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GOVERNING A MULTICULTURAL EUROPE: POLICY CHALLENGES AND RESPONSES

ABSTRACT

European integration has been based on shared values embodied in fundamental principles, such as the long-standing principle of «unity in diversity». In the present-day EU, the need to promote integration, while also accommodating the socio-cultural diversity of member states, as well as the collective identities of various groups such as minorities and immigrants, constitutes a formidable challenge to policy-makers, implementing authorities and the courts of law. The EC and EU treaties provide some guidance in this area, but the potential of the existing norms is not fully realised; they include provisions for the respect of national identities and cultural diversity, which still require clarification. On the other hand, since the Amsterdam revision of the founding treaties, a number of important directives has been adopted, with considerable implications for the status of immigrants and minorities. Finally, new governance methods and instruments, such as consultation with stakeholders and resort to financial incentives, have had substantial impact on cultural and education policies.

INTRODUCTION

Political theorists have argued abundantly in recent years about the existence of a legitimacy deficit in the EU. These arguments lay emphasis on the so-called «input legitimacy» in the context of the EU's description as a «regulatory state»[1]. Equally important, however, is the issue of «output legitimacy». The extension of the functional scope and membership of the Union may be making it ungovernable and unable to respond to citizens' expectations.

Important legislation submitted by the Commission for approval by the Council and the Parliament, such as the directive on biotechnology a few years ago and, more recently, the so-called Bolkenstein directive on services in the internal market have been blocked or emasculated. Indeed, ever since integration touched upon politically sensitive areas, large segments of European citizenry and their representatives in the Council or Parliament have perceived the process as a threat to their respective national identities and welfare states. On the other hand, on many occasions governments have undermined confidence in European institutions by accusing them for policy failures for which the governments themselves were responsible. More importantly, however, large segments of public opinion with pro-European feelings have questioned the way in which the processes of deepening and widening are being driven, as witnessed by the rejection of the Draft Constitutional Treaty in France and the Netherlands. The treaty was perceived as a threat to national identities, not least because of the symbolism of the word «constitution».

Although efforts aimed at European identity-building and demos-creation are likely to continue, the expectations of Habermas on the emergence of «constitutional patriotism» appear unrealistic. Moreover, liberal-cosmopolitan perceptions of Europe as a civilian power and a model for world governance, are far from being embedded in European public opinion. Indeed, opinion polls have shown that European citizens would support more assertive foreign and defense policies. The latter could not, however, be carried out without a dramatic increase in the Union's resources and, probably, the imposition of a federal-type income tax for security and defense purposes, inspired by the example of the Swiss Confederation.

Members of political elites, as well as academics supporting the liberal-cosmopolitan thesis, have tended to discard the continued attachment of citizens to national political cultures[2]. Moreover, as pointed out by Bellamy and Warleigh, the potential for clashes between different political cultures and national economic interests is bound to increase as a result of EU enlargement[3]. Thus, the cultural factor, identified fifty years ago by Karl Deutsch as a background condition of integration, is assuming growing importance. In this context, the task facing Community policy-makers is to ensure citizens that their collective identities matter and that the principle of «unity in diversity» is not just rhetoric. In order to reach

a situation of non-domination, central in the neo-republican discourse on legitimacy, socio-cultural diversity has to be managed by making appropriate adjustments to governance and policy-making at the European, national and local levels.

The European Union has responded to the identity/legitimacy challenge with a policy-mix combining two types of actions, complementary to each other. Thus, in the first place, it has been promoting the identification of citizens, and third-country residents as well, with the Union and, in the second place, it has been adapting its policies to the growing socio-cultural diversity, by seeking to make them more inclusive or by compensating the «losers» with flanking policies and side-payments. Although the present contribution focuses on policy adjustments at the EU level, in order to take into account the growing diversity, a few words on the first option should help to demonstrate its limits. Indeed, measures aimed at European identity-building and demos-creation undertaken since the late 1980s have had limited success. The adoption of the European flag, hymn, common passport, as well as EU mobility programs such as Erasmus may be classified among the successes; less visible are the results of the consultation processes with civil society introduced following the Commission's White Paper on European Governance[4]. More importantly, however, an initiative of great symbolic value, the introduction of the single European currency in twelve member states, has not enhanced, as expected, the identification of citizens to the Union. Indeed, large segments of the population in the aforementioned countries tend to believe that the euro, rather than improving their well-being has undermined their purchasing power and their social welfare entitlements.

The challenge of governing a more heterogeneous Union is gradually being perceived as the main policy challenge for the future. Until recently, the main issue at stake was that of respect of national identities. More recently, however, it has been accepted that, notwithstanding their national identities, EU member states are multicultural and, some of them, multiethnic societies, and thereby face common challenges in dealing with minorities and immigrants. The present contribution is structured accordingly: the first section deals with the respect of collective identities and cultural diversity, including the treatment of minorities. The second and third sections will be devoted to the integration and education of immigrants and

their family members. Although the treatment of minorities is based on a perceived need to ensure diversity, whereas that of immigrants is based on a need to ensure their integration into the local communities, they raise some common challenges to policy-makers. At any rate, there are relatively few countries where minorities and immigrant communities are perceived as welcome vectors of cultural pluralism. Nevertheless, most countries have abandoned policies of assimilation and experiment with multiculturalism and interculturalism. Both concepts are based on the unqualified acceptance of the values of non-discrimination and non-domination but entail different responses to the challenges of diversity.

