict neutrality, others include an explicit commitment to a certain church. But in one point there is full agreement: all European legal systems prohibit discrimination on the basis of affiliation to a religion, although this ban on discrimination can conflict with provisions that render the state less than neutral.

Muslim populations in Europe

Any attempt to quantify the number of people of Muslim faith in the EU can produce only vague answers at best. After all, what is the definition of a Muslim? The question of who belongs to a religious community can only be answered on the basis of individual self-assessment. The data that does exist - and that is a general problem of minority policy (→ Uncounted) - is incomplete, and the statistics that are available are rarely comparable. It is nevertheless reasonable to work on the assumption that the EU has about fifteen million Muslims. A good four million live in France and Germany, 1.6 million in Great Britain, and about one million each in the Netherlands and Spain. Italy also has a significant Muslim population, namely over 800,000. The other countries of the EU have less than half a million. In all cases the Muslims account for well below six percent of the national population (with the exception of Bulgaria). For the EU as a whole, an assumed Muslim population of fifteen million averages out at about three percent of the total population (500 million). That figure is relatively high in comparison to America (where the estimated Muslim population is less than one percent of a total of over 300 million Americans), but it is low in comparison to Russia (with close to 140 million citizens and an estimated Muslim population of 10-16 percent). There are two reasons why the presence of large numbers of Muslims is often perceived in a negative light: On the one hand, they are concentrated in certain regions and cities, and on the other their presence (within the current borders of the EU at least) is a product of migration.

Wherever Islam is represented by immigrant families, some sections of the majority populations seem to develop a defensive reflex. Acts of international terrorism at the beginning of the millennium helped to nurture feelings of being outnumbered by foreigners and even fears of a power take-over by Muslims (→ Xenophobia). In this context the term "islamophobia" has rightly become a modern buzzword. At the same time - and this is a central point in the overall debate - criticism of islamophobia must not be permitted to discourage the robust defence of Europe's basic rights and fundamen-

tal social values against religious extremism. The interreligious cultural dialogue cannot be a true dialogue if obvious incompatibilities are swept under the carpet for the sake of momentary harmony. For the most part, however, it is not about recognition or not for the fundamental values of western-style democracies. When it comes to the details - and that is the decisive level - the question is usually about how legal systems which have traditionally developed in the cultural context of Christianity should react to changes in the composition of their populations. In Europe there are growing numbers not only of people who no longer have Christianity as a point of reference but also of people who identify - and with considerably more devotion than the typical nominal Christian - with another religion, in particular Islam. For such persons, any political measures taken will make quite a different impression and have quite different effects compared with members of the majority society. Ultimately, one of the effects of immigration is to make the host population aware of the cultural factors underlying their legal system and of the resulting need for self-reflection.

The cultural shadow of statehood

Discrimination refers not only to cases where a legal norm directly singles out a specific religious group (direct discrimination) but also to cases where a formally neutral legal norm impacts individuals with a certain religion much more than others, as defined by the general concept of indirect discrimination (→ Discrimination). A law that requires everyone to wear a helmet, for example, or to go bare-headed perhaps, has quite different implication for a Christian than for a Sikh, who has to wear his Dastar as a religious symbol. This simple example illustrates how the religious composition of a population affects the question of discrimination: In a new demographic situation, the same norms can have different consequences. After all, norms are never absolutely neutral; they arise in a specific cultural context and therefore, when the context changes, they cast a cultural shadow. Admittedly, the effect of the shadow is not always discrimination. For example, in 1994 the Hamburg Administra-

tive Court had to rule on the question whether a Muslim should be granted exemption from military conscription because military service would prevent him from performing his daily religious rites and observing Ramadan. In Germany, exemption from military conscription may in fact be granted if it will not otherwise be possible for the conscript to live in accordance with the tenets of his faith. In this case, however, the court ruled - in spite of the strict Muslim code of time-consuming ritual - that military service was not incompatible with the requirements of religion. This means that, for various forms of service or employment, measures must be taken at the practical level to take account of the needs of members of "new" religions. That applies in particular to cases where service or attendance is a legal requirement in a public-law institution such as the military or school.

Talking of school: Traditionally, there is no school on Sundays - an ideal choice for Christians. Requests for alternative solutions can be refused on the following grounds: School is a neutral place in terms of religion, and religious arguments cannot be considered; the same free day for all schools is required for practical reasons; and special treatment is simply not possible. The fact remains, however, that such a state regime has different impacts on different groups. In order to mitigate the effects of this cultural shadow, a number of European supreme courts have been generous in granting dispensations. Back in 1973 the German Federal Administrative Court, for example, permitted Jewish children to be excused from Saturday attendance at school. And in a similar context, the Swiss Federal Court ruled in 1991 that it was unconstitutional for a cantonal school law to make no provision for exemptions from school attendance requirements for religious reasons, thus avoiding situations in which families had to choose between the laws of the state and the commandments of religion. And, according to the court, the ruling avoids not only the danger of a conflict of conscience, "but also of a dispute between the school and the family, which might cause suffering to the child in particular".

One recurrent question in connection with Islam is whether Muslim schoolgirls should be excused from co-educational swimming and physical training if parents make such a request for religious reasons. In 1993 the Swiss Federal Court ruled that a Turkish girl did not have to attend swimming classes in a judgment that attracted come criticism. One of the objections raised was that such "excessively respectful" treatment could undermine the position of women. The court, on the other hand, decided that swimming was not an essential subject in the interest of children or in the context of the Swiss system of values, whereas the Muslim dress code had to be seen as a relatively important religious duty. A similar conclusion was drawn in the same year by the German Federal Administrative Court, although the German court considered the solution to lie primarily in single-sex tuition for such subjects (and only as a fallback in a dispensation from the class). That specific case, by the way, was not about Muslims but about members of the Palmarian Catholic Church. This shows that the question of how religious groups are to be accommodated within existing systems of rules and regulations relates to all religions and is not a specifically Muslim problem.

The provision of separate cemeteries or reserved sections of public cemeteries is another example of how apparently neutral regulations can have different effects on different religious communities. Normally the graves are reopened after a few years and used again. This system of "charnel rotation" is acceptable to Christians. For Muslims (and Jews), however, the situation is quite different: Their religious commandments forbid them to exhume the bones and reuse the grave. Where the regulations do not make allowance for such burial requirements, strict Muslims have to shoulder the additional costs and emotional burdens of burial abroad. In this context the Swiss Federal Court ruled in 1999 that the principle of equality was not being violated because special cemeteries were permitted in Switzerland. This argument does not answer the question, however, of whether the public authority must guarantee their availability and possibly assume responsibility for the costs to ensure that Muslims - just like Christians - are able to bury their dead

in keeping with the tenets of their faith. Sometimes true equality can only be established where additional public funds are employed to neutralise the cultural shadow of a legal system that applies to all (→ Formal Equality).

The headscarf debate

Wearing a headscarf is often a religious matter. At all events it is a high-profile measure and clearly controversial in some contexts. The controversy is especially strong in the case of state schools with regard to the question of the extent to which the authorities are justified in forbidding religiously motivated dress for teachers and pupils. In Germany the courts were called upon in the 1980s to consider whether it was legal for teachers to wear the typical red Bhagwan dress at schools. In 1988 the Federal Administrative Court ruled that it is possible to prohibit "the regular use of clothes which are a clear expression of the religious or ideological conviction of a teacher in a state school" and which meet with rejection on the part of pupils of other persuasions and their parents because such behaviour violates the basic right of negative religious freedom.

The really big headscarf debates have only broken out in the last few years, however. In a decision announced in Switzerland in 1997, the Federal Court spoke of the need to protect the children from teachers in allegedly "religious" dress, and the teacher involved, Ms. Dahlab, took the case to the European Court of Human Rights. In France especially, which has a tradition of excluding religion from the public space, the subject was debated on various juridical and political fronts - with an astonishing outcome: In 2004 France took a radical step in the form of a complete legal ban on wearing "striking religious symbols" in state schools, a ban that applies to teachers and pupils alike. At about the same time, countless courts were confronted with the subject in Germany, too. The case of the trainee teacher Fereshta Ludin, who insisted on wearing her Muslim headscarf in Baden-Württemberg, actually reached the heights of the Federal Constitutional Court in Karlsruhe. In Septem-

ber 2003 the court passed a veritable judgment of Solomon, ruling that the ban on wearing a headscarf was illegal in this case because it was without legal basis in the Land of Baden-Württemberg. If the Länder so desired, however, they could explicitly formulate a dress code in their school laws incorporating a ban on headscarves. In the meantime half of the German Länder have introduced such legislation. Unlike France, the ban in Germany does not apply to pupils; they remain at liberty to wear headscarves or veils as they see fit. As in France, the legal provisions in Germany do not relate exclusively to headscarves. The Baden-Württemberg law, for example, makes reference to "political, religious, ideological or similar external manifestations ... which are liable to call into question the neutrality of the state authority". In Bavaria the focus in the law is different: "external symbols and articles of clothing that lend expression to religious or ideological convictions ... which can also be interpreted as an expression of an attitude that is not compatible with the fundamental values and educational goals of the constitution and with western Christian educational and cultural values". Remarkably enough, the laws in Berlin and Hessen apply to the whole of the public service sector. In the Land of Hessen, the law contains the following passage: "Public servants shall maintain political, ideological and religious neutrality in their work. In particular they shall not wear any articles of clothing, symbols or other items that could objectively have the effect of compromising people's trust in the neutrality of their style of office or endanger political, religious or ideological peace. In decisions relating to satisfaction of the requirements formulated in sentences 1 and 2, due consideration shall be paid to the western tradition of Hessen with its Christian and humanistic character."

