7
No Lessons Learned

Western Europe: freedom of movement versus defence of the homeland

As the third millennium dawns what are the prospects for regional cultural minorities? The omens are less favourable than one might suppose.

In western Europe the minorities have seen the process of western European integration as a liberating factor as the Member States of the Union, the traditional oppressors, decline, and they hand ever more power over to Brussels. But these minorities would do well to heed the old saying ‘Better the devil you know than the devil you don’t’. The last three decades of the millennium showed that most states were increasingly willing to be generous to their minorities in their homelands, whether as a result of armed conflict or not; that dialogue between minorities and their host states, or between host states, were more likely to bring about improved conditions for minorities than regimes imposed by international organisations. Indeed it can be argued that it was the relative success of arrangements at state level that paved the way for instruments adopted at international level.

The European Union, however, is quite another creature. The fanatic drive for a level playing field in economic and social matters, and the rigid centralism which is the mainstay of that drive does not augur well for the decentralised tolerance of local arrangements necessary for the maintenance and development of minorities on their unique habitat, their homeland. It is also far less accountable to its people than any member state. The supreme decision-making body, the Council of Ministers, cannot be removed as a body; the individual ministers can only be removed by the electorate of their own countries. The European Parliament has no government-making powers and can
only dismiss as a whole the collegiate body of the European Civil Service, the European Commission, responsible for drafting legislation; it cannot dismiss individual Commissioners. And there is no appeal against decisions of the European Court of Justice in regard to the implementation of Union legislation.

A main pillar of the process of European integration is the principle of freedom of movement: that any citizen of any member state may move to another member state to live and work. The threat of an invasion of minority homelands is therefore unambiguous. Freedom of movement is governed by Article 48 of the 1957 Treaty of Rome. It entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work. Acceptance of offers and the ability to move freely for this purpose could only be limited on grounds of public policy, public security or public health. However, according to paragraph 4 of Article 48 its provisions did not apply to employment in the public service. The European Commission was aware that what constituted the public service varied considerably in the Member States, and was concerned that if Member States were at liberty not only to decide what constituted the public service but also to impose a nationality requirement for employment in the public service the policy of freedom of movement could be substantially thwarted.

In the view of the Commission, employment in the public service was itself a Community concept.1 Action to eliminate the nationality requirement from conditions for access to certain posts in the public service was therefore essential.2

This need for a restrictive interpretation of derogations to Article 48 was supported in a landmark ruling of the European Court of Justice. In its judgement of 17 December 1980 relating to the case brought by the European Commission against Belgium, the Court stated that it was ‘necessary to ensure that the effectiveness and scope of the provisions of the treaty on freedom of movement of workers and equality of treatment of nationals of all Member States shall not be restricted by interpretations of the concept of public service which are based on domestic law alone and which would obstruct the application of Community rules.’3

In the view of the Commission, Member States could only restrict the entry of aliens to public posts if these posts put the holders thereof in the position of directly participating in the exercise of official authority or of making use of prerogatives in the nature of powers conferred in law in regard to members of the public.4