I. RESPECT OF COLLECTIVE IDENTITIES

1.1. Respect of National Identities

1.1.1. Institutional Safeguards

Respect of national identities is built in the institutional and decision-making system of the Union. The Council, which is the institution where member states' preferences and interests are expressed and amalgamated, decides on major issues by unanimity, according either to treaty provisions or institutional ethos. The EC Treaty still includes some provisions requiring unanimity. Interestingly, according to Article 133 para. 6, introduced in Nice, the common agreement of the Community and its member states is required for the approval of trade agreements with implications on cultural, audiovisual, educational, social and health services; in the opinion of France and some other member states, these services are related to their national identity or, what is sometimes referred to, as the «cultural exception».

During the earlier years of European construction, the Luxemburg accord or compromise, reached in January 1966, providing for the postponement of qualified majority decisions – until a consensus is reached – when a member state invokes «vital interests», appeared as an essential guarantee of national identity, or as Joseph Weiler put it, as the «most legitimating element» of the Community system[5]. The expansion of Community membership, together with the treaty revisions extending the scope of qualified majority decisions, have changed the dynamics of decision-making

in the Council. Thus, rather than resorting to the Luxembourg compromise, member states tend to defend their special interests by seeking to build blocking minorities.

1.1.2. Specific Treaty Guarantees

The need to promote unity, while also accommodating the national identities, as well as the collective identities of various groups, such as minorities and immigrants, constitutes a formidable challenge to policy-makers, implementing authorities and the courts of law. The current treaties provide some guidance in this area, but the potential of the existing norms is not fully realised. It lies beyond the rights accruing from the principle of non-discrimination embedded in Articles 12 and 13 of the EC Treaty, as well as Article 14 of the European Convention on Human Rights. Collective identities are the object of specific legal provisions.

According to Article 6 para. 3 of the EU Treaty «the Union shall respect the national identities of member states». This provision does not cover other collective identities, such as those of minorities or immigrants. By comparison, the Draft Constitutional Treaty explicitly refers to the protection of the rights of minorities, in the provision on the protection of fundamental rights (Article I-2). The other major difference is that the current treaty clause is not included in the list of provisions which are subject to judicial review according to Article 46 of the EU Treaty. At this stage, therefore, Article 6 para. 3 may only serve as a guideline to the legislator and a source of inspiration for the court of law when it performs the function of interpretation of Community law.

Interestingly, the respective provision of the Draft Constitutional Treaty which will be subject to judicial review if the treaty or a substitute version enters into force, is more explicit. Indeed, Article I-5 relates national identity to the fundamental political and constitutional order of member states, which includes regional and local administration. The reference to the fundamental order draws on the concept of fundamental norms (*Grundnorme*). These norms reflect varying national perceptions of the balance between human rights and the general interest on the one hand, and human rights and the market on the other. Typical examples of varying perceptions are those related to the freedom of religion and the limits resulting from the principle of the secular state, the economic freedom and the limits of state intervention, the freedom

to provide health and education services and the limits of the state monopoly[6].

The practical importance of Article I-5 if, of course, it enters into force, lies in the possibility of invoking it as a constraint to the exercise of competences conferred upon the Union. Its impact may be compared to that of the various safeguard clauses in the treaty, rather than to the subsidiarity and proportionality tests which involve a substantial margin of appreciation by the legislator. The French Constitutional Council resorted to this provision in its ruling of 19 December 2004 on the compatibility of the Draft Constitutional Treaty with the French Constitution. Rather the answering directly the question as to whether, under the primacy/supremacy rule of Article I-6, the European Constitution would override the French Constitution, it found that Article I-6 should be read in conjunction with Article I-5, which provided adequate guarantees for the national constitutional order. Thus, the two provisions would operate together as conflict rules in a confederal, rather than a federal legal order. It is doubtful whether the Court of Justice would endorse such a reading, unless if it was forced to, by means of a common declaration to this effect annexed to the Constitutional Treaty or its substitute.

1.2. Respect of Cultural Diversity

1.2.1. Specific Treaty Guarantees

The free movement of goods and services is subject to restrictions when education and culture are involved. Thus, for example, a safeguard clause is embodied in Article 30 of the EC Treaty which allows for exceptions to the free movement of goods in order to ensure «the protection of national treasures possessing artistic, historic or archeological value». On the other hand, the provision of services on a non-profit basis, as in the case of Higher Education, does not fall within the definition of Article 50 of the EC Treaty, according, at least, to a controversial interpretation of the requirement of remuneration by the Community legislator, in the context of para. 16 of the Preamble of the so-called *Bolkenstein* Directive. The same directive explicitly excludes some services with cultural implications from its scope of application.