The question of the Muslim headscarf has also been dealt with at the highest level - by the European Court of Human Rights in Strasbourg (→ Judiciary). In 2001 the court reached a decision on the above mentioned case from Switzerland (Dahlab v. Switzerland, 42393/98). The case was about the elementary school teacher Lucia Dahlab, who had worn a headscarf while teaching for several years before the school inspector's office forbade her to do so. The tone

of the judgment is consonant with the signals sent out at the national level as discussed above: It is permissible to prohibit the use of the headscarf as it could have a negative influence on the children (four- to eight-year-olds in this case) in terms of their freedom of religion. What the judgment also conveys indirectly, however, is a certain perception of the headscarf and its role; the judgement suggests en passant that a mandatory requirement to wear a headscarf is incompatible with the principle of gender equality and that wearing the Muslim headscarf is inconsistent with the message of tolerance.

Four years later the European Court of Human Rights was confronted with the question whether students could be forbidden to wear the Muslim headscarf (Sahin v. Turkey, 44774/98). Leyla Sahin was student of medicine in Istanbul who decided to stop studying there and finished her course in Vienna instead. The reason for this (doubtless costly) move was the reintroduction of a headscarf ban at the University of Istanbul. The court seems to have been at pains to lay down the law in Turkey as little as possible and to leave enough room for manoeuvre in this delicate question. The strict principle of laicism in Turkey and the fear of radical Islam there ("extremist political movements ... which sought to impose on society as a whole their religious symbols and conception of a society founded on religious precepts") are two continuous leitmotifs of the case, which was heard in both chambers in Strasbourg. That has led some commentators to conclude that the judgment cannot serve as a general precedent as it relates to the specific (and strongly secular) constitutional situation in Turkey. It is nevertheless surprising that the critical assessment of the headscarf in the ruling on the case of Lucia Dahlab should ultimately resurface with so little ado in the case of Leyla Sahin. After all this case is not about the headscarf worn by a teacher but by a student, who is not a representative of the state and unlikely to influence her fellow students - who are adults and not four-year-old children - in their religious development.

Excursus: minarets as headdress for mosques

On the first Sunday in Advent in 2009, 57 percent of the Swiss electorate voted in a referendum for a constitutional ban on the construction of minarets. The size of the majority came as a surprise and triggered shock in some Swiss and jubilation in others depending on their political leanings. Cultural historians are already talking of a cultural sea change and political scientists of bandwagon effects in Europe. The Danish People's Party, the Dutch Party for Freedom and the Belgian Vlaams Belang, for example, have all signalled their intention to launch similar initiatives, while German groups like Pro Köln and Pro NRW are talking about electoral campaigns "on the Swiss model". The chairman of the Austrian FPÖ also expressed delight at the result. He felt that the Swiss had "sent out a clear signal against radical Islamism" and described Switzerland as a model for Austria to adopt in order to protect and maintain its western Christian heritage. Similarly, in France there has been a revival of the burqa ban debate. In Austria, a poll conducted on behalf of a national newspaper showed that 53 percent of the Austrian population would support such a proposal. All this means that we can expect a phase of more intensive and fiercer dispute.

In this case, as in so many others, calm juridical analysis can help to shed light on the dark. It must first of all be stressed that the Swiss ban does not refer to the construction of mosques themselves and does not limit religious freedom in the country; it is only the addition of minarets that will be affected. But in fact the majority of the thousands of mosques to be found in the EU today do not have a minaret. In Germany only 160 mosques have minarets, in Switzerland four and in Austria three. The question of a ban on minarets is therefore more about equal rights: Why should minarets be forbidden and church towers and spires not? A frequent argument in this context is that the minaret is there for the muezzin, with the help of loudspeakers, to disturb the neighbourhood with his jarring call to prayer five times a day. Of course, that is not borne out by reality. In most cases a compromise has been found. The tower of the minaret in Telfs in the Austrian Tyrol, for example, is

not a minaret at all; it is a prayer tower without a muezzin. In any case, Muslims are being increasingly called to prayer, not by a muezzin, but by a text message on their mobile phones. The mosque recently opened in Bad Vöslau in Lower Austria had its minaret considerably downsized in the planning phase. The situation is similar in Germany, where guidelines were adopted a few years ago for the construction of mosques in order to ensure that the local population is involved in the planning process at as early a date as possible. The real problem is not the minaret as "a source of immissions in neighbour law" (which could be easily resolved in a rational dialogue on the basis of standard building approvals procedures). What it is really about is the perception of the minaret as a symbol of the Muslim claim to power. Sultan Mehmed II was quick to convert the Christian Hagia Sophia into a mosque as a symbol of the new regime in 1453, and the addition of minarets to what had been churches in the Balkans was naturally part of a Medieval power symbolism. But the converse also applies: The victorious Spaniards transformed the Arab minarets into belfries, and the Albanians took revenge at Kosovo Polje with mindless devastation of the churches there. The contention that a minaret represents a claim to power with the aim of displacing the host culture is neither tenable nor useful. And a juridical approach involving stricter building regulations for minarets than for structures of other religions is equally problematical as it is lacking in legality based on human rights. Even the neutrally formulated changes made in 2008 to the building codes of the Austrian provinces of Vorarlberg and Carinthia, which provide for stricter conditions to be imposed on "buildings used for events attracting large numbers of people" and "buildings of an unusual design or size (height)" can only be in conformity with human rights if they do not cause indirect discrimination (→ Discrimination). What is really unacceptable is the poor argument that the construction of minarets should be forbidden in Europe for as long as the construction of churches is prevented in Arab or Muslim countries. If European standards of protection for minorities and human rights were to be based on the eye-for-an-eye mentality, Europe would quickly find itself at the bottom of the human rights table.

In general it is clear that direct democracy as a purely majority-based system cannot be a suitable instrument for the protection of standards in minority law. In this context it is worth quoting the remarkable comment produced by the Governor of the Austrian province of Carinthia in 2006: "The rule of law is one thing, the sound instincts of the people another" (the quoted politician appears to identify with the latter rather than the former). In addition, the mechanisms of direct democracy also have a tendency to leave the electorate side-tracked. In the case of the negative referenda in France, Ireland and the Netherlands on the proposed changes to the EU treaties, for example, a number of issues decisively influenced the outcome that were unconnected with the question put to the people. With regard to the Swiss minaret referendum, too, it can be assumed that emotional factors were very prominent. Switzerland had previously found itself with its back to the wall on a number of international issues. The international community was exerting increasing pressure on the sacrosanct subject of banking secrecy, and in September 2009 the then Libyan President had submitted an official proposal to the UN General Assembly for Switzerland to be dissolved and its territory divided up among its neighbours. Against such a backcloth, a general debate on the risk of being overwhelmed by growing numbers of radical immigrants is bound to bear fruit, all the more so when the government and the country's intellectuals offer no alternatives to the trouble-makers' claims. The fact remains, however, that Switzerland's approximately 330,000 Muslims (4.3% of the population) are mostly from the West Balkans, which is known to be a moderate region, and are anything but radical Islamists.

What is clearly contrary to the most basic principles of human and minority rights is a policy in which immigrants are only accepted on equal terms when they are no longer recognisable as such, i.e. when they have been forced to assimilate. The debate about minarets and dress codes suggests that only an invisible Muslim can be a good Muslim, someone who prays where there is no tower on the roof and has a wife with no scarf on her head. Such demands cannot be implemented by force, at least not without

turning our backs on the principles of human rights. The discussion is galloping in the wrong direction. What must be required of the Muslims - clearly and consistently - is respect for the fundamental values of human rights and the rule of law. But where our contribution to the dialogue with Islam reveals ignorance of our own values, we undermine our own negotiating position and damage our own case. Such problems as ideologised religious teachers, forced marriage, genital mutilation, preachers of hate and much else must be verbalised emphatically, but only from a position of strength based on full respect for our own western values.

The controversial cross

Back to the state schools: The question here is not only whether teachers (and pupils) should be permitted to indicate their religious affiliations through their mode of dress. Europe's state schools are also at the centre of another debate: whether the cross or crucifix hung on the walls of classrooms is to be seen as a religious statement and whether such a public confession of faith is legally acceptable in the school environment. Although non-Christian pupils cannot be excused from seeing the classroom crosses in the same way as they can be excused from school prayers, no-one seemed to have a problem with the situation for many years. But then it became a big one. In Switzerland a school regulation issued by the municipality of Cadro in the Canton Ticino was challenged at the end of the 1980s, and the administrative court declared the municipal regulation null and void. The cantonal authority lodged an appeal against the ruling with the Swiss Federal Council, claiming that the crucifix did not constitute a religious message but was merely a symbol of the values underlying the Swiss constitution. The argument was accepted by the Federal Council, which ruled that the mandatory cross or crucifix was legal. As in the case of the headscarf, people's views of the cross depend on whether it is seen as a purely cultural item or as an expression of religious faith. The suggestion that the crucifix can be reduced to a cultural artefact or the mere symbol of (an alleged) national identity is controversial, how-

ever. The case was finally referred to the Swiss Federal Court, which concluded that the state as guarantor for the "confessional neutrality of schools ... cannot assume the authority to clearly demonstrate its own ties with one confession".

