

## **BOOK REVIEW**

**EU Law, Minorities and Enlargement,  
by Kyriaki Topidi, Antwerp- Oxford-  
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This book is an attempt at examining how the EU enlargement process has been taking account of minority issues against the background of EU law and policy. Unlike in many international organizations, the process of admitting new member states into the European Union has been far from a purely diplomatic process of accepting application for membership from a candidate state. Instead, it has become a thorny issue and a long process of assessing the quality criteria for membership. A set of elaborate admission criteria, adopted at the Copenhagen European Council in 1993, embraced a list of economic and political requirements. Among the latter, the European Council laid down the following: ‘stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities’. Quite surprisingly, respect for and the protection of minorities was thus singled out among political criteria in isolation from human rights although minority rights are regarded as being an integral part of human rights. It means that the minority protection requirement was perceived as a particularly significant criterion and more broadly than solely in terms of human rights. In practice, the assessment of admissibility requirements has evolved to generate one of the strongest monitoring mechanisms in the field of human rights and minority issues.

It is in this context that one should discern the relevance of the author’s departing assumptions and objectives. Her book attracts even more attention because up until now only a few focused contributions have been written on the operation and actual impact of admissibility criteria on the candidate country’s human rights record. However, the book under review had yet another ambition – to identify the status of minority protection beyond the enlargement process, that is to show the possible and most prospective avenues for making the EU competent in and busy with minority protection after admission. This ambition has been successfully fulfilled.

For attaining her objectives Topidi has designed the structure of the book in seven chapters arranged in three broad parts. The first part is devoted to theoretical issues on minority rights and discusses such questions as the conceptual background of minority rights in the European Union (chapter 1) and minorities in the context of enlargement and EU law (chapter 2). Part two of the book focuses on minority conditionality and law-making in candidate states and examines the following clusters of issues: three legal paths for minority protection in the EU (chapter 3), walking the paths of citizenship, diversity and fundamental rights: questions and limitations (chapter 4), and country case-studies in Slovakia (chapter 5) and Latvia (chapter 6). Part three on ‘EU minority rights: a system in formation’ concludes the book in an extensive chapter 7 by asking a non-rhetorical question – ‘[T]owards a more consistent approach to minority rights in the EU?’

The book’s structure appears to be logical and coherent. Methodologically the structure adequately reflects the author’s conceptual plan from introductory assumptions through analytical parts up to the final conclusions (hypothesis- analysis-synthesis). It needs to be appreciated that she has resorted to a methodology which bridges the demands of theory and practice by devoting part of the analytical examination to empirical country case-studies. Her decision to examine country case-studies can perhaps be criticized for the selection of only two states (Slovakia and Latvia) and overlooking others, such as Hungary or the Czech Republic, which were within the temporal scope of her study. One must moreover admit that the selected countries belonged to the strongest challenges facing EU enlargement in the context of admission requirements concerning minority protection. Thus her choice has been well substantiated, even if it seemed somewhat narrow. There is no ample evidence that Topidi’s final conclusions on country impact would have been different if she would have examined some more country case-studies.

The book is based on Topidi’s doctoral dissertation. It accurately follows all the methodological and substantive

scholarly requirements. Her book is a diligent and meticulous study pervaded by a clear conceptual plan. She has examined a substantial amount of domestic and international legislation, scholarly literature, documentation and case law. Against such a broad background Topidi carried out innovative and valuable research which has led to a thorough examination of minority rights in the European Union and how they can be developed and pursued.

In the part on theoretical issues concerning minority rights Topidi has provided a profound overview of such major questions as the definition of the notion of 'minority', a typology of minority groups and rights, their content and the distinction between individual and collective dimensions of minority rights (chapters 1 and 2). On the whole, the picture of the issues reviewed reflects their actual status quo. However, typical of such chapters are generalizations or abstract statements which somewhat distort this picture.

One such example is the overly categorical statement that the European Convention on Human Rights does not protect minority rights (at p. 25). Topidi then provides examples from the jurisprudence of the European Court on the direct and indirect protection of minority rights. Thus what she actually had in mind is an absence in the Convention of any explicit right for persons belonging to minorities. Over several decades the Court has developed a body of minority-related jurisprudence and through most of the individual human rights the Convention provides for and effectively protects minorities (e.g. freedom of association, assembly, expression or rights to education, property and participation in elections). Advocates of developing minority rights jurisprudence have a right to be disappointed by the European Court but a regular and thorough assessment of its case law (e.g. by G. Gilbert) demonstrates that the net result is not that pessimistic. Topidi's view of the European Convention's contribution to the protection of minority rights contrasts with her overoptimistic appraisal of the jurisprudence of the Human Rights Committee under the ICCPR. Since its entry into force in 1976 the Committee has produced minority rights-related case law which is neither substantial nor legally impressive and largely stems from cases on indigenous populations.

