



# ➤ „European Integration and its Effects on Minority Protection“ – Europäische Integration und ihre Auswirkungen auf den Minderheitenschutz

Im Auftrag des Bundesministeriums für Bildung, Wissenschaft und Kultur im Rahmen des Programms „new orientations for democracy in europe“ – >node<

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## 1. „Who“ are „minorities“ in the Western Balkans?

This is not the place here to re-assess the „recent history“ of the Western Balkans, i.e. actors and processes which led to the four wars in the 1990ies in order to determine the historic „truth.“ With regard to the interpretation whether this wars have been „ethnic conflicts“ and what are the needs to overcome the effects of these conflicts in terms of re-construction and reconciliation through state- and nation-building, the overwhelming majority of social scientists does no longer follow primordial theories going hand in hand with historic theses of „ancient hatreds“, but follow the constructivist-instrumental approach. Ethnic conflicts do not come into being because of biological or cultural differences as such, but they are made by ethnic entrepreneurs. Seen from this perspective, the wars in the Balkans were not „natural“ consequences of the dissolution of the former Socialist Federal Republic of Yugoslavia which could not have been prevented. The historic studies in the framework of this project proved the constructivist-instrumental approach once again in a case study on the beginning of the conflict in Croatia about the so-called Srpska Krajina as well as the coincidence of both continuities and discontinuities of structures and patterns of conflict comparing the Serb-Albanian dichotomy in Kosova since 1912, the trilateral state-formation and nation-building process in Bosnia-Herzegovina from the Ottoman empire on and the Serb-Croat dichotomy since the first Yugoslavia.

Of course there have been conflicts throughout the centuries in Bosnia-Herzegovina and Croatia, but these were mainly social and economic. As with all „national late-comers“ ethno-nationalism became prevailing only in the late 19th century, whereas the religious momentum for a very long time had been pacified by the Ottoman millet-system. Thus for Bosnia-Herzegovina and Croatia the national factor became important only at the turn of the 19th and 20th century; for the first time it violently exploded during WWI and culminated during WWII. But even after this cruel ethnic

eruptions, the various ethnic groups relatively peacefully co-existed side-by-side. Both times there were political factors, mainly from outside, that became ethnically perceived and resulted in incredible ethnic crimes, on all sides.

As Tito and the victorious Communist party after 1945 simply declared the ethnic question settled by „brotherhood and unity“, reconciliation between the various ethnic groups and their ethno-nationalisms never took place. By herorising the partisan struggle against fascism and nationalism, the memory of the „other“ war, i.e. the ethnic war and the atrocities committed by all groups, was suppressed totally. The emergence of the different nationalisms in the 1980ies in Yugoslavia proves that the national question had not been solved at all. It just had been stowed away in a >historic fridge<. With Tito's death the different collective memories emerged and prepared the ground for ethnic entrepreneurs in the 1980ies and 1990ies and who released >fears< and >hate< and made the ethnic wars in Croatia and Bosnia-Herzegovina possible.

In Kosovo, however, the relative peaceful coexistence of Muslims and Serbs was totally destroyed by the atrocities committed against Albanians in the course of the Balkan Wars. After 1913 the Serbian state authorities, which perceived Kosovo as an integral part of the Serbian state and nation, pursued a constant policy of ethnic cleansing. Thus a continuous ethnic conflict developed which has lasted until today. Serbs, but also Albanians tried, whenever they had the chance (the Albanians only during the occupation of the two World Wars), to get rid of the „other“, even if this meant ethnic cleansing or even killing. A small window of opportunity for Kosovo was opened with Rankovic's fall and the emancipation of Albanians in the mid sixties. But this opportunity was not taken, probably by both sides.

In all cases, Kosovo as well as Bosnia-Herzegovina and Croatia, the historic research has shown, that „ethnic hatred“ is not a centuryold phenomon, but the result of a belated ethno-nationalism, dating from the end of the 19th century. But whereas in Bosnia-Herzegovina and Croatia the peaceful co-existence of the ethnic groups was the rule and the ethnic struggles the exception, Kosovo must be seen as a case-study of a continuity of ethnic conflict (since 1913), triggered by a uncompromised Serb ethno-nationalism, which was answered by a similar uncompromised Albanian nationalism (whenever they had the chance).

By taking these historic patterns into account as well as all of the normative and empirical results from the country reports, it became quite clear in our studies that inter-ethnic relations in all of the countries of concern are sharply divided between those social groups which consider themselves to be a „nation“ with an alleged (historic or ethnic) right to form its own state and will therefore never accept to be called a „minority“ and all the other, because of their different language, religion, or historic or cultural characteristics, ethnically perceived groups. To offer the former the „best“ instruments of minority protection according to the standards of international law or even beyond, does not make sense at all. They will never be fully satisfied, but feel discriminated against and simply wait for the next opportunity to raise the claim for self-determination.