A similar conclusion was drawn in 1995 by the German Federal Constitutional Court in its ruling - often referred to as the "crucifix decision" - on the subject of Bavaria's primary school regulations. The Bavarian Administrative Court had argued that the crucifix was a "standard item of western Christian culture" and that the state's decision to teach children in the presence of this symbol was not unreasonable for non-Christians. The German Supreme Court took a different view on the grounds that the crucifix was an expression of a certain religious conviction and its presence in a building must be interpreted as an enhanced confession of Christian faith on the part of the building's owner. To the argument that the mandatory crucifix in state schools could be justified in terms of the positive freedom of religion enjoyed by Christian parents, the Constitutional Court responded as follows: "Positive freedom of religion is a right of all parents and pupils, not just Christians. The resulting conflict cannot be settled on the basis of the principle of majority decisions as the fundamental right to religious freedom is one that is specifically intended to protect the rights of minorities." Bavaria was not very happy with the decision and the mandatory crucifix was enshrined in law at the end of 1999. A new complaint was rejected by the Bavarian Administrative Court in the same year on the grounds that the new law provided for a reconciliation procedure where the obligatory presence of the crucifix could be contested by parents or guardians "for serious and understandable reasons of faith or ideology".

The crucifix debate came to a juridical climax with a ruling of the European Court of Human Rights in Strasbourg in November 2009 (→ Organisations) in a case relating to the Finnish-born Italian Soile Lautsi, whose children Dataico (11) and Sami Albert (13) were at school in the Veneto region of Italy. She petitioned the Italian courts to rule against the admissibility of crucifixes in her children's

classrooms (a normal feature of Italian schools) but was unsuccessful. The supreme court of the Council of Europe, however, ruled in a unanimous decision that the mandatory cross or crucifix in state schools was illegal (Lautsi v. Italy, 30814/06). Unlike the Italian government, the European Court of Human Rights saw a clear religious message in the crucifix and said that the children would recognise that they were at school in an institution that confessed a certain religion (the majority religion). According to the court, that may be motivating for some pupils, but it will also be disturbing for others, especially those belonging to a religious minority. As was to be expected, that triggered a wave of political wrath in Italy. The Italian authorities, who describe the crucifix as an expression of Italian culture and identity and even as a symbol of the country's secularism, immediately appealed the ruling. The case was then discussed in the Grand Chamber of the European Court of Human Rights, which came in March 2011to another, now final, conclusion. The final judgment clarified that, in deciding to keep crucifixes in the classrooms of the State school, the authorities were acting within the limits of the margin of appreciation left to the States. And in general, the Court underlined the fact that the decision whether crucifixes should be present in State-school classrooms is, in principle, a matter falling within the margin of appreciation of the respondent State, one argument being that "there is no European consensus on the question of the presence of religious symbols in State schools". The Court identified the crucifix as "a sign which, whether or not it is accorded in addition a secular symbolic value, undoubtedly refers to Christianity". However, the Court continued, a compulsory crucifix in public schools does not automatically result in a process of indoctrination (which indeed would be illegal under the requirements of Article 2 of Protocol No. 1 of the ECHR). To that extent the Court seems to perceive a (Catholic) crucifix on the wall as being less intrusive than a (Islamic) veil on the head of a teacher.

Ultimately, therefore, European fundamental rights standards do not lead to "crucifix-free" public schools. The Court stressed that the decision "whether or not to perpetuate a tradition falls in

principle within the margin of appreciation" of the States since "Europe is marked by a great diversity between the States of which it is composed, particularly in the sphere of cultural and historical development". However, it should be added that the Court explicitly referred to the commitment of the Italian government to allow pupils to wear Islamic headscarves or other symbols or apparel having a religious connotation and to provide for alternative arrangements to help schooling fit in with non-majority religious practices. Even if compulsory Catholic crucifixes are legal, it also remains a legal requirement that authorities guarantee tolerance of pupils who believe in other religions, are non-believers or hold non-religious philosophical convictions.

Do we want a religion-free public zone?

What we are seeing in connection with scarves on teachers' heads and crosses on classroom walls is a fight for the prerogative of interpretation. Those who would ban the headscarf from the classroom see it as a missionising tool or at least as a religious symbol. The same applies to the cross or crucifix: Those who wish to keep it in the classrooms argue that it is not a symbol of Christianity as much as an organically developed expression of the identity of the country concerned. How plausible these interpretations are is not to be debated here. The real question is whether state neutrality really can only be achieved by banning all religions from the public space. Whereas cases like the above first decision by the European Court in the case of Lautsi pointed in that direction, the Grand Chamber judgment in the same case allows for more leeway for the States. This approach however again bears the risk that certain traditional majority religions are accorded cemented privileged positions vis-à-vis newer minority religions. In order to avoid such a tendency, state neutrality could also be demonstrated by offering all religions equal access to the public space. Instead of either simply banishing all religious signs from public schools or reserving the walls only to the sign of the dominant religion,, it would make sense to have symbols on the classroom walls of all the religions that are

relevant for the individual school community. This approach would be in keeping with the EU's principle of subsidiarity in that it would ensure maximum flexibility for the state authorities and the lower-level bodies like school authorities, whose task it would be to identify the relevant religious symbols for the school or class concerned. The solution would also avoid the imputation that states have a selective view on religion (namely ignoring minority religions) or follow a dogma of irreligion (namely banning all religion from the public space). Tolerance in the context of diversity can only be learnt where diversity is not denied but is co-managed by the state. The classroom is a good place to start.

It appears amongst the EU population the role of institution-based religious belief is losing ground and/or being increasingly replaced by forms of individualised faith. However, there are huge differences between the various Member States.

The Muslim presence in the EU is a product of migration, and the Muslims - in comparison with the majority population - are religious. In addition, the EU's estimated fifteen million Muslims are concentrated in just a few Member States and in just a few cities. Immigration of a significant number of persons from another culture reveals the cultural shadow cast by many of the legal norms of the receiving country. Norms which hitherto have been neutral, suddenly penalise a part of the population. This is particularly clear with regard to religion. The Muslim headscarf has been banned from the classroom in state schools in rulings at the national and European levels that cite the risk of a one-sided influence on the pupils. In the same context, there is major resistance against taking down the Christian cross from walls in public schools. What remains is the question whether state neutrality cannot also be protected by offering space in the classroom to all relevant religions. That would help transform the public space into a practice ground for intercultural communication, something that is increasingly needed in today's societies. The latest referendum in Switzerland is symptomatic

of a debate on migration in which time and credibility are wasted on the wrong topics. Instead of polluting the climate with calls for assimilation deriving from a diffuse angst, it would be better to enter into a self-confident debate on values.

What is a "Minority"?: National, Ethnic, Autochthonous, Linguistic?

The most common terms are "minority", "national minority" or "ethnic group", and they are often used synonymously. The minority or ethnic group may also be qualified by the adjectives "linguistic", "new" or "old", "traditional", "historical", "autochthonous" or "allochthonous". But what exactly constitutes a minority with the standing to call for the state to protect its language, culture and identity as rights that are worthy of protection? And why is it necessary to find as accurate a definition as possible, which - like any definition - is in turn bound to exclude and discriminate?

An attempted definition

There is general acceptance for the definition formulated by the UN's Special Rapporteur Francesco Capotorti in 1979, which involves four criteria. He defines a minority as a group 1) that is numerically inferior to the rest of the population, 2) that does not hold a dominant position in the state, 3) whose members are nationals of the country they are living in, and 4) who maintain a sense of solidarity directed towards preserving their culture, traditions, religion or language. The affiliation of the individual to the group is primarily a matter of free will and not of mother tongue, name or descent. Citizenship as a constitutive element of the concept of a minority underscores the (controversial) distinction between old and new minorities (→ Kaleidoscope of Demographic Change). There are a few cases in which a traditional autochthonous minority like the Russians in the Baltic States have not been granted citizenship and have thus been deprived of the related rights and duties. This shows that need for protection has nothing to do with the formal requirement of citizenship.

When does a minority cease to be allochthonous, i.e. new, foreign, without historical ties to the territory, and become an original, autochthonous group within the population? In Austria, Slovenes, Croats, Hungarians, Czechs, Slovaks and Roma are recognised as minorities, i.e. as groups of Austrian citizens of non-German mother tongue with their own nationhood living in specific parts of the country. The main criteria are Austrian citizenship and membership of a minority that has been living in the country for at least three generations. The one-hundred-year residence requirement (three generations), which also applies for historical reasons in Hungary, goes back to the decline of the Habsburg monarchy and the rise of the nation-state in the 19th century.