On the other hand, Articles 149 para. 1 and 151 para. 1 of the EC Treaty provide, respectively, that Community measures in the fields

of education and culture should respect «the cultural and linguistic diversity» and the «national and linguistic diversity» of member states. The form that these measures may take is also limited by the treaty. Articles 149 para. 4 and 151 para. 5 provide in similar terms that the Community is precluded from harmonising the laws and regulations of member states in the fields of education and culture; it may however, adopt incentive measures and recommendations by qualified majority.

Of particular relevance to our topic is the way in which the cultural autonomy of member states may be affected by harmonisation measures in the context of the Single European Market. Although the principle of subsidiarity has an important potential when it comes to the management of cultural conflicts[7], a specific provision on the respect of cultural diversity has been introduced in the EC Treaty by the Treaty of Amsterdam. This provision, Article 151 para. 4 of the EC Treaty, states that «The Community shall take cultural aspects into account in its action under other provisions of this treaty, in particular in order to respect and promote the diversity of cultures». The philosophical underpinning of this provision may actually relate to the objection regarding the growing marketisation of public goods in the context of the Single European Market, rather than a general need to ensure cultural diversity in a federal-type context.

The impact of the aforementioned provision, which belongs to the so-called integration or horizontal clauses, i.e. clauses which aim at integrating specific policy goals in all areas of EU policy-making, has yet to be determined. In our opinion, this treaty provision lays down a procedural requirement, which aims at moderating the exercise of Community competence irrespective of the domain or the nature of the competence (exclusive or concurrent); thus, for example, when submitting a draft regulation or directive on the basis of Article 95 of the EC Treaty for the purpose of developing the Single European Market, the Commission should «take into account cultural aspects». The wording of this provision does not amount to a full-proof guarantee of cultural diversity. Actually, some commentators, drawing a comparison with the way in which the subsidiarity principle operates, have expressed the fear that the Commission might try to justify encroachments on the cultural autonomy of member states, by resorting to this provision for harmonisation purposes[8]. In our

opinion, even if it were accepted that the aforementioned provision performs a similar function to that of the subsidiarity principle, it does not amount to a power-sharing device between the Community and its member states.

1.2.2. Implementation

The Council has issued in 1997 a resolution on the integration of cultural aspects in the actions of the Community[9]. It called on the Commission to ensure that cultural aspects are taken into account at the preparatory stage of Community legislation. The question as to who is entrusted with the implementation of this requirement in the Commission services is important; policy-makers involved in the establishment of the internal market are unlikely to be sensitive to cultural issues[10].

Recent draft legislation includes references to cultural diversity in the preambles of the acts. Thus, the services directive as adopted by the Council, states in para. 11 of the Preamble that «this directive does not interfere with measures taken by member states, in accordance with Community law, in relation to the protection and promotion of cultural and linguistic diversity and media pluralism, including the funding thereof [...]»[11]. Another draft act, the decision establishing an action programme in the field of lifelong learning, as adopted by the Council, states in para. 34 of the Preamble «Further to Article 151 of the treaty, the Community is to take cultural aspects into account in its action under other provisions of the treaty, in particular in order to respect and to promote the diversity of its cultures. Particular attention should be paid to the synergy between culture, education and training. Intercultural dialogue should also be encouraged»[12].

The observance of Article 151 para. 4 may be secured in Court proceedings by recourse to the duty of reasoning embodied in Article 253 of the treaty. Nevertheless, in order to enhance the protection of cultural diversity under Article 151 para. 4, it may be necessary to combine this provision with other requirements, such as the observance of the principle of proportionality embodied in Article 5 para. 3 of the treaty. Indeed, as pointed out by Malcolm Anderson, the proportionality principle would allow the balancing of the economic argument against the cultural one, so that important cultural interests are not ignored, nor powerful economic interests get their way[13].

1.2.3. The Implications of «New Governance»

New governance encompasses adjustments of the Community method of governance which is based on regulation, as well as resort to new methods for achieving Community policy goals. The classic Community method of governance has indeed been adjusted in respect of the pre-legislative phase, following the Commission's White Book on European Governance[14]. The Commission committed itself to five principles of good governance, including the duty to consult with the relevant stakeholders during the pre-legislative stage. Therefore, after identifying the elements of its legislative proposals which are likely to have cultural implications, the Commission would engage in consultations with the major stakeholders in the cultural field. There is, however, a specificity here, in comparison to other policies. For the purpose of ensuring cultural diversity, the Commission should consult not only with the transnational associations and networks but also with the national ones. In a notice adopted in 2002 the Commission explained that it «will avoid consultation processes which could give the impression that "Brussels is talking to Brussels". In many cases national and regional viewpoints can be equally important in taking into account the diversity of situations in the Member States. Moreover, minority views can also form an essential dimension of open discourse on policies»[15].