Thus, although neither Bosniacs, nor Serbs or Croats in BiH make the absolute majority of the population on the entire territory, their political leaders do not understand them as a „minority“, but as a „constituent people“ or state-forming nation with a right to „institutional equality“, i.e. a right to decide equally on all political decisions not only concerning their own group, but the entire state and society as such. The same holds true for all leaders of political parties from both Slav speaking Macedonians and Albanian speaking Macedonians. To be correct, my ascription according to use of languages would be accepted only by a small minority of people in Macedonia itself. In terms of self-perception, Slav-speaking Macedonians mostly „identify“ themselves with the Republic of Macedonia as „their“ national state, so that people with another mother tongue or „others“ and thereby mentally excluded. Quite contrary, Albanian speaking Macedonians and their political party leaders claim that they are a „constituent nation“ as well with a right to full and effective participation in all affairs of state and society and not simply a „minority.“ In this respect, numbers do not really matter. Whereas Kosovo-Albanians made and make 90 % of the population in Kosovo, Albanian Macedonians had to fight for a fair census in the beginning of the nineties which finally established a 25% share. But also Serbs in Croatia, who made 12% of the population in 1991, never accepted to be seen as a „minority“, but considered themselves to be part of the most important state forming nations in the former Yugoslavia and therefore never accepted or adopted the legal-institutional mechanisms foreseen for them in the Croat constitutional law.

Going hand in hand with these problems of self-perception and ascription in the processes of state formation and nation-building in the Balkans - which have definitively not yet come to an end as the independence of Montenegro in April 2006 and the status talks on Kosovo show - is the total „ethnification“ of all identity formation. This came to the fore in particular in BiH during the interviews. When interlocutors were asked in summer and fall 2005 what the term „Bosnian“ would mean to them in contrast to „Bosniak“, 99 out of hundred answered: these are „Others“. None of them was able or even willing, when discussing theoretical concepts of state- and nationbuilding, to take over the position that the term „Bosnian“ would simply describe all citizens of BiH regardless of their ethnic belonging and therefore also some sort of „loyalty“ to the state as such. The same holds true for Kosovo: people are either seen as „Serbs“ or „Albanians“, there is (and was) never some sort of „regional identity“ with the province of Kosovo and her institutional-legal status. The term „Kosovan“ used now in international reports is an extremely artificial ascription invented by some internationals. This is in striking contrast to the autonomous province of Vojvodina where the formation of a „regional identity“ with the consciousness of a tradition of „multicultural“ living together prevented the possibility after 1991 to mobilise ethnic feelings, in particular of those Serbs who had lived there for decades or even centuries. Only with the settlement of Serb refugees fleeing from Croatia in 1995 and from Kosovo in 1999 inter-ethnic relations also deteriorated. Despite of the fact that the Macedonian constitution had adopted the citizenship concept with some rules on minority protection, the identification of Slav speaking with being „Macedonian“ before and after 1991 prevented also in the Republic of Macedonia that the

Albanian speakers could feel „at home.“ Again they were in fact excluded from this sort of „identification“ with the state by the majority population and their political leadership. The possibility of multiple identities and the formation of state loyalty is therefore one of the most difficult, but also most urgent prerequisites for any legal and institutional reform in all of the Western Balkan countries in order to create functioning states based on rule of law and democracy.

