

# The Thorny Question of Minority Rights in Euro-Mediterranean Relations

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The issue of minority rights has cropped up in Euro-Mediterranean relations relatively recently. In fact, this problem had, in the end, been discarded from the November 1995 Barcelona Declaration, demonstrating to what point the issue is sensitive and delicate, not only at the Mediterranean Partner Countries (MPC) level but also in the European Union. The issue was, however, taken into consideration in the European Neighbourhood Policy (ENP), the latter being based directly on the pre-accession process, although there is no denying that the approach followed still suffers from a lack of coherence.

We have already had the occasion of effecting a systematic analysis of the stipulations insofar as specifically minority rights in the ENP or the pre-accession strategy. One could thus refer to this study, which we consider an *acquis*,<sup>1</sup> for the present analysis, which essentially focuses on the developments taking place over the past two years.

In fact, the IEMed Yearbook format is not the right place for a detailed technical analysis, but it is appropriate for an analysis that allows light to be shed on a major strategic issue and, we hope, sparks a serious debate on a topic that has largely remained taboo in Euro-Mediterranean relations, after the fashion of issues such as corrup-

tion (see the criteria for “deep and sustainable democracy” below, however). Indeed, it is time to stop practicing the policy of the ostrich as large-scale inter-ethnic and inter-religious tensions emerge.

## The Evolution of European Legislation and the Reticence of Certain Member States

Without entering into a complex analysis, we should, however, consider a certain number of factors. Firstly, all the types of minorities are of course present in the Mediterranean Region (cultural, ethnic, foreign, national, linguistic, religious, etc.). One of the major problems is that, on the international law level, there is no legally binding definition yet of what the notion of “minority” includes.

Secondly, and also on the legal level, we should stress that the Treaty of Lisbon, which emerged from a draft constitutional treaty, constitutes a major step forward. Indeed, according to Article 2 of the TEU: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, *including the rights of persons belonging to minorities*. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”<sup>2</sup> The Charter of Fundamental Rights, which, as you will recall, was an integral part of the Constitutional Treaty and to which the Lisbon Treaty directly refers, indicating that it has the same legal value as a

<sup>1</sup> See Erwan LANNON, Anneleen VAN BOSSUYT, Peter VAN ELSUWEGE: “Minorities in the Euro-Mediterranean Area: The Prerequisites for Launching a Fruitful Intercultural Dialogue”, in *Intercultural Dialogue and Citizenship – Translating Values into Action – A Common Project for Europeans and their Partners*, L. BEKEMANS et al. (eds.), Marsilio, Venice, 2007, pp. 345-402.

<sup>2</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, OJ EU No. C 83 of 30 March 2010. Italics added.

treaty,<sup>3</sup> should also be considered. According to Article 21 on Non-Discrimination: “1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, *membership [in] a national minority*, property, birth, disability, age or sexual orientation shall be prohibited.” Article 22, on Cultural, Religious and Linguistic Diversity, stipulates that the European Union “shall respect cultural, religious and linguistic diversity.”<sup>4</sup> The European Commission has long hidden behind the argument of human rights protection, which supposedly encompasses the protection of minorities, but it must be understood that minority rights are *specific* rights. This matter is thus unresolved, for certain Member States, for instance France,<sup>5</sup> remain particularly impervious to the issue of respect for minority rights, in particular those of national minorities.

### Scope and Complexity of the Minority Issue in Mediterranean Partner Countries and Beyond the Immediate EU Neighbourhood

The current tension between Shiites and Sunnis on the Arabian Peninsula (in particular Saudi Arabia, Bahrain and the United Arab Emirates) but also in Syria and Lebanon as well as in Iraq, or between Muslims and Coptic Christians in Egypt demonstrate that the issue of minorities, in particular religious ones, is currently a matter of serious concern. We should also consider the Berber, Druze, Kurdish or Sahrawi minorities, not to mention less known minorities such as Arab Israelis or certain religious communities. The list is endless and one can see that this issue is very important and will become increasingly more so. Intolerance and discrimination

benefit extremist movements or certain political parties that make it their stock in trade, whether in the MPCs or in EU Member States.<sup>6</sup> These issues have always been eminently political but today are tending to take on a truly geopolitical dimension, for they are often transnational problems. Globalisation makes it increasingly difficult to ignore discriminatory treatment of communities that are at times highly isolated, whether politically or geographically.

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In any case, these issues should be addressed with the greatest care, for one cannot dissociate the issue of minorities from that of identities, nationalities and multiple citizenships.<sup>7</sup> Certain balances can only be called into question gradually and in a spirit of dialogue and mutual understanding, both on the level of the European Union and the MPCs. The wave of revolts and revolutions breaking on the Arab world today are and will be catalysts of inter-ethnic and inter-religious tensions. Events in Libya, Egypt and Syria are unfortunately but the first warning signs of very deep tension or even open conflict that could rapidly spread to other regions. The question of the Tuaregs, who had found protection in Muammar Gaddafi’s Libya and some radical groups of which have become allied to the jihadis present in the Sahel area to conquer part of Mali, Lebanon’s conta-

<sup>3</sup> According to Article 6 § 1 of the TEU: “1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties. The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.”

<sup>4</sup> Charter of Fundamental Rights of the European Union, OJ EU C 83, 30 March 2010, p. 389. Italics added.

<sup>5</sup> Recall that France has not signed the Council of Europe’s Framework Convention for the Protection of National Minorities. See: <http://conventions.coe.int/Treaty/en/Treaties/html/157.htm>.