On the other hand, some methods associated with new governance are likely to by-pass the integration clause examined above; thus, the current flourishing of «governance by expertise» and the multiplication of independent (and apolitical) regulatory agencies in the context of the «regulatory state» tend to relegate cultural issues to a secondary position in decision-making, thereby undermining the commitments on cultural diversity.

Finally, New Governance also involves resort to financial incentives for achieving policy goals. The EC Treaty includes affirmative action provisions, namely the duty «to promote the diversity of cultures» and to take «incentive measures» (Article 151 para. 5). Typical of this approach are the Community subsidies under the MEDIA programs. On the other hand, following the Amsterdam revision of the EC Treaty, the prohibition of state aids has been adjusted and the Commission may, under Article 87 para. 2d), consider compatible with the common market «aid to promote culture and heritage conservation, where such aid does not affect

trading conditions and competition in the Community, to an extent that is contrary to the common interest».

1.2.4. The Treatment of Minorities

In the case of minorities, three main normative models are distiguished in political theory: the assimilation model, the anti-discrimination model and the multicultural model. For many years, the anti-discrimination model prevailed; in addition to cultural and linguistic rights, individual political rights were often involved. At any rate, there are overlaps between linguistic and political rights; thus, the right to address petitions to the administration in a minority language is typical of the dual nature of some minority rights.

The protection of minorities is governed by national law. Nevertheless, standards of treatment have been embodied in post-WW I treaties and conventions on minorities between neighbouring countries including, in some cases, cultural and political autonomy, guaranteed representation in national elections etc. In the post-WW II setting, Article 27 of the International Covenant on Civil and Political Rights embodies guarantees for the collective expression of minorities; more recently, their protection was strengthened on the European continent by the adoption, under the auspices of the Council of Europe, of two comprehensive agreements: the Framework Convention of 4 November 1993 on the protection of ethnic minorities and the Charter of 5 November 1992 on regional and minority languages[16].

The EU/EC treaties do not provide explicit protection for minorities. Racial discrimination is mentioned, however, in Article 13 of the EC Treaty. On the basis of this provision the Community legislator adopted Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation[17], also known as the «race equality directive» which is of crucial importance for members of minorities[18]. On its part, the Court of Justice has stated that linguistic rights have to be taken into account in Community policies pursuant to Article 151 para. 4 but refused, nevertheless, to annul a Community act which did not explicitly refer to this provision as a legal basis for the act[19]. Interestingly, the protection of minorities became a political conditionality for states acceding to the Union, in the context of the Copenhagen criteria[20]. It may be inferred from this practice that infringement of the rights

of minorities may lead to the activation of the procedure of Article 7 of the EU Treaty for the enforcement of human rights.

On the other hand, positive measures to ensure the cultural development of minorities, in the context of an inclusive society based on multiculturalism, are implemented by member states. Action for the promotion of cultural diversity may be carried out by member states with Community support. States have also experimented with interculturalism in the field of education, as explained in the last section of our study.

2. ENSURING THE INTEGRATION OF IMMIGRANTS

2.1. Introductory Remarks

At the EU level, the Council recently adopted a declaration embodying eleven «common basic principles on integration», where integration is perceived as «a dynamic two-way process of mutual accommodation by all immigrants and residents of Member States»[21]. On its part, the Parliamentary Assembly of the Council of Europe, in a recent resolution, urges member states to benefit from migration «in terms of supply of labour, intellectual input and cultural diversity» and provides that the goal of integration is to ensure «social cohesion through accommodation of diversity understood as a two-way process»[22]. In the case of immigrants, the basic assumption is that they aspire to be accepted by the receiving society. Thus, integration of immigrants has been defined as the process of becoming an accepted part of society; it involves the immigrants, with their unique characteristics, accomplishments and adaptive abilities, and the receiving societies, with their varying attitudes to newcomers[23]. In the aforementioned declarations refugees are not identified as a group needing particular protection. In fact, due to the forced nature of their migration and their experiences compared with other migrant groups, their specific needs have to be met in order to support their integration; as pointed out by ECRE, they will often be one of the most vulnerable groups in society, while also being the most resilient[24].

In the area of migration, norm-creation at the Community level is influenced by the legal instruments adopted at the international level (UN, ILO) and the Council of Europe. At the international

level, the social rights of migrants which include the right to equal remuneration and various social entitlements are guaranteed by ILO Convention 141 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted by UN General Assembly Resolution 45/158 of 18 December 1990. At the level of the Council of Europe, the social rights of migrants are guaranteed by the European Social Charter of 1961, whose amended version of 1996 entered into force on 1 July 1999.

The Amsterdam Treaty amendments to the EC Treaty established a Community competence for combating discrimination and for certain types of action in the field of immigration of third-country nationals. Article 13 enables the Community to issue directives against all forms of discrimination, but stops short of setting out an unqualified prohibition directly applicable to individuals, including aliens. In the field of immigration, Community competence is concurrent to that of member states and, therefore, its exercise is subject to the test of subsidiarity. Article 63 provides under indent 3a) for measures in the area of legal immigration, i.e. conditions of entry and residence, and standards and procedures for the issue by member states of long-term visas and residence permits, including those for the purpose of family reunification; moreover the aforementioned article provides under indent 4) for measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.