Thirdly, the geographic distribution makes a difference in several ways. Again numbers matter. In BiH, „constituent peoples“ and minorities were geographically dispersed before the war. Nowadays, Serbs and Croats, due to the massive ethnic cleansing during and even shortly after the war, are strongly territorially concentrated, the former in the Eastern part of Republika Srpska and the latter in Herzegovina. All of the 23 small and smallest minority groups in BiH, which make no more than 2% of the overall population, remained territorially dispersed and make no more than 5% even at the local level. Hence the introduction of a 50% threshold for mother tongue education was simply cynicism. In Serbia, minorities live territorially concentrated in Vojvodina, Sandzak and South Serbia adjacent to Kosovo. Minorities are, therefore, settled mainly in the geographic periphery of Serbia. Quite often, as we found out through the interviews, the centralist attitude of Belgrade politics was often perceived as Serb nationalism by minority people, but even Serbs living in the periphery. In Montenegro, all the „minorities“ together would even form a majority of the population. Despite of the fact, that Serbs amount to 32% of the population and Bosniaks respectively Muslims to 10%, all of them living in the far more economically disadvantaged northern part of the country, the Albanian minority with 5% and Roma attracted much more attention by the government. In Kosovo, one third of the Serb minority is territorially concentrated in the north of the river Ibar and the divided town of Kosovska Mitrovica, whereas two thirds - mostly elderly people with a rural background - live territorially dispersed in „enclaves“ in the south under severe security problems as the March 2004 riots have shown. In Macedonia, the ethnic Albanian population lives territorially concentrated in the northwestern parts of the country, thus allowing them to pass the 20% threshold, introduced by the Ohrid Agreement in 2001, for the use of Albanian as an official language in those territories and in some municipalities they even form the majority thereby dominating local self-government institutions. The other minorities live territorially dispersed and nowhere reach the threshold. In Croatia, the geographic distribution is twofold. Hungarians, Slovaks, Czechs, Ruthenians and Germans live in the region of Eastern Slavonia. Most Italians settle in Istria and enjoy there a high degree of cultural autonomy and regional self-governance. The return of Serb refugees to Krajina is still one of the biggest problems due to outright discrimination in the labor market.

In conclusion, there are two main trends which can be observed as main problems for effective minority protection.

First the „identification“ of territory with ethnic identity in the tradition of the classic Central European ideology of the nation state. This „identification“ is intimately linked with the sharp divide into „constituent peoples“ or „nations“ on the one hand and „minorities“ on the other. All „ethnic conflicts“ in the past were

violent conflicts for political domination of territory by ethnic entrepreneurs and through mobilising the ethnic feelings of such groups which consider themselves to be nations, not minorities. However, as all difficulties in state reconstruction reveal, as will be shown in the next chapter, the identification of identity with territory is still on-going effectively preventing the application of the citizenship concept to create ethnically neutral and multiple identities or, even worse, is even re-inforced by the international community by compromising to the threats of territorial separation by ethno-national leaders thereby rewarding and allowing them to hold the grip on their ethnically conceived constituencies.

In contrast, „real“ minorities were not only most severely affected victims in those wars, but also marginalised after the wars in all conflict settlement agreements and re-construction efforts as will be shown below. In addition, due to their mostly small numbers and being territorially dispersed they are also most affected by all pulling forces of assimilation, i.e urbanisation and industrialisation going hand in hand with centralisation on the regional and national level. For instance, the multi-cultural tradition of Vojvodina is nothing else any longer than a myth. All these small communities territorially concentrated in small, rural villages will dy out over the next generation since social, economic and geographical upward mobility to the capital means simply assimilation even for the Hungarian minority which still holds a majority position in several municipalities in the border region to Hungary. However, if students go to Hungary for their studies, they will not return. So, by generalisation, all measures of kin-states to „help“ their minorities through scholarships for the youth are, due to the brain-drain and thereby intellectual decapitation of the group, fully counter-productive.

## 2. Law in the books and law in practice

### 2.1. The constitutional basis

When starting the project we differentiated three possible „models“ of constitutional systems: the ethnically „neutral“ model based on the concept of individual equality of citizens regardless of their belonging to any particular group and therefore the non-discrimination rule as the most important legal instrument of protection; secondly, the model of „consociational democracy“ recognising and legally institutionalising ethnic groups by treating groups equally in the representation and participation in state bodies, basically through ethnic quotas for the composition of the legislature, executive and even judiciary, and thirdly a mix of these „idealtypes“ constructions which can be labelled „promotional“: both individual and group rights are recognised as „affirmative action“ measures through „special rights“ for language promotion or in the area of culture (education, media). Even ethnic quota to promote individuals for compensation of past (de jure) discrimination can - on a temporary basis - be seen as justified without, however, fully institutionalising quota and mutual veto rights for groups like in the consociational model.

The Dayton Peace Agreement in BiH set the pace for conflict settlement in the Balkan wars. A closer look into the institutional arrangements forseen in the Annexes reveals that the drafters of the Dayton constitution followed the model of

consociational democracy for conflict resolution. Dayton was therefore based on a territorial separation into Entities and cantons mostly following ethnic lines, thereby also cementing the ethnic pillarisation of the population. On state level all institutions were formed after the rule of proportional ethnic representation connected with mutual veto power in order to create the necessary trust for elite consensus through power-sharing.

