

Power beyond Conditionality

Abstract

This article addresses the role and power of international organisations regarding changes in national minority policies in post-Communist Europe. It is argued that most of the academic literature within the field misses the point when they reduce norms to a question of socialising states, as norms play a role as constitutive as well as regulative rules making possible and regulating actions of states and international organisations, including the EU. Thus, seeing norms as competing with conditionality is misleading, as norms rather provide the framework within which conditionality as well as socialisation take place. In a similar way, power is conceptualised in a rather limited fashion as something which one actor uses to get another actor to do what it otherwise would not have done. It is argued that using a broader conceptualisation of power, including constitutive and non-intentional kinds of powers, as well as addressing the authority of organisations, leads to a better understanding of the role and power of the EU, the Council of Europe and the OSCE within the field of national minority issues.

This is demonstrated in the case of the Hungarian minorities in Romania and Slovakia. The EU relied heavily on the Council of Europe and the OSCE to interpret European norms and the Hungarian, Romanian and Slovak states' compliance with these norms. This amounts to an exchange of power, in which the EU could rely on the authority and symbolic power of the other two organisations, which in return could rely on the EU's direct power over the three states.

Compliance or socialisation? Do governments change their policies according to international norms because they are socialised into these norms, or because it is in their interest to do so? This puzzle has figured prominently in the literature on the relationships between European organisations such as the European Union (EU), the Council of Europe (CoE) and the Organisation for Security and Cooperation in Europe (OSCE) on the one hand and the post-communist states in Central and Eastern Europe on the other. The question is whether these states changed policies due to incorporation of the norms of the CoE and the OSCE, or due to the desire to live up to the

requirements for EU (and NATO) membership. This logically translates into a question of the power of the three organisations: have the CoE and the OSCE had the normative power to produce a change in the behaviour of the states, or was it EU's material power which mattered (Schimmelfennig, Engert et al., 2006).

This question has also been raised in connection with the national minorities in the post-communist states, which by the three organisations have been seen as an issue where the post-communist states should change policy (see for instance Kelley, 2004a). This includes the Russian minorities in the Baltic states, the Hungarian minorities in Romania, Slovakia, Serbia and Ukraine and many other minorities. Yet much of this literature does not go into detail with the concept of power, although I will argue that it is fundamental to their analyses. Most of the theorists occupied with the issue of national minority issues and European organisations implicitly conceptualises power in a fashion similar to Dahl (1957) as something which an actor (A) uses to get another actor (B) to do something he would otherwise not have done. This conceptualisation, I will argue, make them miss the most important aspects of the power of the CoE and the OSCE, namely their power to interpret norms and states' compliance with these norms. On a more fundamental level, they also get the role of norms wrong, as norms can play a role beyond the socialisation of actors into adhering to the norms voluntarily.

My argument is that a broader conception of power, including indirect, non-intentional and constitutive dimensions of power provides a much fuller understanding of how power relations work between the organisations and the post-communist states and even more so in between the organisations. If one looks at the example of the way in which the three organisations have handled the issue of the Hungarian minorities in Romania and Slovakia, the CoE and the OSCE have interpreted whether the states have been in compliance with the (often unwritten) rules and standards for national minority, and the EU have had the direct power to make the states comply with these rules. In order to fully understand the relations between the organisations, it is necessary also to look at how they held different kinds of authority, which granted the CoE and the OSCE the power to interpret the vaguely defined European norms in practice, interpretations which the EU would rely on. This is not an argument against the previous findings of the literature on the subject

of European organisations and national minority politics¹, but rather an attempt to put these findings into a broader perspective.

The mentioned literature on the European organisations (the EU, the CoE and the OSCE) and national minority issues and this literature's use of the concept of power will be discussed in the following section. After this, I briefly discuss the different ways of conceptualising power, including a discussion of how power can also be indirect, non-intentional and the power to interpret the social world. Authority, its relationship to power and the different kinds of authority an international organisation can hold is also discussed. In the subsequent section I turn to the case of the organisations' treatment of the issue of the Hungarian minorities in Romania and Slovakia, including their attempts to influence the Hungarian minority policies of Romania and Slovakia as well as the debate over the Hungarian Status Law. The intention is to use the case to provide an understanding of how the authorities and the powers of the organisations developed over the years, as well as of their interaction. This interaction, it will be argued in the following section, is best understood as an exchange, where the CoE and the HCNM thanks to their authority could bestow legitimacy on the EU, which in return could give the other two organisations increased leverage over the states. Finally, it is concluded that broadening the concept of power makes it possible to understand relations in between the organisations and between the organisations and the post-Communist states, which cannot be understood when looking at these relations in terms of conditionality versus socialisation.