On the basis of the first of the aforementioned EC Treaty provisions, the Community adopted the Directive 2003/86/C on family reunification[25] which states, in para. 4 of its Preamble, that family reunification contributes to achieving socio-cultural stability, thereby facilitating the integration of aliens. Article 7 para. 2 provides that member states may pose integration requirements. Interestingly, in para. 11 of the Preamble it is mentioned that family reunification should respect the values of the host-states; the latter are entitled under Article 4 para. 4 to oppose requests for reunification in the case of polygamous marriages; moreover, member states may set a minimum age limit for the requesting person and his or her spouse, with a view to ensuring better integration and avoiding forced marriages.

On the basis of the second of the aforementioned provisions of

Article 63, the Community adopted Directive 2003/109/C concerning the status of third-country nationals who are long-term residents[26] which provides for the issue of permanent residence permits (Article 8) and entails a right of equal treatment in specific domains (Article 11), upon the completion of a five-year period of legal residence in a member state; moreover, the directive entails a right to reside in any other member state of the Union (Article 14) but the member state concerned is allowed to apply preferential treatment in favour of nationals of member states and other specified categories. In para. 4 of the Preamble it is mentioned that the integration of third-country nationals who are long-term residents in the member states is a key element in promoting economic and social cohesion. Article 5 para. 2 of the directive allows, however, member states to set specific integration requirements among the conditions that have to be fulfilled for the issue of long-term residence permits; most member states require a basic knowledge of the host society's language, history and institutions. This flexibility in the treatment of third-country nationals is absent in Directive 2004/38/C on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states[27], which applies to EU citizens but also to members of their families who are third-country nationals. Moreover, these aliens are entitled to a general right of equal treatment (Article 24 para. 1).

In addition to the quasi-civic rights envisaged above, the EC Treaty bestows in certain domains the same political rights on EU citizens and aliens. Thus, both categories are entitled to address petitions to the European Parliament (Article 194) and complaints for maladministration to the EU Ombudsman (Article 195); they may also exercise the right of access to the documents of EU institutions (Article 255). Nevertheless, only nationals of member states may benefit from EU citizenship and the voting rights therein. The exclusion of long-term residents from participation in the European elections has been criticized by Jessurun d'Oliveira who contends that these individuals are subject to myriads of rules and regulations stemming from the European Community without representation on the level of the decision-making process[28]. Interestingly, the Council of Europe has adopted in 1992 a convention on the participation of foreigners in public life at the local level, granting active and passive electoral rights to all legal

residents; some member states already provide such rights.

Among integration measures, the acquisition of nationality and citizenship remains the most potent one. Recently, member states have introduced amendments to their legislation in order to facilitate such acquisition. Thus, a number of them have reduced the required duration of residence and some have introduced in their legislation the acquisition of nationality by birth on the territory of the state concerned (*jus soli*). Although, in theory, it would have been possible to harmonise the rules regarding the acquisition of nationality, it is thought more practical to dissociate EU citizenship from the nationality of member states and to provide for its acquisition by birth or long-term residence. Interestingly, however, in the Swiss Confederation you become Swiss after becoming a citizen of a canton.

A final remark on the legal framework is related to the way in which EU sanctions may be applied against member states which infringe fundamental rights, but also against those which preach or practice anti-immigrant policies. Article 7 of the EU Treaty was activated against Austria when the extreme right-wing party of Jorg Haider participated in the governing coalition. Thus, although integration of aliens remains, essentially, a national responsibility, irresponsible behaviour towards aliens may be dealt with effectively under EU law.

2.2. The Common Agenda for Integration

Integration policy aims at facilitating the integration process of migrants by combining various measures and instruments. In a notice entitled *Immigration, integration and employment* the Commission called for a holistic approach to integration, encompassing its economic, social, political and cultural dimensions[29]. The political engineering has to be pragmatic, based on the specific national and local contexts. The Community may only set limits on integration requirements in the context of the common immigration policy. On the other hand, however, cooperation on integration has officially been on the agenda since the European Council Meeting at Thessaloniki (June 2003). Moreover, the European Council adopted at a special session on 4-5 November 2004 the so-called Hague Programme on the strengthening of the Area of Freedom, Security and Justice, which included action in the field of integration; it was

followed on 19 November 2004 by the JHA Council which adopted eleven Common Basic Principles (CBPs) referred above[30]. The Commission recently adopted a Common Agenda for Integration[31]. According to this document, the actions suggested for the implementation of the CBPs on integration at the national level «are given as possible guidelines designed to help in the conception of national policies and programmes [...]»[32]. They are also actions which can be supported under the proposed European Fund for Integration. The latter, a typical instrument of New Governance, will promote integration measures which correspond to Community priorities.