As our studies and politics on the ground have shown, this model basically failed in the task of re-construction and reconciliation: trust was never achieved between the former warring parties of the violent conflict who had been allowed to stay in power. Power-sharing did not provide for co-operation on the elite level as theoretically foreseen but led to a politics of „divide et impera“ which was even democratically legitimised by too early and constantly repeated elections on all levels since the OSCE wanted - through election-engineering - transform the monoethnic party system into a multiethnic one. This effort, however, totally failed. The more the High Representative then intervened into daily power politics by decreeing laws and sacking obstructionist politicians, leaders of the ethno-nationalist parties had no incentive for negotiating compromises - the „essence“ of democracy - and could convince their electorate to be the only staunch defenders of their respective „national interests“ thereby reinforcing - with the help of the internationals - their ethno-nationalist power-grip and prevent any inter-ethnic co-operation either on the elite or mass level. This political process in the decade between 1995 and 2005 had serious repercussions on state formation and nation-building, already adressed in some aspects above. Due to the fixation on elections, the necessity of a functioning judiciary and rule of law for state reconstruction was seen only from 2000 onwards. A land-mark judgement of the Constitutional Court had to be transposed into institutional reform again by the High Representative in 2002. But, instead of following the message of the judgement to abolish the closed, exclusive institutional mechanisms of ethnocracy, the elements of consociational democracy were even re-inforced by imposing them on all territorial levels through the amendments of the Entities´ s constitutions. Judicial reform, again imposed by the High Representative, did not take care of even the most elementary requirements of rule of law. In effect, nothing was done to effectively tackle ethno-nationalist parties and their cartel of power and to enforce the creation of multiple identities through education and the media, thereby increasing state loyalty. This had also tremendous consequences for the economy. The BiH economy is deteriorating again since 2002 and still aid-dependent instead of investment driven. For two years now everybody speaks of the necessity to totally revise the Dayton constitution with its ethnocratic institutional system as the main obstacle for any serious reform. As far as minority protection is concerned, nobody is aware of the fact that there are 23 minorities in BiH. Every aspect of life is taken hostage by the rivalry between the three „constituent peoples“ so that all problems of minority protection are at the bottom of any scale of priority in BiH.

A very similar result stems from the analysis of minority protection in Kosovo. Every aspect is subjugated to the conflict between Serbs and Albanians. The institutional structures established by the so-called „Constitutional Framework“ in 2001 are basically the same as in BiH. As in BiH, the model of consociational democracy failed

for re-construction and reconciliation in Kosovo. The territorial separation and institutional segregation could not be overcome or were even re-enforced by KFOR and UNMIK with the exception of the Kosovo Police Force. Neither trust nor inter-ethnic co-operation could be achieved anywhere. And the economy is a ticking time-bomb with an unemployment rate of about 70%. The international community had thus to give up the formula „standards before status“ and started negotiations on the final status of Kosovo in 2005. Again the „real“ minorities, Croats, Roma, Turks, Gorani etc. are totally marginalised and - despite of the rhetoric of the international community - politically not taken seriously.

The third conflict settlement agreement, which has to be taken into account here, is the Ohrid Agreement of 2001. In this case, the legal-institutional and political background was different: The Macedonian constitution 1991 followed the model of „ethnic indifference“ based on the concept of equal citizenship with some rights for members of minority groups. Due to the fact that the awareness of the international community was fixed on the wars in Croatia, BiH and Kosovo, it went unnoticed that inter-ethnic relations in Macedonia nevertheless constantly deteriorated before, finally in 2001, there was a real danger of massive violent conflict also in Macedonia. The citizenship model of the Macedonian constitution could thus not prevent the escalation of ethnic conflict due to the „identification“ and „exclusion“ mechanisms referred to above. The Ohrid Agreement, brokered by the EU and US, did however not introduce the model of consociational democracy and thereby recognise the Albanian aspirations for Macedonia to become a „bi-national“ state. The main elements of the compromise were the representation of ethnic communities in state bodies and even a quota system for the civil service, without, however, full veto powers and thereby the possibility to block the entire decision-making process; a strong emphasis on language rights by declaring Albanian a second official language in those municipalities where they have a share of 20% and more, and, finally, a concept of decentralisation for the devolution of powers to the municipal level and by re-adjusting the borders of municipalities so as to give Albanians more municipalities with a 20% share instead of granting a form of territorial autonomy to the Albanian settled territories. A referendum against this reform failed in 2004. Despite ongoing criticism of Slav-Macedonian intellectuals that Ohrid had introduced an ethnocracy along the lines of BiH, the consequences for state- and nationbuilding and the improvement of inter-ethnic relations between Slav and Albanian Macedonians are remarkably different from BiH and Kosovo and can be called a success story. Macedonia does not seem to be a victim of possible spill over effects threatening its very existence as a state, and she is neither a failed nor weak state any longer: the economy is much better off than in BiH, there is a much more effective judiciary and administration not blocked along ethnic lines, and with regard to the SAP, Macedonia is much more advanced than all of the other countries with the exception of Croatia. Nevertheless, the consequences for „real“ minorities are again less convincing since they remain marginalised as in the other cases.

