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MINORITY RIGHTS IN EUROPE

PATRICK THORNBERRY & MARÍA AMOR MARTÍN ESTÉBANEZ
STRASBOURG, FRANCE: COUNCIL OF EUROPE PUBLISHING, 2004.

Pp. 682. \$80, €53.

*D. Christopher Decker**

In the last decade there has been a significant amount of attention focused on minority rights in Europe for two main reasons. First, the break-up of Yugoslavia and the ethnic wars that occurred brought minority rights to the forefront of European attention, since these events conjured images of the treatment of minorities in World War II. Second, the European Union adopted the Copenhagen Criteria, which are a series of requirements for candidate states to meet in order to become members. Among the criteria is “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.”¹ With the opening up of Eastern Europe and the enlargement of the European Union into these states, the emphasis on minority rights has been made a priority. As such, this book makes an important contribution to the understanding of minority rights in Europe by exploring the work of one of Europe’s main actors in the area of minority rights, the Council of Europe.

This book primarily² focuses on the plethora of mechanisms, bodies and institutions that are responsible for monitoring, promoting and protecting minority rights, and the standards that this machinery is setting for Council of Europe states. The overarching theme of the book is to “present an account and a substantive critique of the principle minority-related standards mechanisms, as well as their work and potential for development.”³

The introduction mentions the work of other international organizations such as the League of Nations, United Nations, International Labour Organization, Organization for Security and Co-operation in Europe, and European Union, in the area of minority rights. And while the stereotypical discourse would point to minority rights in an East/West paradigm, the authors rightly point out that Western European states are facing the same

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¹ EUROPEAN UNION ENLARGEMENT: A HISTORIC OPPORTUNITY, at <http://europa.eu.int/comm/enlargement/intro/criteria.htm>.

² One chapter in the book is designed as a case study of how the Council of Europe bodies deal with the Roma.

³ PATRICK THORNBERRY & MARÍA AMOR MARTÍN ESTÉBANEZ, *MINORITY RIGHTS IN EUROPE* 28 (2004).

problems of racism, discrimination and xenophobia as is the case in Eastern Europe, thus making the need for the Council of Europe's mechanisms all the more important in the area of minority protection for the whole of Europe. The authors structured the book by analyzing the mechanisms that create binding law and move toward institutions making "soft law" and other non-judicial machinery.

The chapter on the European Convention on Human Rights (ECHR) looks at the historical attempts to create a minority-specific clause and then explores how the ECHR and the jurisprudence of the European Court of Human Rights (the Court) have developed issues related to minorities such as self-identification, self-determination, non-discrimination, language, education, religion and participation, *inter alia*.

The book also explores the Framework Convention for the Protection of National Minorities (FCNM). This chapter addresses the issues that have traditionally detracted from the FCNM, including the notion of "framework" diluting the applicability of the FCNM, the belief that the terms are more aspirational than obligatory, and the lack of a definition. The authors discuss these matters and illustrate the great strength in the FCNM. The substantive rights included in the FCNM, such as non-discrimination and positive measures, culture, education, language, participation, cross-border contacts and obligations of minorities, and others, are also discussed.

The authors address the European Charter for Regional or Minority Languages (the Charter) and discuss the philosophical basis of the Charter as well as the definition and scope. The authors also explore the Charter's treatment of "migrant languages," official languages and dialects. A clear and succinct explanation of the territorial application and the exceptions for non-territorial languages under the Charter is also provided.

The book goes on to describe the intergovernmental organs and political aspects of the Council of Europe's minority rights protection scheme. The authors illustrate how the Committee of Ministers (CoM), through its summits, declarations and recommendations, has had a positive effect on the development of minority rights protection over the past fifteen years. Particular attention is paid to the two summits and involvement of the CoM in the creation of the Stability Pact for South-Eastern Europe, and its role in Kosovo and Chechnya. While the authors credit the CoM with its achievements, they also critique its lack of leadership on the issue of minority protection and the tendency of the CoM "to consider the minority question as confined to the states of central and eastern Europe."⁴ The authors also point out the role of the CoM as the main monitoring mechanism, and how

⁴ *Id.* at 250.

this has led to a lack of transparent monitoring. The chapter concludes that this monitoring function has not lived up to its potential and this has hindered the possibility of minority protection, especially in Western European states. Through this point, the authors offer proof of their assertion that the Council of Europe has dealt with minority rights protection differently in Eastern versus Western Europe. A further chapter notes the various committees and the Council of Europe Secretariat and how these bodies develop and implement minority rights standards. This chapter is particularly interesting, as the work that these bodies undertake is usually not examined in the depth provided.

Another area that the book explores is the work of the Parliamentary Assembly of the Council of Europe (PACE). The book traces PACE's work before the political change in 1990 and after, treating this period as a pivotal point in minority rights protection. Notably, the authors point out that PACE mostly criticized non-members prior to 1990 and that the criticism of state protection of minorities was focused on Eastern Europe from 1990 onward, adding weight to an underlying theme of the book. Furthermore, the chapter on PACE monitoring of minority rights in states, pre- and post-accession to the Council of Europe, provides a particularly interesting insight into an area where little attention has been paid.⁵

Other chapters explore the work of the Congress of Local and Regional Authorities of Europe, the European Commission against Racism and Intolerance and the Commissioner for Human Rights.

The authors' conclusions bear out some important points. In relation to the ECHR, the authors come to the conclusion that while the ECHR and the Court have great potential to make a direct impact on minority rights, the "institutional practice is somewhat equivocal."⁶ Moreover, the FCNM and the Charter will most likely be the best tools for the protection of minorities in Europe, as time and practice allow these instruments to take hold. While the authors note the problems and drawbacks of the political aspects of the Council of Europe's attempts to protect minorities, they also conclude that the Council of Europe has created an example that can be imparted to the world.⁷

This book presents a comprehensive overview of the Council of Europe's protection of minority rights. It is a great addition to scholarship

⁵ While the European Union Monitoring and Advocacy Program (EUMAP) of the Open Society Institute has looked at minority protection *vis-à-vis* European Union accession, little public attention has been paid to accession to the Council of Europe.

⁶ THORNBERRY & ESTÉBANEZ, *supra* note 3, at 73.

⁷ *Id.* at 668.

in the area of minority rights and specifically toward furthering understanding of the lesser-known mechanisms of the Council of Europe. While the volume is an excellent resource for students, practitioners and academics, the book is slightly euphuistic and difficile thereby, making it potentially less accessible to students.