The German word "Volksgruppe" for a national minority is very common in the German-speaking countries, where minority situations are often the result of changes made to national borders after the two World Wars. In addition to the Germans in Denmark and Belgium, this also applies to the South Tyroleans in Italy, for instance. On the other hand Germany has its own minorities, namely the Friesians and Sorbs, and South Tyrol has its Ladin minority. These three, very small minorities have no parent country to relate to, no kin state that could play a protective role on the basis of bilateral treaties. There are also larger ethnic groups, like the Scots, Catalans and Basques, which do not constitute a nation-state and are often referred to as co-nations, i.e. as a separate nation within a nation-state. The opposite is the case with the Hungarians, one third of whom live outside the borders of modern Hungary: The Hungarian government attracts frequent criticism from neighbouring countries for an active kin state minority policy involving legislation and treaties designed to give Hungarian expatriates the same status as citizens living in Hungary itself.

The terms "national minority" or "ethnic group" can be defined in terms of a few key elements of a living community of descent which distinguish the group from other ethnic communities. The primary objective features are their language and a homogeneous area of settlement. An ethnic group is accordingly a community

which does not form a nation-state, which has been living in a homogeneous area of settlement for generations, which exists on the territory of the state alongside a majority of different ethnicity, and whose members express their will to preserve their own culture and distinct identity. The equation of the term "linguistic minority" with "national minority" or "ethnic group" will therefore be correct in most cases, although there are some linguistic minorities that identify with the majority population and its culture. Such a divorce between language and nationhood can be explained in terms of the natural intermingling of two ethnicities and other socio-economic factors, especially in border areas and dispersed locations, and relates to the complex social identity of each individual.

Since rights and duties exist between the state and the members of the minority or the minority as a group, most states define their minorities or provide a list of those minorities that are officially recognised as such. However, neither of the two legally binding documents in international law adopted by the Council of Europe in the area of minority protection, namely the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, provide a definition (→ Organisations). That permits the various signatory states to apply their own definitions of a "minority" on the one hand and it permits the documents - liberally interpreted - to be applied to new minorities on the other. And the Framework Convention's Advisory Committee does in fact criticise those states that apply a very rigid interpretation to its provisions and deny new minorities any of the protection afforded by the agreement. After all, certain fundamental constitutional rights that are included in the Framework Convention, such as the right to education (Arts. 4-6 and 13-14), religious freedom (Art. 8) or the freedom of opinion (Art. 9), must also be granted to new minorities.

An attempted numerical approach

The Member States of the Council of Europe (47 plus the Vatican with observer status) comprise 32 nation-states, five multinational states (Belgium, Switzerland, Great Britain, Russia and Bosnia-Herzegovina), and ten small states with less than one million inhabitants each (Andorra, Iceland, Liechtenstein, Luxembourg, Malta, Monaco, Montenegro, San Marino, the Vatican and Cyprus). Of today's 767 million Europeans 103 million are considered members of minorities, of which there are more than 300. More than half of these minorities have less than 50,000 members; only 65 minorities have more than 300,000 members. The figures for the 27 Member States of the EU, with over 50 million minority citizens, create a similar picture. Most of Europe's 53 stateless languages are in the same situation as the other 6000 small languages worldwide, of which one third are already at risk of extinction (→ Speaking of Languages).

Only small states like those listed above tend to have no minorities on their territories. Even such apparently homogeneous states as Ireland, Cyprus, Luxembourg and Portugal have small minority groups within their borders. The countries with the most recognised minorities of any size are Romania, which has 18 groups (2.3 million members), followed by Hungary with 13 groups (1 million members) and Italy with 12 groups (3.5 million members). In comparison, the figures for Germany and Austria are relatively low. In Germany the 172,000 members of the country's four recognised minorities make up just 0.2 percent of the population, while in Austria six recognised minorities with 142,000 members account for 2.1 percent.

As a general rule it can be said that the bigger the minority, the greater the desire for an independent state, often resulting in autonomy as a compromise (→ Autonomies). Catalonia and the Basque region of Spain are examples of autonomy involving very extensive rights of self-government. Whereas Catalonia is a successful example of such autonomy, developments in the Basque Country have been stymied over the decades by the apparently irreconcil-

able interests of the Spanish majority population and Basque groups demanding independence. Apart from the size of a group and the political history of its region, geography also plays a role that should not be underestimated. The extensive autonomy and self-government regimes of Greenland (Denmark) and the Aaland Islands with their population of 20,000 Swedish-speaking Finns, for example, can be explained in terms of their self-contained remote location and in the latter case proximity to the Swedish border. In contrast, the Hungarians living as a compact group in the Székely Land in Romania and the Corsicans on the French island of Corsica have no autonomy at all and are fighting for classical minority rights (→ Case Studies).

The fact that it is still the states themselves that decide what a minority is might be best illustrated by the example of the Turks, who recognise Armenians, Greeks and Jews as minorities but not the over ten million Kurds, who are still often referred to as "Mountain Turks". It was not until 2009, that Turkey started to develop some initiatives to install minority rights as such as Kurdish as a teaching language, Kurdish toponomy, and political participation for the Kurdish minority. Nor do Greece or France recognise the minorities living on their territories. And yet the estimated 230,000 members of the seven minorities in Greece constitute almost 2.5 percent of the Greek population, and the situation is even more striking in the case of France, where over 5 million members of minorities (including Occitanians, Bretons and Corsicans) account for around 14 percent of the French population. This is a reflection of the specific state-nation model to be found in France. Quasi by definition, the classic French state-nation, with its supreme goal of equality for all citizens, cannot recognise and value all linguistic and cultural diversity on its territory.

There is no generally accepted definition of what a minority is. It is up to the states to define minorities and decide upon their recognition and the rights attached to the latter. However, the decisive factor in the question of affiliation to a minority is sub-

jective free will. Only in exceptional cases can objective criteria be applied as a corrective. Language is the most important objective characteristic of a member of an ethnic group or national minority.

Estimates and existing census results suggest that there are over 300 minorities with more than 100 million members in the 47 countries of the Council of Europe. Almost one in ten Europeans therefore belongs to a minority. And that does not include migrants. France and Greece are the only European countries that do not recognise minority groups in spite of the considerable size of such groups on their territories.

Xenophobia: Combating Racism

On 21 March 1960 the South African police in Sharpville shot seventy Africans who were protesting peacefully against the country's racist pass laws. The United Nations General Assembly responded in 1967 by proclaiming 21 March the International Day for the Elimination of Racial Discrimination. Two years later, in 1969, the UN Convention on the Elimination of All Forms of Racial Discrimination came into force. The Convention has since become one of the most widely recognised treaties in international law; over 170 states have committed themselves to respecting its provisions. The Convention is monitored and further developed by the Committee on the Elimination of Racial Discrimination (CERD), which receives regular reports from the signatory states. Over fifty states have also made declarations under Article 14, authorising CERD to receive and consider complaints from individuals, (including all 27 EU states with the exception of Estonia, Greece, Latvia, Lithuania and the United Kingdom). In spite of this general proscription, racism remains a common problem. That can doubtless be explained in terms of its sociological function: It lends pseudo legitimacy to prejudice, channels aggression and dissatisfaction, and creates group identities, which in turn confer a sense of pseudo security. As a kind of superiority complex, racism is a phenomenon that is to be found in all forms of society worldwide. Nevertheless, the continent of Europe has a special responsibility.

Racism in Europe: An ongoing challenge

From acts of colonialism (like the behaviour of Belgium in the Congo) to the race laws of Nazi Germany, it can be seen that white European racism is something special insofar as it has also been given a theoretical basis. In the words of Albert Menni, it can be said that racism is the generalised and final assigning of values to

real or imaginary differences, to the accuser's benefit and at the victim's expense, in order to justify the former's privileges or aggression. Fortunately, racism in this narrower sense based on racial theory is today only a marginal phenomenon. In general, however, racism has become a much broader problem that is still as common as ever.

Racism encompasses all forms of behaviour that seek to discriminate against, insult, slander or threaten people because of group-based characteristics (colour, language, culture) or their imputed membership in a group. Racism imposes an identity on people by classifying them in a group and assigning certain characteristics to the group so as to denigrate its members as being inferior or worthless. In an abstract intellectual view, racist behaviour can be said to be preceded by the trio of de-individualisation, stereotyping and disparagement. Although Europe has managed to withdraw from the old colonial context, racism is still on the agenda, especially as a result of increasing immigration, and is a growing problem throughout the continent (→ Kaleidoscope of Demographic Change).