The CBPs adopted by the Council and elaborated by the Commission are all related to the challenge of governing a multicultural Europe. With the exception of the employment of immigrants, the CBPs focus is on identity issues, namely the understanding of the term integration, respect of basic values, basic knowledge of the host society's language, history and institutions, education of the immigrants' descendants, intercultural dialogue, the practice of diverse cultures and religions and participation of immigrants in the democratic process. Among these issues, we will deal in more detail with those related to education.

3. FROM MULTICULTURAL TO INTERCULTURAL EDUCATION

3.1. Defining the Challenges

Today's societies are, in varying degrees, multicultural and multilingual. These qualifications traditionally apply to countries with substantial minorities. Recently, however, the scope of these qualifications has been extended and now covers countries with large immigrant communities. From the point of view of public policy, the treatment of minorities is based on a perceived need to ensure diversity, whereas the treatment of immigrants is based on a need to ensure their integration.

The aforementioned assumptions entail important implications with respect to education policy. Applying the principle of non-discrimination with respect to minorities and immigrants doesn't lead us very far. The principle entails a right of equal access to education; where education is free of charge, it should be made

available on equal terms to citizens and legal immigrants. On the other hand, as far as immigrants are concerned, education systems have introduced special classes for the children of newcomers and have undertaken action to combat academic underachievement and early school-leaving. Moreover, the aforementioned EC directive on long-term residents, applies explicitly the right to equal treatment in the fields of education and vocational training, including the provision of financial support and scholarships.

3.2. Dilemmas Regarding Language Learning

The teaching of the local language is generally regarded as the basic means for achieving the social inclusion of immigrants. The right of access of immigrants to local schools is generally recognised. In Greece, state education is also accessible to children of illegal immigrants. Moreover, host countries organise local language and history courses for adult immigrants and, indeed, for those who apply for permanent residence or citizenship.

On the other hand, most host countries are reluctant to involve themselves in the teaching of the language of origin of immigrants and to be bound by international agreements to that effect. At the level of the Council of Europe, the Convention on Migration of 1977, as well as the amended version of the European Social Charter of 1961, which entered into force on 1 July 1999, provide for the teaching of the language of origin of immigrants. The same is true of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted by UN General Assembly Resolution 45/158 of 18 December 1990 which also provides that «States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin» (Article 31 para. 1).

From the point of view of expediency, the teaching of the language of origin is part and parcel of the migration policy, its goals and means of implementation. Although controlled immigration is generally perceived as a blessing for the economies of developed countries, host countries are reluctant to issue long-term work permits, in order to avoid the permanent establishment of immigrants. In the same line of thinking, the teaching of the language of origin to the immigrants' children was perceived as a

means to facilitate the repatriation of the migrants in their home countries, at some time in the future. This line of thinking is reflected in Directive 77/486/EEC[33] and in the implementing legislation of the Federal Republic of Germany. Recently, however, this country reviewed its policy and reached the conclusion that the teaching of the language of origin was unproductive; in actual fact, only a small number of immigrants decided to resettle in their home country while, on the other hand, the teaching of the same language undermined efforts aimed at the social inclusion of immigrants[34].

The third facet in the debate regarding the teaching of the language of origin of immigrants is related to the costs. Should the costs related to the teaching be borne by the host state or should the countries of origin pay the whole or part of the bill? Clearly, the host country cannot pay the bill for religious schools; to what extent, however, should it organise and finance special courses for the teaching of the languages and civilisation of the countries of origin of immigrants? Some countries have responded to the challenge by setting-up and financing multicultural schools, i.e. schools for children of immigrants, thereby ensuring control over their education. Recent assessments suggest, however, that these schools do not contribute to the goal of social inclusion in the host country.

3.3. The Intercultural Imperative

The central aim of intercultural education is to create tolerant and politically responsible citizens. Tolerance is central to the implementation of the aforementioned principle of non-domination. Intercultural curricula ensure unbiased education for all children and contribute to the mutual accommodation of nationals and aliens. The intercultural imperative needs to be implemented in the teaching of the following subjects:
– foreign languages;
– history, culture and society;
– religion;
– civic education, including human rights, democratic citizenship and institutions.

In the area of education, the content, duration and teaching methods are determined by each member state, although various EU programmes influence policies by means of financial incentives.

Indeed, by virtue of Article 149 of the EC Treaty, the Community is entitled to undertake supportive and supplementary action, which includes developing the European dimension in education, particularly through the teaching and dissemination of the languages of the member states. In this respect, the European Commission recently submitted an important notice on *A New Framework Strategy on Multilingualism*[35] which includes some key areas of action for education systems and practices. Thus, the Commission identified a need for national plans to give coherence and direction to actions to promote multilingualism; in the words of the Commission «these plans should establish clear objectives for language teaching at the various stages of education and be accompanied by a sustained effort to raise awareness of the importance of linguistic diversity».