Finally, the situation in Croatia and Serbia has to be critically assessed. Croatia had „solved“ its problem with the largest minority, the Serbs in 1995, when most of them were driven out of the country in the course of the military re-integration of

the occupied Srpska Krajina in the summer of 1995. All constitutional guarantees which had been suspended were finally even abolished and a new Constitutional Law on Minority Protection adopted in 2003. This law provides for a minimum representation of minorities in Parliament and other rights in the areas of language and culture. In practice, however, serious problems through a lack of implementation remain. Despite of the fact that it is remarkable that the reformed HDZ who had come back to power in the elections in 2004 could base its government on a coalition with all of the minority representatives, including the Serb one, in Parliament, Serb refugees who have returned are obviously discriminated against on the local level when the look for jobs in the local government administration. Italians mostly concentrated in Istria complain about Croat centralism, others are marginalised.

The situation in the State Union of Serbia and Montenegro based on the Belgrade Agreement brokered in 2003 by the EU in order to keep these two countries together, could best be described as a Potemkin village for the federal level with all effective power concentrated on the level of the Republics of Serbia and Montenegro. The latter had effectively split from the Federal Republic of Yugoslavia and thereby from Serbia already in 1997 by introducing customs barriers and a different currency. The legal-constitutional situation before and after 2003 was therefore simply a chaos: the Belgrade Agreement and the constitutional documents were never implemented. The entire institutional system on Union level remained a fake, the constitutions of the Republics were never adjusted and, as far as minority protections is concerned, Montenegro did not apply the former federal laws any longer without, however, adopting new laws. The result was total legal insecurity which laws are valid or not and shall be applied or not. In addition, Serb centralist politics were perceived in the entire periphery where minorities are living as „total neglect“ of their interests at best, but more often as outright discrimination by „Serb nationalism“. The power struggle between pragmatic liberal reformers, originally led by the assassinated Prime Minister Zoran Djindjic, and the more conservative and/or Serb ethno-nationalist parties, headed now by Prime Minister Kostunica and the accused war criminal Vojislav Seselj, is also a matter of principle for the entire future development of Serbia: either as a central state based on strong exclusivist ethno-nationalist sentiments fueled and mobilised in elections, or as a regional state devolving powers to regions and municipalities and thereby allowing also effective minority protection. As long as this political decision, even more necessary now after the split of Montenegro and the status talks on Kosovo, is not made and a new „contrat social“ concluded in Serbian society, no new Serbian constitution can be adopted to form the legal basis for a functioning state, EU integration and minority protection.

2.2. Minority Protection in the areas of education and the labor market

As more detailed normative and empirical studies in the areas of access to education and the labor market have shown, there are manifold problems of effective minority protection which cannot simply be reduced to a binary scheme by contrasting law in the books with law in practice.

First of all, there are conceptual problems which are in no way clarified yet. Does effective minority protection require the promotion of the languages and cultures

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of minorities through mother tongue instruction in public schools from elementary level to tertiary education? Or should public education be organised in schools and universities operating „bi-lingually“? A comparison of all of the public educational systems in the Western Balkan countries, however, revealed that there is a lot of confusion on concepts and terminology. In essence, three „models“ of instruction could be distinguished for the sake of comparison:

First, schools and/or classes where minority pupils receive instruction in all subjects of the regular curriculum in their mother tongue which is the minority language. As a consequence, minority pupils are mostly institutionally segregated from those of the majority population.

Secondly, schools and/or classes operate in the official language of the respective state. Minority pupils are therefore taught in a foreign language which they usually did not learn through primary socialisation in the family with all of the problems created thereby. However, as a „remedial“ effort both to be able to follow instruction in the official language and for the preservation of the minority language and culture, they will get additional classes. Since pupils and/or their parents of the majority population are mostly not interested in the language and culture of the minority, such additional classes are again mostly attended by minority pupils only, in effect stigmatizing them.

Only a third model can thus be called „bilingual education“ stricto sensu. Again there is a great variety in forms of bilingual education which cannot be fixed in abstracto from our studies. However, it is necessary to determine here in advance that one should speak of „bilingual education“ only, if subjects of the „core“ curriculum are taught in both languages and not only those of interest for the minority, i.e. their language and culture, and if both languages are used in the same class of pupils without institutional separation according to subjects<sup>1</sup>.