In the framework of the preparations for the 2007 European Year of Equal Opportunities for All, the EU Commission had surveys performed on the subject of discrimination (→ Discrimination), and the results were updated in the summer of 2008. They show that discrimination based on ethnicity is considered the commonest form of discrimination in the EU. Ethnic discrimination is thought to be very common by 16 percent and fairly common by 46 percent of respondents, and only just under a quarter say that it is fairly rare. There are considerable differences between the various countries: In the Netherlands, Greece, France and Italy, more than three quarters of the population assume that ethnic discrimination is widespread compared with less than one quarter in Lithuania, Latvia and Poland. In general, Europeans are quite comfortable with the idea of having a neighbour of different ethnic origin. On a scale from 1 ("very uncomfortable") to 10 ("totally comfortable"), 44 percent gave a score of 10, and the EU average was 8.1. If the fictitious neighbour is a Rom, however, the comfort score declines steeply to

an average of 6 (→ The Roma). In five countries, where rejection of the Roma is widespread, the score was below 5, namely in Bulgaria (4.8), Ireland (4.8), Slovakia (4.5), Italy (4.0) and the Czech Republic (3.7). For Germany and Austria, too, the scores - at 5.8 and 5.6 respectively - are below the average for the EU. Many Europeans are also uncomfortable with the thought of having their country run by someone from a different ethnic group than the majority population. The average score for this question was a weak 6.4, with Greece (4.7), the Czech Republic (4.5) and Cyprus (3.9) all below a score of 5. Here again, Germany (5.4) and Austria (4.9) were also among the skeptics.

Europe's institutional response: ECRI, EUMC, FRA

Europe has reacted to this latent xenophobia through official channels at least, starting with the European Year against Racism in 1997. At the institutional and legislative levels, too, Europe has been very active in the fight against racism (→ Organisations). The Council of Europe, for example, has been addressing questions of racism via its European Commission against Racism and Intolerance (ECRI) since 1993. ECRI is comprised of one independent expert per Member State of the Council of Europe (i.e. currently 47 experts). In the framework of a system of periodic country reports, the Commission monitors policies, legislation and other measures taken by Member States of the Council of Europe in the fight against xenophobia, intolerance, racism and antisemitism. In addition ECRI can propose measures to be taken by the states at the local, national and European levels and also make general policy recommendations like the recommendation issued in 2007 on the avoidance of racism in police work. The establishment of ECRI also stimulated thought in the EU on the creation of an agency to address questions of racism, and in 1997 the European Monitoring Centre for Racism and Xenophobia (EUMC) was set up in Vienna in 1997. The mandate of the EUMC did not involve the production of periodic country reports as in the case of ECRI but the decentral collection of data on racism and xenophobia through the RAXEN network. The data from the

Member States are used to produce reports on the situation in Europe with regard to racism. In March 2007, the EUMC was absorbed into the newly established EU Agency for Fundamental Rights (→ Organisations).

The Agency for Fundamental Rights (FRA) is active in all aspects of the protection of human rights in Europe. In the Agency's founding regulation, it nevertheless says that the fight against racism is a permanent focus of the Agency's work and various FRA reports have addressed the issue. The EU Member States are called upon to provide adequate funding for the anti-discrimination offices and to enable them to provide assistance to discrimination victims in court. The Agency also underscores the importance of collecting data on crime motivated by racism and invites the states to provide an independent address where complaints can be lodged in cases of racist police behaviour. Ethnic discrimination is especially frequent in connection with employment, housing and health care. The FRA calls upon the states to maintain an adequate supply of subsidised housing and avoid ethnic discrimination in the allocation process. In the field of education, the states are encouraged to promote integrated school models and preschool and to avoid segregation in special schools. In the interest of effective monitoring, the FRA also advises keeping separate records. In their health care systems, too, Member States are called upon to keep separate data for different ethnic groups in order to have a clearer picture. In general, the Agency feels that the de facto discrimination situation in various fields of life should be regularly monitored with the help of random checks ("situation testing").

The reaction of the European legislator: The Racial Discrimination Directive

In the year 2000, the EU issued the Directive "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin" with the objective of defining a minimum standard in the fight against ethnic discrimination in Europe. The Directive is

based on Article 13 of the EC Treaty, which had entered into force the previous year (→ Discrimination), and also on the assumption that a high level of employment and social cohesion will only be possible if ethnically motivated discrimination is tackled effectively. The Directive prohibits discrimination in a wide variety of forms in the EU: direct discrimination (less favourable treatment of a person than others in a comparable situation on grounds of racial or ethnic origin), indirect discrimination (an apparently neutral practice that puts persons of different racial or ethnic origins at a disadvantage unless the practice is objectively justified), harassment (unwanted conduct related to racial or ethnic origin with the purpose of or resulting in violating the dignity of a person and creating an intimidating, hostile, degrading or offensive environment), and instructions to discriminate on grounds of racial or ethnic origin. What is striking about the Directive is its scope; it covers not only discrimination with regard to access to employment and self-employment, vocational guidance and training, and working conditions, but also to areas other than employment. It bans discrimination in the field of "social protection including social security and healthcare", "social advantages", "education" and "access to and supply of goods and services" including access to housing. This broad spectrum of protection from discrimination is available to anyone living on EU territory (whether legally or not, although the prohibition of discrimination does not cover differences in treatment on the basis of nationality and is without prejudice to provisions relating to residence for third-country nationals).

The Directive specifies that all laws and administrative provisions that are contrary to the principle of equal treatment must be abolished. Similarly, any provisions of individual or collective agreements that are contrary to the principle of equal treatment are to be declared null and void. The Member States have a duty to designate bodies (so called equality bodies) for the promotion of equal treatment, which must at least be capable of providing assistance to victims of discrimination in the pursuit of their complaints, conducting independent surveys on discrimination, and publishing independent reports. Finally, the Member States must guarantee protec-

tion from victimisation, i.e. adverse treatment for individuals who lodge a complaint on the grounds of discrimination. Protection from discrimination is also facilitated through a further provision in the Directive: If an individual can establish facts which suggest that discrimination has occurred, it is for the respondent to prove that there has been no breach of the principle of equal treatment (reversal of the burden of proof). Implementation of the Directive, however, is not completely satisfactory (→ Discrimination).

After long debate: European resort to criminal law

The former "Third Pillar" is a child of the Treaty of Maastricht. Within this legal framework it is possible for the EU states not only to enter into loose collaboration in the field of criminal law but also to work for a minimum degree of harmonisation of criminal offences (→ The Lisbon Treaty). The fight against racism is explicitly mentioned as one of the agendas in which the EU can make such stipulations. In November 2001 the Commission had already proposed harmonisation of the Member States' approaches to the punishment (or not) of offences motivated by racism. The suggestion remained the subject of negotiations within the Council of the EU for six long years before a text was finally agreed in April 2007. The states seem to have had difficulty in deciding how to strike a balance between the fight against racism and the protection of freedom of opinion. The framework decision "on combating certain forms and expressions of racism and xenophobia by means of criminal law" was finally adopted in November 2008 and was to be implemented by the 27 Member States by the end of November 2010. The purpose of this instrument is to provide for proportionate and dissuasive penalties - with a maximum of at least one to three years imprisonment - for especially serious forms of racism in all EU Member States. The offences covered by the framework decision include public incitement to violence or hatred against a certain ethnic or religious group, and also public condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes directed against an ethnic or religious group (where such conduct is "likely to incite vio-

lence or hatred against such a group or a member of such a group", → Zero Tolerance). This constitutes an attempt to establish a European position on Holocaust denial, an undertaking that is not unproblematic in terms of freedom of opinion, and the very specific and distinct historical experiences of the Member States with their various genocides. At all events, the Member States have a duty with regard to all the above-mentioned offences to ensure that incitement and aiding and abetting are also punishable. The EU framework decision also states that racist or xenophobic motivation should in general be considered an aggravating circumstance and taken into consideration when determining penalties. This must be considered a meaningful approach for awareness building in Europe for the dangerous phenomenon of racism.

Racism replaces individual identities with group identities, assigns certain negative characteristics to the groups and thus denigrates its members as being inferior or worthless. Among other things, the trio of de-individualisation, stereotyping and disparagement serves to justify aggression, boost the racists' ego or maintain privileges. Only a quarter of Europeans believe that ethnic discrimination is rare. Bodies at the international, European and national levels deal specifically with the fight against racism and ethnic discrimination. The adoption in 2000 of the EU's Racial Discrimination Directive led to one of the world's most committed anti-discrimination laws. In addition, the EU Member States agreed at the end of 2008 to harmonise their systems of criminal law so as to make public incitement to hatred against certain groups punishable by imprisonment. Denial of the Holocaust, which was a criminal offence in only nine EU Member States, is thus to become liable to prosecution throughout Europe.

Yin and Yang in the Protection of Minorities

The reader may be forgiven for thinking that, at the end of this little book, the authors have decided to seek refuge in the wide open spaces of Asian philosophy (especially after sleepless nights spent looking for a suitable heading to fit the letter "y"). But the protection of minorities does in fact have something of a dualism that is not unrelated to the concept of Yin and Yang, the classic symbol of dualist philosophy, of a world divided into two. According to the Far Eastern philosophy, however, Yin and Yang are not an antagonistic but a complementary pair; their opposition is relative. Yin and Yang are not so much definitive categories as two groups of aspects and realities that condition and complement each other and succeed each other in a rhythmical alternation; the one cannot exist without the other. Such an interpretation of a dualistic world view can be applied in the case of minority protection.