Conditionality, Norms and European Organisations

Much has been written on the attempts of European organisations such as the EU, the CoE and the OSCE High Commissioner on National Minorities (HCNM)² to influence the situation of national minorities in Central and Eastern Europe. Whereas the literature on the CoE and HCNM often has focused on the nature of the ideals and norm held by the organisations (see for instance Flynn and Farrell, 1999; Manas, 1995; Thio, 2003), the literature on the EU has focused more on the nature of its impact (see for instance Hughes and Sasse, 2003; Johns, 2003; Vermeersch, 2003). In the latter

¹ I use the term "national minority *politics*" when referring to the field in general and "national minority policies" when referring to the concrete policies of governments, rather than "national minority protection" or "national minority rights", as the states' treatment of "their" minorities concern more than just rights or protection, and is intrinsically political.

² The post of OSCE High Commissioner on National Minorities were held by the Dutch diplomat and politician Max van der Stoep from 1993 to 2001, and by the Swedish diplomat Rolf Ekéus from 2001.

case, they have been drawing on a distinction between two modes of explanations which can be found in much of the literature on EU enlargement and international institutions in general, namely the distinction between logic of consequentialism and logic of appropriateness as determining action (Checkel, 2005; Schimmelfennig and Sedelmeier, 2002: 804). This distinction, introduced by James G. March and Johan P. Olsen (1989), separates between the actions which are undertaken because the actor seeks to maximise its own benefits (logic of consequentialism), and the actions undertaken because the actor perceives it to be the appropriate thing to do for such an actor (logic of appropriateness). Although this distinction has been conceptualised in different ways (as norms versus incentives, persuasion versus conditionality), I will argue that this is the heart of the matter.

In the literature on Europeanisation and national minorities, this distinction has led to a discussion of whether the changes in the policies of the Central and Eastern European (CEE) states have been due to the socialisation of key actors or the promise of membership of organisations such as the EU (or NATO). Advocates of the former have been referred to as constructivists, whereas the latter have been referred to as rationalists. According to this distinction, constructivists believe that norms matter as actors can be socialised into them, that is, the norms are internalised so that they form an integral part of their identity, so that acting contrary to them will seem wrong to the actor (Checkel, 2005: 804)³. Rationalists, on the other hand, claim that norms are irrelevant, as actors solely follow own self-interests. A variant of this argument is that members of the CEE elites have either self-interestedly followed the domestic opinion as it was the most important to them, or have been more influenced by domestic norms and values than Western or European ones (Schimmelfennig, Engert et al., 2006: 18).

I will argue that this distinction is based on a misunderstanding of constructivism. Constructivism is best understood as an epistemological position, according to which the social world does not exist independently of our understanding of it, but is dependent on the constitutive rules which we use to interpret it and to operate within it. Constitutive rules are, put extremely briefly, the rules which define what something is, for instance the rule in football which define what a goal is, or in international politics, the rule defining what sovereignty is, and thus also what constitutes a breach of sovereignty is (Connolly, 1983: 179-198; Searle, 1969: 33-36). This has to be separated from

³ Socialisation has also been used in the sense of guaranteed compliance with the norms of the international community, see for instance Schimmelfennig, F., R. Engert and H. Knobel (2006). European Organizations, Political Conditionality and Democratic Change. Basingstoke, Hampshire, UK, Palgrave Macmillan.

regulative rules, which regulate behaviour within the framework established by the constitutive rules.

Thus, it is constitutive rules which make actions intelligible, since without a rule defining what constitutes a national minority, it is impossible to regulate a state's behaviour towards its national minorities (on the struggle over the definition of national minorities, see Pentassuglia, 2002: 55-74). Although constructivism opens up for the study of the importance of norms understood as constitutive as well as regulative rules, it does not mean that actors necessarily will act according to norms understood as beliefs about what is right and wrong. As Frank Schimmelfennig has argued, there is nothing in the idea that the world is socially constituted that contradicts the idea that actors act according to strategically calculated self-interest (Schimmelfennig, 2001: 497). In other words, the question of the role of norms in constituting the international community is a different question from what motivates actors.