Further, there is wide agreement that the Framework Convention for the Protection of National Minorities (FCNM) is legally binding, but is nevertheless a weak instrument with regard to its content and international supervision (at pp. 29-31). However, this conclusion seems to overlook the progress which has been made in clarifying the content of sometimes vaguely formulated provisions. The jurisprudence is emerging not only in specific country situations but also as a body of generally applicable interpretations developed by two extensive commentaries of the Advisory Committee on the minority rights to education and participation in public life. Yet another clarification has been invited by Topidi's qualification of the binding legal rules of the FCNM in contrast to the OSCE's well-developed 'soft law'. The problem with such distinctions is that they confuse generic categories, in this case legal versus political rules. The OSCE's commitments were not even intended to become legal rules, but they are binding as political standards. As such, their enforcement can sometimes be more effective than legally binding provisions.

In Part two Topidi distinguished three legal paths for minority protection in the EU which have subsequently served as dimensions for the further examination of both European law and country case-studies. They have been perceived as a potential host legal setting for minority rights: citizenship rights, diversity rights and fundamental rights (pp. 114 and 147). Therefore they have first been characterized and then applied with regard to Slovakia and Latvia. EU pressure on candidate states, stronger in the case of Slovakia than Latvia, improved minority rights in law and practice but left crucial areas as programmes for future action. An interesting conclusion drawn by Topidi is that in many instances the EU, in the absence of its own minority

rules, had to rely on minority recipes from the standards and activities of the OSCE. This is why the enlargement process has naturally strengthened a search by the EU for its own standards, models and programmes in the field of national minorities.

Part three of the book is more than a verification of analytical research and it also tends to suggest a choice for further accommodating minority rights in the law and policy of the European Union. Topidi has designed two broad and completely opposing scenarios: a minimalist one operating on the assumption of maintaining the current status quo in minority protection and a maximalist one advocating the creative coexistence of all three proposed frameworks (see above). It seems that the latter scenario should not be termed 'maximalist' because it continues to consider minority rights indirectly and not as part of the possible new empowerment of the European Union.


Before answering the question of which of the two positions is favoured by her, Topidi characterizes the impact of the enlargement process on developing an EU approach to minority rights. Two case-studies she has examined have shown that the Copenhagen criteria formed a 'loose framework of action' which had to refer to minority standards elaborated in the OSCE and the Council of Europe. Although Topidi notes the positive symptoms of the influence exerted by the Copenhagen minority criterion on the candidate states, she eventually submits that this 'did not result in a profound transformation of minority protection in Central and Eastern Europe' (p. 213).

Such a result can be explained by the effects of three systemic deficiencies in the formulation of EU minority rights standards. Firstly, this situation has been caused by the 'unclear articulation of EU minority standards', with the exception of the EU Race Directive. One could not have expected more considering that some EU members have not developed satisfactory legislation and practice comparable to that required of candidate states. Another systemic deficiency is the low prioritization of minority rights on the EU legal agenda. The third symptom is the uncertain value of the minority criterion as a continuing condition for EU membership. Significantly, for the first time the Commission envisaged in its accession reports on Bulgaria and Romania a continuation of the monitoring in some areas but eventually minority protection was not found among the topics for post-accession enhanced monitoring. Topidi condemns that the EU 'is not interested in getting involved in the unresolved ethnic tensions of Member States' (p. 218). Within the existing framework she perceives the implementation of the anti-discrimination Race and Employment Directives as a remedy for missing direct links to minority rights in the EU legislation.

The maximalist scenario largely builds upon the weaknesses of its minimalist counterpart. Based on the dominance of the fundamental rights approach for the protection of the rights of minorities it is proposed to be enhanced by such factors as the synergy of the citizenship and pro-diversity approaches. This is already discernible in the steps taken or planned to be taken by the EU towards strengthening the applicability of fundamental rights for third-country residents. But it is only a part of the problem since this policy favours 'new' minorities and does not improve the situation of 'old' minority communities. Topidi's optimism also stems from the evolution of governance like the 'softer' law approach to EU policy-making. A good illustration of this approach is the Open Method of Coordination (OMC) presented by the Lisbon Presidency Conclusions. The possible use of OMC in areas of fundamental rights and minority rights has an opportunity to prove its effectiveness and to balance diverging approaches and interests. Consequently, Topidi underlies the validity of all component parts of two scenarios which need improvement, better feedback and the further development of measures and mechanisms.

The book by Dr. Kyriaki Topidi is a remarkably successful study in developing a theoretical framework for a better accommodation of the rights of minorities within the European Union. The few polemical points raised above cannot question the great value, the usefulness and the high standard of the professional quality of the content and methodology of the book. It shows, firstly, what has already been achieved in pursuing minority rights in the European Union but also provides for some well substantiated answers to crucial questions. The book designs realistic options but equally encourages further conceptual research and debate. This is particularly important because the stage which we have arrived at is characterized by Topidi, referring to a wise quote from Antonio Gramsci, as the one which remains between ‘the pessimism of reason and the optimism of the will’.





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Security and Human Rights (formerly Helsinki Monitor) is a journal devoted to issues inspired by the work and principles of the Organization for Security and Cooperation in Europe (OSCE). It looks at the challenge of building security through cooperation across the northern hemisphere, from Vancouver to Vladivostok, as well as how this experience can be applied to other parts of the world. It aims to stimulate thinking on the question of protecting and promoting human rights in a world faced with serious threats to security.

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