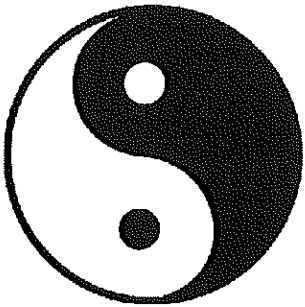
All too long the academic and political discourse involved a heated debate on the question of whether minority protection was about the group (such as the Danish ethnic group and their political representatives in Germany) or about purely individual protection for individual persons (those who currently define themselves as Danes and want to use their language in everyday life; → What is a "Minority"?). Another controversial point is related to the appropriate level of legislation and administration for minority protection - the level of the state, international law or the EU. Minority protection is seen as a competence matter, and it is felt in many places that it should be addressed at the one or the other level of government (→ Organisations). Both dichotomies are in fact wrong (from the Greek dichótomos "separated" or "cut in two", suggesting a division into two structures that are incompatible). They only make sense if they are interpreted in the sense of the Chinese Yin and Yang as "complementary dichotomies". Then the philosophy of Yin

and Yang resolves the apparent contradictions of European minority protection.

The blurred line between the objects of protection: Group and individual

The complementary character of two dimensions as symbolised in the sign for Yin and Yang is also to be found in the individual and collective dimensions of minority protection; a group can only exist if and for as long as there are individuals who consider themselves members of it. To that extent the existence of a group is conditional on its recognition by the members of the group. It is the individuals that make the group a group, and not the group that makes individuals out of the individuals. Nevertheless, a system of minority protection based on individual rights cannot wholly neglect the group element. Minority protection makes no sense where no account is taken of group identity. In order to determine whether a member of a minority has been discriminated against, there must be a group identity to serve as a reference (→ Uncounted). For that reason, protection against discrimination at the level of individual rights must also always have a group dimension, too. It therefore makes little sense to attempt to make a watertight distinction between the two. It is rather the case that the protection of minorities is a continual balancing act in which individual rights components form part of a mix with group elements, with the ratio of the mix determined by the needs of the group and the level of acceptance of the protection mechanism in society as a whole (→ Case Studies). In this way the needs of equality of all citizens on the one hand and group differentiation on the other can be brought into a dynamic balance. "New" minorities, for example, normally desire "equality" with the majority and an effective fight against discrimination, while "old" minorities are primarily interested in defending their otherness. Of course, minorities do not constitute a rigid category; their needs change with time. The authorities must accordingly be alert to the relationship between the majority and the mi-

nority and their respective needs and make adjustments in the individual case.



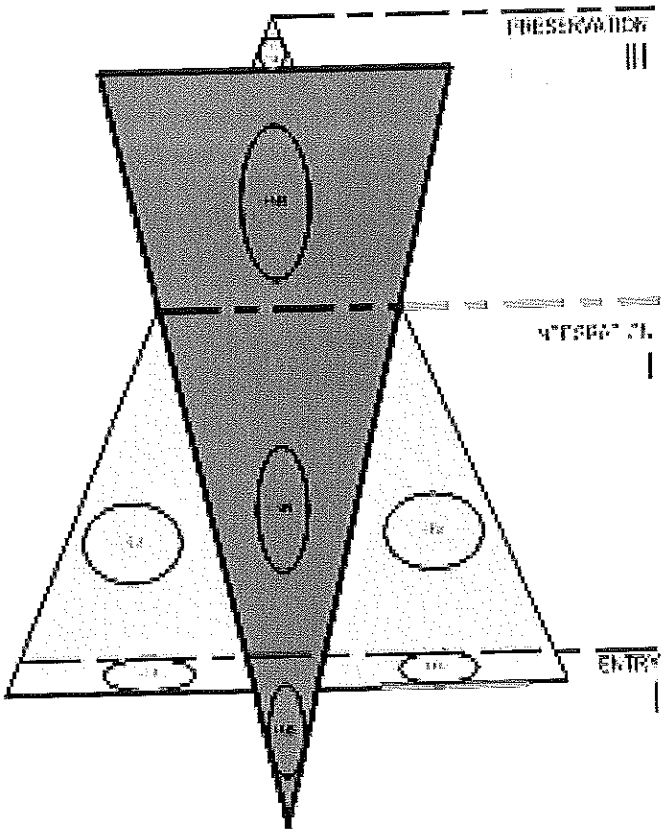
The blurred line between the subjects of protection: The state and the EU

Minority protection is a cross-cutting issue. As such, it deserves consideration at all governmental levels everywhere and at all times. The aim must be to achieve a meaningful division of labour. In the case of the relevant international organisations, for example, the OSCE is the specialist for diplomatic crisis management, while the Council of Europe is primarily concerned with the development of legal framework standards (→ Organisations). The EU, on the other hand, can effect direct change in the legal systems of the Member States and displace national legal norms in the process (although that does not apply to all areas, as there are some in which the EU has no or very limited powers).

The division of labour between the EU and its Member States in the field of diversity management can be described with the help of two pyramids. The standing pyramid symbolises the powers of the EU, while the inverted pyramid represents the Member States. The model also has three horizontal bands for three fields of action. The first one is immigration (the "entry" level). In this area the Union has considerable powers (which have not been fully employed to date, however; → Kaleidoscope of Demographic Change). At this

level it would be logical for the Union to exercise its regulatory powers, as the Single Market is based on a system of open domestic borders, and the pressures of immigration vary considerably from one Member State to another. Above all it would be useful if the question of numbers were to be handled on the basis of solidarity, with a fair distribution of the burden throughout Europe (an approach that has been proposed often enough but is regularly rejected by a number of Member States). The second level of the pyramid model is not about immigration but about the treatment of established migrants and traditional minorities in the various Member States ("integration" in the graphic). At this level member countries and the EU have complementary powers. In some areas at this level, the Union is the primary regulatory authority, while the Member States are only active at the level of implementation as in the case of anti-discrimination law (→ Discrimination). In other areas the converse applies: the Member States have the regulatory authority while the EU merely issues guidelines as in the case of social and employment policies (→ Business and Economic Crises). But when it is about more than immigration, protection from discrimination or social integration of the individual member of a minority, i.e. when it is not only about the protection of individual rights but about the recognition of collective rights, then authority is vested almost exclusively in the Member States. In this third zone (the "preservation" level in the graphic), the Member States have exclusive competence. They alone decide, for example, whether their minorities should have permanent political representation in parliament (→ Participation) and whether they should have special rights at the regional level (→ Autonomies) or any other group rights (→ Quota and Proportional Systems). Admittedly, the structures and mechanisms employed must be in compliance with EU law (reflected in the graphic by the fact that the peak of the standing pyramid projects beyond the base of the inverted pyramid). A system of ethnic proportionality like the one employed in South Tyrol, which operates with a census that is not in compliance with the European Data Protection Directive, for example, would be a case in which the EU could take corrective action (→ Uncounted). The pyramid model again illustrates a system in which two spheres com-

bine and alternate, depending on the regulatory need, as in the case of Yin and Yang.



Toggenburg, Who is managing ethnic and cultural diversity within the European Condominium? The moments of entry, integration and preservation, in Journal for Common Market Studies, 4(2005), P. 717-737, P. 721

In the philosophy of the Far East, with its concept of Yin and Yang, the pupil asks the master which end of the stick - Yin or Yang - is the more important. The master replies: "The stick it-

self is important!". The same applies to minority protection. The question whether minority protection should be achieved on the basis of collective or individual rights is based on an inappropriate dichotomy. What is needed, depending on the individual situation, is a mixture of the two. Like the two ends of the stick, neither of the two approaches to minority protection makes sense without the other. Nor does it make sense to seek to assign regulatory authority in the field of minority protection to just one level of governance. The protection of minorities is a cross-cutting issue; it must be addressed at the local, regional and national levels as well as by the EU, the Council of Europe and the OSCE. All the wheels must interlock to create a mechanism capable of delivering meaningful protection.

Zero Tolerance: The Effects of Population Relocation and Ethnic Cleansing

In the context of nation-state building, the redefinition of national borders after World War I and the atrocities of World War II, numerous measures were taken in Europe with the objective of creating homogeneous populations. Today we would speak of "ethnic cleansing". Ethnic cleansing as an instrument of nation-state building was employed in Europe in connection with the events on the Balkans and the Caucasus again at the beginning of the 1990s. The term "ethnic cleansing" relates not only to the deportation and forced relocation but also to the murder of members of linguistic, religious or ethnic minorities (→ What is a "Minority"?). The practice of ethnic homogenisation of a territory through forced displacement and deportation often verges on genocide where the murder of the group is intended in whole or in part. The massacre of Srebrenica during the war in Bosnia and Herzegovina, for example, which was the subject of a case at the International Criminal Tribunal for the former Yugoslavia against Radovan Karadžic, the former President of Republika Srpska, has been classified as genocide. In addition to genocide and relocation by forced displacement and deportation in the course or as a result of acts of war, there have also been repeated cases of population exchange on the basis of treaties established between two countries. Besides the many cases of denaturalisation and expropriation without any compensation, victims were often denied all future rights of return or restitution.