Concerning the latter, there has lately been different attempts to directly compare the impact of the socialising of CEE states into what is defined as "Western liberal norms" (Schimmelfennig, Engert et al., 2006: 8) with the impact of the incentive of membership in the EU (this includes especially Kelley, 2004a; Schimmelfennig, Engert et al., 2006). The idea is, bluntly put, to determine the degree to which actors in charge of the states have been motivated by a desire to live up to the standards "taught" them by organisations such as the CoE and the OSCE, or by the perspective of personal or national benefit from EU membership.

The breakdown of the influence of "socialisation" and conditionality into a question of organisations is important. Although, as Judith Kelley (Kelley, 2004a) emphasises, the CoE also had its own enlargement process with conditions becoming a member, in practice the admission process was relatively short and the benefits relatively small. This means that the CoE and the OSCE, or rather the HCNM in the case of national minorities, played the role of socialising agencies, whereas the EU have played the role of gatekeeper, only letting the complying states in. This division can be found in Hughes & Sasse (2003), Kelley (2004a) and in Schimmelfennig, Engert, et al (2006). Consequently, the impact of the CoE and the HCNM is equal to the impact of socialisation, and the impact of conditionality and other kinds of incentives is equal to the impact of the EU.

Both Kelley and Schimmelfennig et al. argue that membership conditionality has been far more important than socialisation, which has had a rather negligible impact on its own, as politicians only changed policy when EU membership became a (conditional) possibility (Kelley, 2004a: 174-175; Schimmelfennig, Engert et al., 2006). The obvious conclusion seems to be that the EU (and NATO in the case of Schimmelfennig et al.'s analysis) is by far the most powerful institution. Yet, although I will agree with their analysis of the motivations of the CEE politicians, I will also argue that seeing CoE and HCNM as powerless organisations would be a serious mistake, based on a misleading conception of power. Both books hint at the power of these two organisations when they discuss the reliance of the EU on the two other organisations for information and evaluation (Kelley, 2004a: 179; Schimmelfennig, Engert et al., 2006: 9-10). Here I will focus predominantly on Kelley, as she is the one dealing solely with the national minority issue and is most explicit on the interaction between organisations. It is worth quoting her at length:

“The EU relied heavily on the HCNM to *explain key concepts* [my emphasis], soften the attitudes of key policy makers, and suggest solutions. Indeed, the EU very much wanted the HCNM to play this role, especially since EU member states, wary of implications for themselves, preferred not to suggest too detailed a solution. The EU also relied on CE [CoE] and OSCE standards and recommendations as bench marks for performance and as reference for the validity of EU entry requirements” (Kelley, 2004a: 182).

Thus, Kelley is very much aware of the important role that the CoE and the HCNM have played in shaping the policy of the EU, or as I will put it, interpreting and defining the constitutive and regulative rules governing how the CEE states should treat their national minorities. Nevertheless, she stops short of going into detail with what this means for the power of the two organisations.⁴ Instead, she engages in a counterfactual analysis in order to argue that conditionality would have provided the same effects without socialisation as it did when it was employed with socialisation (there has not been any instances of conditionality without socialisation). However, this counterfactual analysis is based on her previous analysis of the effects of conditionality when employed together with socialisation, and thus does not really arrive at isolating conditionality (Kelley, 2004a: 180-181).

⁴ This is not to slate Kelley, whose work I find a significant contribution to the field, but to demonstrate how important dimensions of the power of the CoE and the HCNM have been ignored in much of the academic literature.

Maybe part of the problem is that Kelley and others have not developed the concept of power sufficiently. The full title of Kelley's book "Ethnic Politics in Europe- the Power of Norms and Incentives" (2004a), says a lot. Whereas norms and incentives are thoroughly discussed, power is left undefined. Yet I argue that it is possible to derive some notions of power from her work. When she chooses to study changes in actual policy behaviour and implementation, she writes in a tradition which defines power as being possible to study only in terms of changes in behaviour (Kelley, 2004a: 29). This is a tradition which has been very influential and dates back at least to Robert Dahl's classic definition of power as making an actor do what he would not otherwise have done, in order to provide a full understanding of this, it is necessary to turn to the theories of power and authority.