Taking these „models“ into account, a comparison of the Western Balkan countries' institutional systems reveals that in most primary and secondary schools in all of the countries models a) and b) are in use, whereas model c) is the rare exception.

However, even this legal comparison must be put into the factual context and reveals that minority law instruments in the field of education are not effective or even counter-productive depending on the normative standard, since in reality exactly those minorities which are - because of their small numbers or lack of a kin-state - in most need of a language shelter program are mostly subjugated to a mixed transitional and submersion program, whereas the minorities or members of groups which consider themselves nations are most frequently granted mother tongue education in form of a segregated school system from kindergartens to university level thereby, however, effectively hindering mutual understanding through common school experiences and thereby the creation of a feeling of respect for diversity and the readiness for inter-cultural cooperation. It goes without saying that this is not contributing to overcome ethnic divides and to promote social cohesion.

Academic literature reveals that there are no serious comparative studies in Europe which models or factors can guarantee effective minority protection. Advocates of

<sup>1</sup> Tove Skutnabb-Kangas, Commentary: The status of minority languages in the education process, in Filling the Frame. Five years of monitoring the Framework Convention for the Protection of National Minorities, Council Europe Publishing 2004, pp252 - 254 categorises model in a very similar way: A **language shelter program** is a model where minority children are instructed through the medium of their own mother tongue, where the teacher is bi-lingual with the majority language offered as a second language. In contrast, a **transitional program** is a model, where minority children are initially instructed through the medium of their mother-tongue for a few years until they learn the majority language better. A **submersion model** is a program, where minority children are forced to accept instruction through the majority/foreign language in „mixed“ classes, where the teacher does not understand the mother-tongue of the minority children. In the **two-way bilingual (or dual immersion) model** children from both the majority and minority population choose to be instructed by a completely bilingual teacher initially mainly through the medium of a minority language (90-10%) or through both languages (50-50%).

mother tongue education have to face the accusation that they promote segregation which is not only strictly prohibited by the UN Race Discrimination Convention to which all the Western Balkan countries are parties, but also that they effectively hinder ethnic co-operation and thereby, in the end, social cohesion as a prerequisite for stable democratic political systems. On the contrary, advocates of bi-lingualism have to face the accusation that a „bi-lingual“ school system would be the most effective way for assimilation. Again the question is raised: is there no „third way“ of a „hybrid“ mix of systems to avoid Scylla and Charybdis of either segregation or assimilation? As a result, the project revealed that there is an urgent need for much more interdisciplinary and comparative research in order to identify which independent factors lead to which results in a European context, since most of the research done in this field was made in the Anglo-Saxon world and stemming from an immigration background.

Finally, there are also many problems in implementation stemming from the dominant ethno-nationalist ideologies of ethnic political parties which effectively counter-act legal instruments. For instance, in Bosnia and Herzegovina, you will find the phenomena of „reverse bussing“ (in analogy to the legal discussion of „reverse discrimination“), i.e. that pupils from a „constituent people“ who are in a factual minority position in one of the Entities are transported by bus every day across the Inter-Entity-Boundary-Line into the „nationally“ correct Entity for attending public schools, or the phenomenon of „two schools under one roof“ in the Federation where Croats and Bosniacs attend the same school building, however segregated into a morning and afternoon shift. Both these measures obviously contradict the OSCE measures for an ethnically integrated school system by establishing a „common core curriculum“ for all public schools.

Again, what our studies clearly reveal is the fact that in most cases of obvious segregation because of the exclusivist ethno-national motivation behind, there are no factors which can counter-act these ethno-nationalist tendencies of parties in power. Again a clear conceptualisation of „cultural diversity“ as one of the core values of the European Union is missing, and based on such a conceptualisation strategies, action plans and measures to counteract the dominating ethno-nationalist ideologies not only through legal instruments, but through socialisation media, such as education and the electronic media, themselves.

Our analyses of the labor markets have made clear that there is a sharp distinction between the civil service and the private labor market on the one hand, and the formal and informal markets on the other.

As far as ethnic quota systems are introduced by constitutions and laws for civil services, in actual practice these quota systems again favor the members of the larger minorities or „constituent nations“ and not the members of those groups who would really need them. Moreover, a „remedial“ quota system for the civil service on the one hand, and the pressure from the World Bank to reduce the civil service posts dramatically as this is the case in Macedonia, will again be perceived in ethnic terms and create an „ethnic competition“ for jobs in the public sector which will, of course not help to overcome the ethnic divide, but even exacerbate

ethnic tensions. Here, the lack of coordination of actors of the so-called international community has disastrous consequences.