Genocide against the Armenians during World War I

At the beginning of World War I, the Christian minority of the Armenians in Anatolia numbered between 1.5 and 2 million and accounted for about ten percent of the population. The Ottoman Empire, which also fought with Germany and Austria-Hungary against

Russia, accused the Armenians of collaboration with the latter. Volunteer Armenian units did in fact fight alongside the Russians in the hope of achieving independence for Armenia. The Turkish government responded by holding the Armenian civil population collectively responsible and enacted its Law of Deportation in 1915. The army was ordered to expel the Armenians and to nip all resistance in the bud. The massacre of the Armenians started in the central collection camps. These massacres and the death marches across the mountains and into the territory of today's Syria - with no resettlement measures provided for - led to the death of more than a million Armenians. After World War I, in response to pressure exerted by the Allies, the main perpetrators in the genocide were tried before a military court and seventeen death sentences were passed, three of which were carried out. In 1923, however, the remaining convicted Turks were released in a general amnesty.

Following the genocide, only about 100,000 Armenians were left in Turkey at the beginning of the 1920s. Most of the survivors fled to Russia and above all via the Middle East to South America, the USA and Australia. In addition to the Christian religion and their language, the genocide is part of the identity of the Armenians now living in over a hundred different countries. In spite of the historic and identity-defining importance of the events, decades of effort by the Armenian diaspora to have the genocide officially recognised have largely failed. Since 1965 only 21 countries, including Greece, Italy, Canada, Russia, Switzerland and Cyprus, have officially classified the deportation and massacre of the Armenians between 1915 and 1917 as genocide within the terms of the 1948 Genocide Convention. The United Kingdom has condemned the crimes but does not consider the criteria to have been met for classification as genocide in accordance with the UN convention. In 2005 Germany called upon Turkey to acknowledge its historical responsibility for the massacre of the Armenians. In France, where half a million Armenians live, a bill was approved by the First Chamber in 2006 to make denial of the Armenian genocide a criminal offence punishable by up to a year's imprisonment and a fine of € 45,000, but the bill then failed to pass the Senate. On the basis of a new EU legal instrument,

"public condoning, denying or grossly trivialising crimes of genocide" was made punishable under national criminal law as of 28 November 2010 (→ Xenophobia). At the political level, the European Parliament decided in 1987 and again in 2001 that recognition of the Armenian genocide should be made a precondition of Turkish accession to the EU (→ Organisations).

It was with mixed feelings that the Armenian diaspora responded to the Turkish-Armenian Protocol, which was signed in October 2009 but still has to be approved by the two national parliaments in Ankara and Yerevan. In 1993 the countries broke off diplomatic relations because of the Nagorno-Karabakh conflict (territorial dispute between Armenia and Azerbaijan) and Turkey's refusal to recognise the massacre of the Armenians during World War I. The Protocol provides for the appointment of a commission of historians, who are to be given access to the archives. The majority of the Armenian diaspora, however, seems to reject the proposal as a mockery of the historical facts and a delaying tactic on the part of Turkey. Moreover, the focus of the Protocol is on improvements to Turkish-Armenian relations and cooperation in the fields of energy, transport, communications, tourism and education, which many representatives of the Armenian diaspora see as a betrayal on the part of the Armenian government in the interest of purely economic advantage.

Relocation on the basis of bilateral treaties: Examples from Greece and Turkey to Austria

Ethnic cleansing has often been based on relocation treaties signed at the end of a war or military conflict in order to consolidate redrawn borders. The objective of such measures is normally ethnic homogenisation of the territory of the state so as to prevent potential tensions arising with neighbouring states. In the interwar period, this mode of returning a minority to its parent country was seen as an act of self-determination (→ Autonomies); integration of the minority in the parent country meant that its members could

exercise all their rights as part of the majority. Such relocation treaties are only legal, however, where the people concerned are able to take the decision of their own free will.

The Treaty of Lausanne concluded between the Greeks and the Turks in 1923 provided for a major compulsory population exchange involving 1.250,000 Greeks in Turkey and 400,000 Turks in Greece. This mutual relocation was performed under the auspices of the League of Nations and was considered a suitable and humane solution for minority problems up to the end of the 1930s. As a matter of principle, the right to property must be respected with any form of relocation, for example through the allocation of equivalent property in the new area of settlement or at least adequate compensation. In the Greco-Turkish relocation agreement, however, all claims were settled in the form of a lump sum.

The situation was similar in the case of the 1919 Greco-Bulgarian Convention respecting Reciprocal Emigration, in which the population exchange was theoretically voluntary. In reality, however, the affected population groups were under strong pressure to opt for their parent country. In the course of this relocation about 100,000 Bulgarians and 35,000 Greeks had to leave their homes. The compensation due to be paid in the parent country remained an empty promise in most cases. For those individuals who rejected relocation, protocols were signed by Greece and Bulgaria relating to protection for their respective minorities, but the protocols never entered into force and the remaining minorities were ultimately deprived of all rights.

South Tyrol, which was officially annexed by Italy in 1920 following the collapse of the Austro-Hungarian Empire, had an almost one hundred percent German-speaking and Ladin population at the time. When the Fascists seized power in Italy, Italianisation measures were introduced including a ban on the use of the German language in schools and public life and the Italianisation of German surnames and place names. Mussolini's policy of mass resettlement for Italians in the new industrial areas of South Tyrol (the so-called

Death March for the South Tyroleans) was designed to create a new Italian majority there. Finally, in 1939, Hitler and Mussolini concluded the Option Agreement, under which South Tyroleans had to choose between emigrating from South Tyrol and receiving German citizenship in exchange or retaining Italian citizenship and completely relinquishing their German identity. In addition, the message in the official propaganda was that the "stay-at-homes" would be resettled in the south of Italy while the "optants" would be assigned a suitable area for collective settlement in the German Reich. Over 200,000 of the German-speaking and Ladin population opted to leave (about 86%), but the process of relocation was interrupted by the events of World War II and only one third of the optants actually left. A quarter of the approximately 75,000 emigrants returned to South Tyrol after the war and regained their right to nationality through the 1948 Optants Decree. After World War II, with help from the international community, Austria and Italy succeeded in negotiating a minority protection regime based on equal rights for all three of South Tyrol's linguistic groups and a peaceful settlement of the ethnic conflict (→ Autonomies).

Ethnic cleansing on Cyprus and its consequences

In 1960 Cyprus gained independence from the United Kingdom. Only three years later, in 1963, conflict broke out between the Greek and Turkish ethnic groups. The Greek Cypriots were unhappy because they felt the quotas reserved for the Turks in the public administration system were excessive (→ Quota and Proportional Systems). The situation escalated with a planned change to the constitution that would have benefited the Greek population. Fighting broke out and, with Nicosia almost in a state of civil war, the UN sent a peacekeeping force before the conflict could spread to Greece and Turkey.

In 1974 Greek soldiers stationed on the island overthrew the democratically elected President of Cyprus. The goal of the coup d'état, which was steered by Athens, was the forcible annexation of

Cyprus. Turkey thereupon intervened and occupied more than a third of the northern part of the island. The conflict led to the forced displacement and relocation of some 200,000 Cypriots. 160,000 Greek Cypriots fled from the north to the south, and 40,000 Turkish Cypriots moved from the south to the north. While the government in the Greek area claimed the authority to represent the whole island, the Turks proclaimed the Turkish Republic of Northern Cyprus in 1983, which has only been recognised by Turkey. The resettlement of mainland Turks and the presence of Turkish soldiers in the north widened the rift between north and south still further. Until its accession to the EU in 2004, the ethnically cleansed island was divided into two hermetically sealed off areas separated by the 180 km long Green-Line, i.e. a buffer zone under the control of the UN.

In 1999 the UN renewed its diplomatic efforts to find a solution for the reunification of Cyprus in time for the island republic's accession to the EU. The Annan Plan presented in November 2002 (UN proposal named after the then Secretary General Kofi Annan) provided for a confederation on the Swiss model with a Turkish and a Greek state, each enjoying a considerable degree of autonomy (→ Grisons). Under the plan, the Turkish area would have had to be reduced from 37 percent to 29 percent of the total, and 50,000 Turks would have had to be resettled, while over 100,000 Greeks would have been able to return, on a step-by-step basis, to the villages they had lived in prior to the division of the island.

The majority of the population in the Turkish part of Cyprus and also the Turkish government agreed to the reunification program, but in a referendum held just before Cyprus' accession to the EU the Greeks said "no", and Cyprus joined the EU as a divided country in May 2004. Since then the EU has been living with the fiction of a unified Cypriot island state, although it is clear to everyone that one third of its territory is not under the control of this EU Member State. International recognition is still lacking for the Turkish part of Cyprus, where EU law cannot be applied. In the spring of 2008 the two sides agreed to resume negotiations on reunification of the

two parts of the island, but so far - in spite of pressures brought to bear by the EU and the international community - little concrete progress has been made.