Power, Authority, and International Organisations

Although power is undoubtedly one of the most important concepts within the political and social sciences, it is at the same time an essentially contested concept, whose definition and application has been much discussed in theoretical literature as well as in the practice of politics (Barnett and Duvall, 2005: 41; Connolly, 1983). Therefore, the intention here is not to provide final and universal definition, nor to provide an exhaustive discussion of the various definitions of power, but rather to explore how "opening up" the concept of power can provide us with a better understanding of the role of the organisations in question within the field of national minorities. For this purpose, I will use Michael Barnett and Raymond Duvall's definition of power as "the production, in and through social relations, of effects that shape the capacities of actors to determine their circumstances and fate" (Barnett and Duvall, 2005: 42). This definition has the advantage of being broad enough to encompass several dimensions of power, from the conceptualisation of it as something one actor (A) holds over another (B), to more discursively-oriented conceptualisations framing it in terms of the production of social identities and knowledge (see Dahl, 1957 for an example of the former; Foucault, 1977 for an example of the latter).

The "classic" definition of power in the social and political sciences is Robert Dahl's argument that "A has power over B to the extent that he can get B to something he would not otherwise have done" (Dahl, 1957). Implicit in this argument is that power is direct, intentional and causal, and best measured in changes in the behaviour of B (Hayward, 2000: 11-13). Yet, power, understood in the sense described above, does not have to direct, as many critics of Dahl have pointed out, for

instance can A exercise power over another by affecting institutions in a way that changes B's possibilities for acting towards or through these institutions (Barnett and Duvall, 2005: 51-52). Nor does it have to be intentional, as unintended consequences and structural and discursive can have very real effects on an actor's ability to determine his own circumstances (Barnett and Duvall, 2005: 49-57).

Finally, power does not have to be causal, as constitutive relationships, that is, the social constitution of rules, knowledge and positions, also can have important effects for actors (Barnett and Duvall, 2005: 52-57; Clegg, 1990: 8-11). The last aspect is important, as it concerns the way in which constitutive as well as regulative rules can affect the possibilities for action of one actor. Thus, power is not solely something that one actor uses to constrain others, but is often something which constrain and enable possible courses of actions for all actors (Hayward, 2000: 3)

What is particularly relevant for the scope of this article is the possibilities of certain actors to interpret the world and have this interpretation accepted by, perhaps even imposed upon, others. As mentioned, action in the internal system takes place within a system of constitutive and regulative rules. Yet these rules are rarely codified, which makes contestation more likely. As the ability to have one's interpretation of these rules recognised is very unevenly distributed among the actors in the international system, an important actor's interpretation of these rules can be very important for other actors. This is the case not only with the abstract interpretation of these rules, but also the interpretation of the world, for instance deciding whether a state's actions constitute a breach of international conventions or practice. This may concern interpretation of constitutive as well as regulative rules. This can be seen in the example of the Hungarian minorities, which the CoE and the HCNM defined as being national minorities and the responsibility of the Romanian and Slovak states (interpreting constitutive rules), which led them to criticise or appraise the policies of the two states (interpreting regulative rules).

This kind of power has much in common with Pierre Bourdieu's concept of symbolic power (Bourdieu, 1991; Bourdieu and Wacquant, 1992). Symbolic power is, briefly put, a power of world-making, that is the power to define what the different objects in the world is, and to distinguish which objects that belong together and which that do not (Bourdieu and Wacquant, 1992: 137-138). An actor's symbolic power depends on its symbolic capital, i.e. the degree to which the actor is

recognised as by other actors as being authorised to speak on this subject, as well as upon how close the actor's particular interpretation is to social reality. Symbolic power is dependent on being misrecognised, that is not being recognised as power by those who are subject to it or those who exercise it (Bourdieu, 1991: 164-170).

Yet, the kinds of power to interpret the international system that I am interested in here are not necessarily exercised on the basis of misrecognition, although it may very well be the case. These kinds of power can be exercised with the willing complicity of its subjects, but the subjects may also protest, but yet have to obey the power. This, I will argue, was very much the case when the governments of CEE states complied with the demands of the three organisations regarding national minority policies without accepting the legitimacy of these demands. Nevertheless it is possible to argue that the EU was the subject of the symbolic power of the CoE and the HCNM, but this is something that I will return to below.

What is extremely important here is to keep in mind that the power to interpret rules and their application to the world is dependent on some kind of legitimacy or authority. The relationship between the two concepts of power and authority is deeply contested. I will argue that authority, unlike power, always is possessed by an actor and necessarily requires recognition or consent of some kind or another from other actors. As Michael Barnett and Martha Finnemore have argued in the case of international organisations, authority is about the conferral of credibility to specific actors, so that the possession of authority helps an actor being heard, recognised and believed (Barnett and Finnemore, 2004: 19-20). If we treat authority as source of power, the kind of power it produces is to a larger degree about saying what something is and what the right thing to do is, rather than getting other actors to do what they otherwise would not have done. Thus, according to Joseph Raz (1990), authority is what makes an interpretation the authoritative, that is the binding and (most) reliable, interpretation of many.