Also noteworthy is a cable by the US Embassy in Paris published by Wikileaks stating that “Although there is some evidence that France’s Muslim minorities are better integrated than their counterparts elsewhere in Europe, the French have a well-known problem with discrimination against minorities,” cable 07PARIS306, “Engagement with Muslim Communities – France,” <http://wikileaks.ch/cable/2007/01/07PARIS306.html#>.

<sup>6</sup> One can also mention that a Front national television spot, during the French presidential campaign, was exclusively dedicated to the issue of halal meat. The spot can still be viewed on the party’s website: [www.fn92100.com/article-clip-de-campagne-de-marine-le-pen-sur-le-halal-103433708.html](http://www.fn92100.com/article-clip-de-campagne-de-marine-le-pen-sur-le-halal-103433708.html). The issue of the Roma people in Hungary, Italy or France (among other countries) likewise remains a matter of concern. In this regard, see the Communication from the European Commission, “National Roma Integration Strategies: A First Step in the Implementation of the EU Framework,” COM(2012) 226 final, Brussels, 21 May 2012.

<sup>7</sup> National, European, residential.

gion by the Syrian conflict or the manipulation of the conflict between Turkey and the PKK are but a few examples from among many.

### **The New “Deep and Sustainable Democracy” Criteria as Instituted in the Revised European Neighbourhood Policy of May 2011**

In the Joint Communication of the European Commission and the High Representative, “A New Response to a Changing Neighbourhood,” containing elements for a revision of the ENP, the issue of minorities is explicitly mentioned only once. The document stipulates that: “Civil society plays a pivotal role in advancing women’s rights, greater social justice and *respect for minorities* [...].The EU will support this greater political role for non-state actors through a partnership with societies, helping [civil society organisations or] CSOs to develop their advocacy capacity, their ability to monitor reform and their role in implementing and evaluating EU programmes. In-country EU Delegations will seek to bring partner countries’ governments and civil society together in a structured dialogue on key areas of our co-operation. EU funding for such actions could be delivered through the establishment of a dedicated Civil Society Facility for the neighbourhood.”<sup>8</sup> One of the fundamental aspects of this revision of the ENP is the introduction of what is now known as the new criteria for building “deep and sustainable democracy,” which partially echo the Copenhagen Criteria. The Communication effectively stipulates that “several elements are common to building deep and sustainable democracy and require a strong and lasting commitment on the part of governments. They include:

- Free and fair elections;
- Freedom of association, expression and assembly and a free press and media;
- The rule of law administered by an independent judiciary and right to a fair trial;
- Fighting against corruption;
- Security and law enforcement sector reform (including the police) and the establishment of democratic control over armed and security forces.

[...] They are the main benchmarks against which the EU will assess progress and adapt levels of support.”<sup>9</sup>

It should be kept in mind that the Copenhagen Criteria state that candidate countries must have achieved the following in order to gain access to the EU:

- i) Stability of institutions guaranteeing democracy, the rule of law, human rights and *respect for and protection of minorities*;
- ii) The existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union;
- iii) The ability to take on the obligations of membership including adherence to the aims of political, economic & monetary union.

Hence the absence of any reference to “respect for and protection of minorities” in the criteria for “deep and sustainable democracy” is striking, since respect for the specific rights of minorities is generally considered one of the best indicators of respect for human rights in general. In other words, I deem a “Mediterraneanisation” of the Copenhagen Criteria would be appropriate.

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This does not mean, however, that the European Commission and the High Representative have not taken this issue into account in their evaluations. Indeed, as the Communication from May 2012 entitled “Delivering on a New European Neighbourhood Policy” indicates: “There is increased respect for minority rights in Armenia and Morocco. However, torture and degrading and in-

<sup>8</sup> Joint Communication of the European Commission and the High Representative on “A New [EU] Response to a Changing Neighbourhood,” Brussels, 25 May 2011 COM(2011) 303, p. 5. Italics added.

<sup>9</sup> COM(2011) 303, op. cit. p. 4.

humane treatment continue to be perpetrated by security forces in a number of countries. Similarly, discrimination on grounds of religion or belief, ethnic origin and sexual orientation remains widespread and trafficking in human beings continues to be a serious problem in many countries."<sup>10</sup> This considered, a global strategy in this sphere should quickly be implemented, though we are still quite far from achieving this.

### **It is high time to launch a serene debate on these issues, both on the EU level and within the framework of Euro-Mediterranean relations**

The preceding communication, dated May 2011, also indicates that there should be "a strong commitment to promoting gender equality, in line

with the major role once again played by women in recent events in the South, fighting against all forms of discrimination, respecting freedom of religion and protecting the rights of refugees and beneficiaries of international protection. Reinforced human rights dialogues will allow monitoring of commitments in this area, including addressing cases of human rights violations. Boosting cooperation with the Council of Europe could also help in promoting compliance."<sup>11</sup> It is thus interesting to note also that we are witnessing a certain "Europeanisation" of Euro-Mediterranean relations.

That leaves but one conclusion: it is high time to launch a serene debate on these issues, both on the EU level and within the framework of Euro-Mediterranean relations. It is a matter that should be addressed with the utmost seriousness and first and foremost in the academic sphere; the politicisation of such an issue represents a major risk that we cannot afford to take in such a difficult context.

<sup>10</sup> Joint Communication of the European Commission and the High Representative on "Delivering on a New European Neighbourhood Policy," Brussels, 15 May 2012, JOIN(2012) 14 final, pp. 8-9.

<sup>11</sup> COM(2011) 303, op. cit. p. 6. One can also refer to my above-mentioned analysis that systematically refers to issues associated with minority rights appearing in ENP documents.