As far as the private labor markets are concerned, with the exception of Montenegro, all countries had adopted anti-discrimination laws instead of affirmative action regulations. However, nowhere are these anti-discrimination laws enforced through the judiciary so that outright discrimination when minorities are excluded from the privatisation process or when even private employers from the Roma community do not dare to hire Roma as employees in restaurants since their costumers could refuse them as waiters due to racist stereotypes is not tackled at all. Hence the real problems are, on the one hand, the lack of implementation of existing laws and, on the other hand, that even effective anti-discrimination measures as such would not be sufficient for effective minority protection. Members of minorities living territorially dispersed or in economically backward and/or rural areas need affirmative action measures in order to provide for equal opportunities against this sort of doubled disadvantage. This is even more true for minority women who mostly face a triple disadvantage.

The most seriously affected minority all over the Balkans are Roma and in particular Roma women. They are imprisoned in a vicious circle: due to their poverty they do not get adequate education and due to their lack of formal education they get no jobs so that they remain stricken with poverty. National strategies and action plans in the framework of the Roma Decade adopted by all governments of the Western Balkans, however, have serious conceptual flaws and face a lot of problems in implementation. However, even EU assistance through the CARDS-program, is mostly not effective at all. As the evaluation of a two years financial program to assist the Romanian government reveals, some Roma communities on the local level have been assisted in social housing, through vocational training programs, or in income-generating programs. However, taken all together some 300 people benefited from this financial assistance of the EU with an estimated Roma population of about 2 million. Moreover, the uncoordinated sectoral approach to provide for assistance does in no way meet the structural problems. Does vocational training help to overcome the vicious circle of lack of formal education? Certainly no.

Finally, another overall problem revealed from the comparison is, however, that neither in the public nor private sector reliable data exist in order to develop any meaningful strategy for minority protection in this field by either national governments or international organisations and the EU.

3. European integration and the effects on minority protection

Summarising our studies on European integration and the spill-over effects on the Balkans, it became obvious from opinion polls - including the one in Serbia commissioned by us (see Annex...) - that EU-integration in terms of full membership is one of the most important incentives for overall reform. However, it became also obvious that ethno-national elites pay only a lip service to European values in the abstract sense of democracy, rule of law, and protection of human rights including minority rights. Despite tremendous disadvantages in terms of financial and economic assistance, for instance political elites in RS defend the

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„national interest“ as they see and define it, against any stronger political integration in BiH for necessary reforms which would trigger economic development of which in particular the population in RS would benefit as the poorest part of the country.

In the field of standard setting in terms of international law and EC-law, it is also obvious that the two opposing nation state concepts, the French republican or civic model of a state nation based on ethnic indifference and the German model of the ethnically perceived national state with the consequence of legally recognising and institutionalising ethnic groups, hinder standard setting in terms of „hard law“ within the framework of the Council of Europe and the EU. The jurisprudence of the European Court of Human Rights is very „conservative“, nevertheless provides now for a European „minimum standard“ since neither France nor Greece have signed, let alone ratified the Council of Europe Framework Convention on the Protection of National Minorities and the French Conseil Constitutionnel had declared the ratification of the European Charter on Regional and Minority Languages unconstitutional in 1999. Such a „minimum standard“ is guaranteed through Articles 8 through 11 of the ECHR which, according to the doctrine of the ECtHR, implies also a „right to express one’s ethnic identity“ in the public sphere which can no longer be prevented by the authorities of state parties to the ECHR. For instance the refusal to register an association for the protection of a minority culture is thus a violation of Article 11 ECHR (ECtHR, Sidiropoulos v. Greece) and cannot be defended by national authorities by referring to their constitutional tradition or the alleged public interest to defend national unity. Secondly, through the monitoring of the Advisory Committee under the Framework Convention for the Protection of National Minorities, its opinions and the recommendations of the Committee of Ministers, a second source in the form of „soft law“ in the field of minority protection comes into being. However, neither the opinions of the Advisory Committee nor the recommendations of the Committee of Ministers are - since they are not judicial bodies - specified enough so that it would be possible to establish clear „standards“ of review, for instance in the field of minority education or „effective participation.“ This work is in progress inside the AC itself by elaborating so-called „thematic reports“ based on the opinions and through comments of the community of lawyers working in this field at universities and in research-institutions.