The Beneš decrees and AVNOJ resolutions and their consequences

The Beneš Decrees - named after the then Czechoslovak President Edvard Beneš - were drafted by the Czechoslovak government in exile from 1940 to 1945 and adopted by the provisional national assembly in March 1946. The resulting mass deportation of the German-speaking population from Sudetenland mainly took place in 1945 - 1947. Some 2.5 million Germans and members of the Hungarian minority had their property confiscated and were expelled. Germans and Hungarians, who were collectively accused of collaboration with the Nazi regime in the decrees, lost Czechoslovak citizenship and all property rights. The Beneš decrees are still in force today and remain a bone of contention in politics and the media comment between Germany and Austria and their Sudeten Germans and their associations on the one hand and the Czech Republic and Slovakia on the other. In 2009 the Czech President Vaclav Klaus spent a number of months blocking the Lisbon Treaty, which for him was the grave of Czech sovereignty. At the European level he defended his resistance to the treaty with the argument that the EU Charter of Fundamental Rights would cause the Czech courts to be swamped with claims for compensation for the consequences of the Beneš decrees. In fact the entry into force of the Charter of Fundamental Rights did not change the prior legal situation and most certainly cannot lead to the readmission of statute-barred claims. It required a ruling by the Czech Constitutional Court to the effect that the Lisbon Treaty was not in breach of the country's constitution to finally persuade President Klaus to sign the treaty on 3 November 2009 (→ The Lisbon Treaty) - but only after having first negotiated a cosmetic Beneš clause.

In 1943, the Anti-Fascist Council of the People's Liberation of Yugoslavia, also known by the Yugoslav abbreviation AVNOJ, adopted the following resolution: "The entire property of the German Reich and its citizens ... and the entire property of persons belonging to the German people ... will become state property." This was confirmed by Tito in 1944 and incorporated in the law of the Republic of Yugoslavia in 1945. Since relocation of ethnic Germans had already been the policy of the German Reich from 1943-1945, the AVNOJ resolutions primarily affected those Danube Swabians still living in Vojvodina at the end of the war following terrible persecution, and a few thousand remaining Lower Styrians and Gottscheer. On the basis of the 1955 State Treaty concluded between Austria and the Allies, Austrian property on Yugoslav territory was assigned to Yugoslavia in lieu of reparations. The confiscated property thus passed into Yugoslavian state ownership, and no compensation has been paid to this date, especially since the Republic of Slovenia, in accordance with the provisions of the 1991 Denationalisation Act, excludes the restitution of property nationalised by way of indemnification between 1945 and 1963.

Relocation and ethnic cleansing were often employed in order to create a homogeneous population in support of nation-state building and to avoid collective outbreaks of violence or even genocide. Population exchange treaties with no right of choice for the people affected are nevertheless in violation of international law as they infringe elementary human rights and the right of (internal) self-determination. Even in cases where an element of choice was formally conceded, however, the individual often had little scope to escape the collective decision of the group, so powerful were the propaganda and coercion on both sides. Examples from the recent past like the war on the Balkans show that with regard to mass murder or genocide the distinction is often blurred.

Even when not clearly in violation of international law, ethnic cleansing does not necessarily bring pacification to a territory,

as the recent examples of Bosnia-Herzegovina and Cyprus show. In addition, agreed return settlement measures, restitution or compensation often never materialise or are explicitly excluded unilaterally.

ANNEX

The following three figures - based on tables and pie charts in a recent FRA report* - have been updated and reflect the status as of September 2012. They show that the majority of the European Union Member States are bound by minority-specific standards which have been developed under the Council of Europe and which are regularly monitored by expert bodies. These international mechanisms are described in the chapter "Organisations: the roles of the OSCE, the Council of Europe and the EU".

* European Union Agency for Fundamental Rights, Respect for and protection of persons belonging to minorities 2008-2010, Luxembourg 2011, available at http://fra.europa.eu/.

Figure 1: International obligations of the EU Member States under the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM)

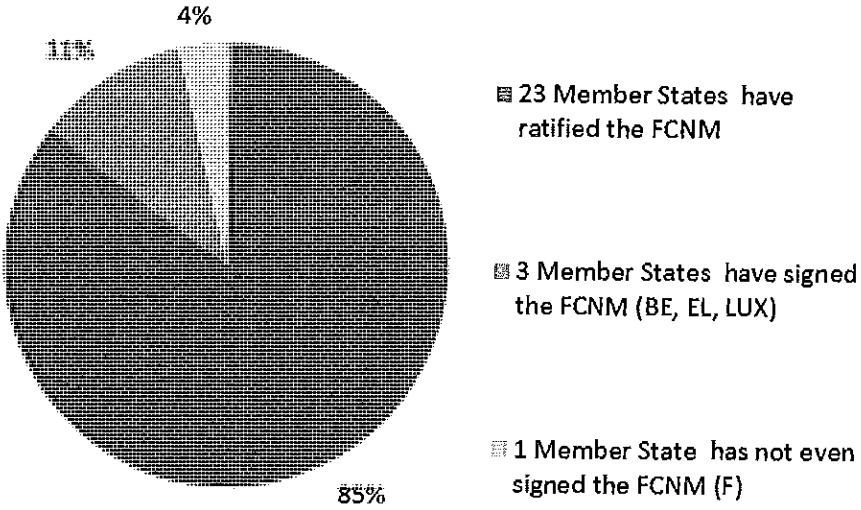


Figure 2: International obligations of the EU Member States under the Council of Europe's European Charter for Regional or Minority Languages (ECRML)

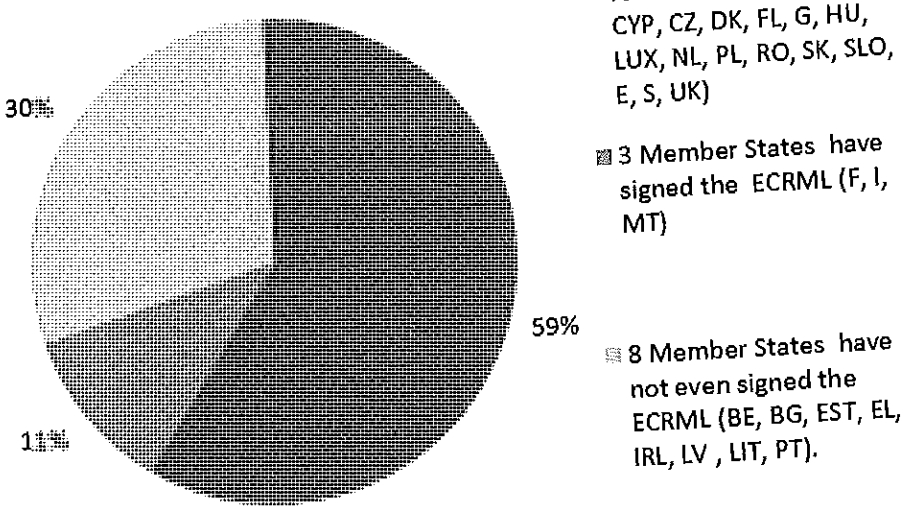


Table: Most recent opinions on the EU Member States adopted by the respective European monitoring bodies established under the FCNM, the ECRLM and the ECRI (next to the date of adoption the respective monitoring cycle is indicated)

Country	FCNM Framework Convention for Protection of National Minorities		ECRML European Charter for Regional or Minority Langueges		ECRI European Commission against Racism and Intolerance	
	Date of adoption of the Advisory Committee Opinion		Date of adoption of most recent Committee of Experts' evaluation report		Date of adoption of the ECRI report	
Austria	28/06/2011	3nd	10/09/2008	2nd	15/12/2009	4th
Belgium	NR		NS		19/12/2008	4th
Bulgaria	18/03/2010	2nd	NS		20/06/2008	4th
Cyprus	19/03/2010	3rd	19/09/2011	3rd	23/11/2011	4th
Czech Republic	01/07/2011	3rd	23/03/2012*	2nd	02/04/2009	4th
Denmark	31/03/2011	3rd	28/09/2010	3rd	23/03/2012	4th
Estonia	01/04/2011	3rd	NS		15/12/2009	4th
Finland	14/10/2010	3rd	21/09/2011	4th	24/05/2007	3rd
France	NS		NR		29/04/2010	4th
Germany	27/05/2010	3rd	02/12/2010	4th	19/12/2008	4th
Greece	NR		NS		02/04/2009	4th
Hungary	18/03/2010	3rd	11/09/2009	4th	20/06/2008	4th
Ireland	06/10/2006	2nd	NS		15/12/2006	3rd
Italy	15/10/2010	3rd	NR		06/12/2011	4th
Latvia	09/10/2008	1st	NS		09/12/2011	4th
Lithuania	28/02/2008	2nd	NS		22/06/2011	4th
Luxembourg	NR		03/06/2010	2nd	08/12/2011	4th
Malta	22/11/2005	2nd	NR		14/12/2007	3rd
Netherlands	25/06/2009	1st	22/03/2012*	4th	12/02/2008	3rd
Poland	20/03/2009	2nd	05/05/2011	1st	28/04/2010	4th
Portugal	05/11/2009	2nd	NS		30/06/2006	3rd
Romania	21/03/2012*	3rd	30/11/2011	1st	24/06/2005	3rd
Slovakia	28/05/2010	3rd	24/04/2009	2nd	19/12/2008	4th
Slovenia	31/03/2011	3rd	20/11/2009	3rd	30/06/2006	3rd
Spain	22/03/2012*	3rd	02/12/2011*	3rd	07/12/2012	4th
Sweden	23/05/2012*	3rd	02/05/2011	4th	17/12/2004	3rd
United Kingdom	30/06/2011	3rd	19/11/2009	3rd	17/12/2009	4th

NR = signed but not ratified
NS = not signed
* FCNM / CRML - still restricted (unpublished)

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