Of crucial importance for the promotion of tolerance and responsibility is the understanding of the concept of plural citizenship: national, European and world. History and citizenship courses are continuously rewritten but they now need to be taught with the use of interactive technologies, allowing continuous exchanges between schools and pupils established in different countries. Chatting through the internet during specific school hours may become as effective as the European mobility programs in promoting a sense of belonging to the same community. Finally, it is also necessary to look at how European schools, whose task is to provide education to the children of EU employees, can contribute to intercultural education in the country in which they operate and, in particular, how these schools can be made accessible and attractive to the local communities.

CONCLUSION

European integration has been based on shared values embodied in fundamental principles, such as the long-standing principle of «unity in diversity». In the present-day EU, the need to promote integration, while also accommodating the socio-cultural diversity of member states, as well as the collective identities of various groups such as minorities and immigrants, provides a formidable challenge to policy-makers, implementing authorities and the courts of law. The treaties provide some guidance in this area, but the potential of

the existing norms is not fully realised. The EC Treaty includes provisions for the respect of national identities and cultural diversity, which still require clarification. On the other hand, since the Amsterdam revision of the treaty, a number of important directives has been adopted, with considerable implications for the status of immigrants and minorities. Finally, new governance methods and instruments, such as consultation with stakeholders and resort to financial incentives, have had substantial impact on cultural and education policies.

[1] See the latest discussion in A. Follesdal and S. Hix, *Why There Is a Democratic Deficit in the EU: A Response to Majone and Moravcsik*, in «JCMS», vol. 44, n. 3, 2006, pp. 533-562.

[2] D. Wolton, *Culture et identité européenne dans le cadre du processus d'intégration européenne*, in P. Soldatos (ed.), *L'Europe des cultures et des langues*, Montréal, Chaire Jean Monnet-Université de Montréal, 1999, pp. 81 fl.

[3] R. Bellamy and A. Warleigh, *Introduction*, in id. (eds.), *Citizenship and Governance in the European Union*, London, Continuum, 2001, p. 11.

[4] COM (2001) 428 of 25 July 2001.

[5] J.H.H. Weiler, *The Transformation of Europe*, in «Yale Law Journal», vol. 100, 1991, p. 2473. The aforementioned terminology was not included in the revised text of the article included in the book by the same author *The Constitution of Europe*. The thrust of the author's argument is that, during the period envisaged, the integrating federal legal development interacted with a confederal political development. As pointed out in the book (p. 36): «Had no veto power existed, had intergovernmentalism not become the order of the day, it is not clear to my mind that the Member States would have accepted with such equanimity what the European Court was doing. They could accept the constitutionalisation because they took real control of the decision-making process, thus minimizing its threatening features».

[6] S. Giubboni, *Social Insurance Monopolies in Community Competition Law and the Italian Constitution*, in «European Law Journal», vol. 7, n. 1, 2001, p. 69.

[7] P. Krause, *Cultural Pluralism and European Polity-Building: Neither Westphalia nor Cosmopolis*, in «JCMS», vol. 41, n. 4, 2003, p. 679.

[8] T. Stein, *Die Querschnittsklausel zwischen Maastricht und Karlsruhe*, in *Festschrift fur U. Everling,* Baden-Baden, Nomos Verlag, 1995, pp. 1444, 1449 fl.

[9] O.J. 1997 C 36/4.

[10] N. Scandamis, *La régulation de la diversité culturelle en droit européen*, in id. (ed.), *Cultural Factors in the Decision-Making of the European Union*, Athens-Brussels, A. Sakkoulas-Bruylant, 2002, p. 237.

[11] Common position (EC) n. 16/2006; O.J. 2006 C 270E/1.

[12] Common position n. 15/2006; O.J. 2006 C 251E/37.

[13] M. Anderson, *The Politics of Cultural Diversity*, in N. Scandamis (ed.), *Cultural Factors in the Decision-Making...*, cit., p. 207.

[14] COM (2001) 428 of 25 July 2001.

[15] COM (2002) 704 of 11 December 2002, p. 12.

[16] See R. Cholewinski, *Migrants as Minorities: Integration and Inclusion in the European Union*, in «JCMS», vol. 43, n. 4, 2005 (special issue on «Migrants and Minorities in Europe»), pp. 700-703.

[17] O.J. 2000 L 303/16.

[18] See G. Toggenburg, *Who Is Managing Ethnic and Cultural Diversity in the European Condominium? The Moments of Entry, Integration and Preservation*, in «JCMS», vol. 43, n. 4, 2005 (special issue on «Migrants and Minorities in Europe»), pp. 728-729.

[19] ECJ 23 February 1999, case C-42/97 (Parliament/Council), in «ECJ Rep.» 1999 I-869, especially points 62-63.

[20] See G. Sasse, *Securitisation or Securing Rights? Exploring the Conceptual Foundations of Policies towards Minorities and Migrants in Europe*, in «JCMS», vol. 43, n. 4, 2005 (special issue on «Migrants and Minorities in Europe»), pp. 684-687.

[21] Council Document 14615/04 of 19 November 2004.