As far as EU-legislation is concerned, there are anti-discrimination directives based on Article 13 EC-Treaty which would allow for affirmative actions in the Member States, but any harmonisation or further EU-legislation with direct measures of minority protection is strictly prevented by France. The only „progressive“ actor in the international field is thus the High Commissioner on National Minorities of the OSCE who, based on the reports of independent experts, adopted a series of recommendations for minority protection in the fields of education, media, political participation and, recently, on policing. However, as all other acts of the OSCE, these recommendations are political recommendations without any legally binding force.

As regards cross-fertilisation of the achievements in minority protection between these international actors, there is an obvious lack of communication and co-

ordination not only on the ground in the Western Balkan countries, but also on the international level itself. Even within the Council of Europe itself, the various bodies such as the Advisory Committees under the Framework Convention or the Language Charter never meet, but also representatives from the Venice Commission, the AC, the High Commissioner of the OSCE and the UN Working Group on Minorities only occasionally meet. On the ground, the situation is even worse. EC-delegations and Council of Europe or OSCE representations only occasionally cooperate, frequently they are competitors in „selling“ human rights through organising training seminars.

As practical experience with studies for the European commission has shown, the incentive from European integration in form of „good will“ to undertake the necessary reforms for „good governance“ is lost by the lack of regional coordination and cooperation. Despite of the fact that regional cooperation is even a conditionality criterion for the Western Balkan countries, the basic problem is that the EU commission itself does not fulfill this requirement within its own ranks. The implementation of the CARDS program through EU representatives in the various countries on the same issue is not co-ordinated. For instance, all Western Balkan countries have established judicial academies for the training of judges and prosecutors, Bosnia even two in Banja Luka and Sarajevo. However, they do not inform each other, let alone cooperate. One of the most important proposals to make the EU incentive for minority protection more effective is thus to elaborate some sort of „minority mainstreaming“ for all EU programs after the model of gender mainstreaming.

#### 4. The Gender Perspective

Our studies on the gender perspective come to the result that there are a lot of reports on the fate of women in violent ethnic conflicts and the work which is done to fight their traumas, or gender discrimination in certain areas including many hypotheses and based on circumstantial evidence from women groups. But there are no hard, comprehensive, and comparable data on the position of women in education, the labor market or political participation in the Western Balkan countries, despite of the fact that several election laws provide for quota for women on party lists. Hence, the overall conclusion from our project is that a comprehensive research strategy on gender issues in inter-ethnic relations has yet to be developed and needs much more financial means to be implemented than has been available in our project.

#### 5. Concluding remarks

In conclusion, if we try to answer the main questions of our research program whether European integration and the instruments of minority protection contribute to political stability, democracy and social cohesion through inter-ethnic cooperation after violent ethnic conflicts, we can establish the following preliminary results through summary hypotheses for further research:

- there is a sharp distinction between social groups which consider themselves „nations“ with a right to form their own political community and other groups which are then in a minority position. Their political claims are totally different; ethnic conflicts carried out by nations or aspiring nations cannot be settled through minority protection instruments;

- the model of „consociational democracy“ adopted in conflict settlement agreements proved counter-productive with regard to all of the three indicators established above; moreover, it tends to cement ethno-national identities and thereby block the possibility to form multiple identities including the political system and therefore loyalty vis-à-vis the state;
- the „citizenship model“ based on individual anti-discrimination is neither effective to prevent ethnic conflict;
- minority protection in the phase of reconstruction of the state and economy after violent conflict cannot be seen isolated, but only in the context of overall reforms of political parties, the administration, judiciary, education and media to provide for „good governance“ and a spirit of „inter-ethnic cooperation“ to achieve internal and regional stability, democratic, effective and accountable rule of law, and the acceptance of cultural pluralism instead of the wrong concept of ethnic homogeneity as a prerequisite of political stability; hence, all forms of identification of territory with ethnic identity are the starting point of our problems;
- the incentive of EU-integration on the development of effective minority protection is lost in the implementation of EU programs and conditionality for political reform due to the fact that the hollow phrase of a „European standard“ is revealed in reality in many fields what is soon discovered by political elites and then perceived as imperialism by them and that the EU itself does not go in conformity with her own conditionality criterion of regional cooperation;
- what we need therefore, is the elaboration of a contextual and regional concept for managing ethnic diversity through various international, state and civil society actors based on the idea to overcome the wrong, because ideologically predetermined, dichotomies of „civic“ versus „ethnic“ models and „individual“ versus „group“ rights in search for institutional balances, and the effective implementation of this approach in various situations (pre-conflict, post-conflict; regional) in the CFSP, in particular for the enlargement process and the new neighborhood policy.