[22] Resolution 1437 of 27 April 2005.

[23] R. Penninx, *Immigrant Integration Processes and Policies in the European Union*, in Hellenic Migration Institute (ed.), *Managing Migration: The Greek, EU and International Contexts*, Athens, Hellenic Migration Institute, 2006, p. 101.

[24] European Council for Refugees and Exiles (ECRE), *Towards the Integration of Refugees in Europe*, July 2005, p. 5.

[25] O.J. 2003 L 251/12.

[26] O.J. 2004 L 16/44.

[27] O.J. 2004 L 158/77.

[28] H.-U. Jessurun d'Oliveira, *Union Citizenship: A Pie in the Sky?*, in A. Rosas and E. Antola (eds.), *A Citizens' Europe. In Search of a New Order*, London, Sage, 1995, p. 80.

[29] COM (2003) 336 of 3 June 2003

[30] *Supra*, note 21.

[31] COM (2005) 389 of 1 September 2005.

[32] *Ibidem*, p. 15.

[33] O.J. 1977 L 99.

[34] N. Tietze, *La politique de la langue: entre intégration et politique de la différence*, in R. Kastoryano (ed.), *Les codes de la différence*, Paris, Les Presses de Sciences Po, 2005, pp. 206-212.

[35] COM (2005) 596 of 22 November 2005, p. 5.

BIBLIOGRAPHY

Anderson, M., *The Politics of Cultural Diversity*, in N. Scandamis (ed.), *Cultural Factors in the Decision-Making of the European Union*, Athens-Brussels, A. Sakkoulas-Bruylant, 2002, p. 193.

Bellamy, R. and Warleigh, A., *Introduction*, in id. (eds.), *Citizenship and Governance in the European Union*, London, Continuum, 2001, p. 3.

Cholewinski, R., *Migrants as Minorities: Integration and Inclusion in the European Union*, in «JCMS», vol. 43, n. 4, 2005 (special issue on «Migrants and Minorities in Europe»), p. 695.

Commission of the EC, *European Governance. A White Book*, COM (2001) 428 of 25 July 2001.

Commission of the EC, *Towards a Reinforced Culture of Consultation and Dialogue - General Principles and Minimum Standards for Consultation of Interested Parties by the Commission*, COM (2002) 704 of 11 December 2002.

Commission of the EC, *Immigration, Integration and Employment*, COM (2003) 336 of 3 June 2003.

Commission of the EC, *A Common Agenda for Integration*, COM (2005)

389 of 1 September 2005.
Commission of the EC, *A New Framework Strategy on Multilingualism*, COM (2005) 596 of 22 November 2005.
European Council for Refugees and Exiles (ECRE), *Towards the Integration of Refugees in Europe*, July 2005.
Follesdal, A. and Hix, S., *Why There Is a Democratic Deficit in the EU: A Response to Majone and Moravcsik*, in «JCMS», vol. 44, n. 3, 2006, p. 533.
Jessurun d'Oliveira, H.-U., *Union Citizenship: A Pie in the Sky?*, in A. Rosas and E. Antola (eds.), *A Citizens' Europe. In Search of a New Order,* London, Sage, 1995, p. 58.
Krause, P., *Cultural Pluralism and European Polity-Building: Neither Westphalia nor Cosmopolis*, in «JCMS», vol. 41, n. 4, 2003, p. 665.
Penninx, R., *Immigrant Integration Processes and Policies in the European Union*, in Hellenic Migration Institute (ed.), *Managing Migration: The Greek, EU and International Contexts*, Athens, Hellenic Migration Institute, 2006, p. 99.
Scandamis, N., *La régulation de la diversité culturelle en droit européen*, in id. (ed.), *Cultural Factors in the Decision-Making of the European Union*, Athens-Brussels, A. Sakkoulas-Bruylant, 2002, p. 225.
Stein, T., *Die Querschnittsklausel zwischen Maastricht und Karlsruhe*, in *Festschrift fur U.Everling*, Baden-Baden, Nomos Verlag, 1995, p. 1439.
Tietze, N., *La politique de la langue: entre intégration et politique de la différence*, in R. Kastoryano (ed.), *Les codes de la différence*, Paris, Les Presses de Sciences Po, 2005, p. 203.
Toggenburg, G., *Who Is Managing Ethnic and Cultural Diversity in the European Condominium? The Moments of Entry, Integration and Preservation*, in «JCMS», vol. 43, n. 4, 2005 (special issue on «Migrants and Minorities in Europe»), p. 717.
Weiler, J.H.H., *The Transformation of Europe*, in «Yale Law Journal», vol. 100, 1991, p. 2403.
Weiler, J.H.H., *The Constitution of Europe*, Cambridge, Cambridge University Press, 1999.
Wolton, D., *Culture et identité européenne dans le cadre du processus d'intégration européenne*, in P. Soldatos (ed.), *L'Europe des cultures et des langues*, Montréal, Chaire Jean Monnet-Université de Montréal, 1999, p. 67.