If we turn to the specific authorities and powers of international organisations, Ian Hurd has convincingly argued that their power should rather be analysed in terms of how they shape the context for states (or other actors in general) than in terms of whether other actors comply or are socialised (Hurd, 2005: 498). And in order to analyse the capacities of an IO for shaping this it is worth looking at the kinds of authority an IO can hold within a given field. Again, it is worth

drawing on Michael Barnett and Martha Finnemore's 2004 book, *Rules for the World*, according to which international organisations can hold four kinds of authorities (Barnett and Finnemore, 2004: 19-24). The first is the rational-legal stemming from being a bureaucratic institution, which is the authority to create rules and categories to classify and act upon the world with. This includes the power to construct information in ways so that it gives meaning and can be acted upon, and is to large degree dependent on being perceived as acting impartially and impersonally on the basis of universal rules. The second is the delegated authority stemming from the decision of states to transfer authority to the IO for one reason or another.

Third, there is the moral authority of embodying or being created to protect certain values, for instance human rights or the prevention of ethnic conflict, and being recognised as not being involved in the self-interested power games of states. This can be very important when powerful actors recognise moral authority (Hall, 1997). Fourth, there is the expertise authority of being recognised as holding knowledge which other actors do not hold. Implicit in this is also the recognition of the alleged impartiality of the IO, which frames it as different from the self-interested states, whose interpretations of the world is perceived as inevitably bound up with their material interests. Being an expert means among others to be recognised as independent from the power, and this perceived independence is exactly what grants the experts the authority to legitimise other actors' use of power (Bourdieu, 2000: 103-105). Thus, there can be significant power in being recognised as being powerless, and this is the case with both moral and expertise authority.

Hence, these four kinds of authority can act as the source of IO's power to interpret the world and its constitutive and regulative rules, thus providing the framework within states and other actors, including other IOs, will have to act. It is important to keep in mind that the authority and therefore the constitutive powers of IOs are very much field dependent, which means that an IO can hold significant power within one field, for instance national minority politics, and no power or authority in other fields. How authority and power have played out in the field of national minority politics in the cases of the Hungarian minorities in Romania and Slovakia is the subject of the following section.

Relations of Power between the Organisations Regarding the Hungarian Minorities in Romania and Slovakia

The Hungarian minorities in the neighbouring states, numbering more than three million, has since the end of the Cold War been a source of dispute both within the states and between Hungary and the states. These minorities date back to the Treaty of Trianon, which after World War One granted large parts of the Hungarian empire to existing or newly created states. The largest and politically most significant minorities can be found in Romania (between 1.4 and 2 million) and Slovakia (550-600.000), constituting respectively around 6-8 and 11% of the populations of the two countries. Also Serbia and Ukraine have significant Hungarian minorities, but these have politically been less important. The CoE, the EU and the HCNM have all addressed the governments of Romania and Slovakia as well as the Hungarian government (in the case of the Hungarian Status Law) in order to make them change their policies towards these minorities. Here I will focus on the interaction between the organisations rather than their impact in order to provide an example of how the CoE and the HCNM have used their power to interpret rules concerning national minorities as well as the Hungarian minority policies of the three governments.

Romania

Ceaușescu's reign in Romania was among others characterised by nationalist and anti-Hungarian discourse and oppression of the Hungarian minorities⁵. Initially after the December 1989 revolution relations were good between the ruling National Salvation Front, led by President Ion Iliescu, and the newly founded Democratic Union of Hungarians in Romania (UDMR), yet these relations quickly deteriorated (Gallagher, 2005: 75-89). This deterioration culminated in the clashes between Hungarian protesters and Romanian police and armed forces 19-20th March 1990 in the Transylvanian town of Târgu Mures, which left between three and ten people dead. Although this violence was not repeated, relations continued to be strained between Iliescu's government and the UDMR (which represented the Hungarian minorities), until Iliescu and his Social Democratic Party of Romania (as the NSF was called now) lost the elections in 1996 (Keesing's Record of World Events, 1996).

The new government, led by President Emil Constantinescu, included the UDMR, but nevertheless many of the disputes over the role and rights of the Hungarian minorities continued (Gallagher,

⁵ I refer to them in the plural as Hungarian minorities rather than in the singular, as it is best understood as a composite entity consisting of different groups with different collective identities, for instance the Szekely, or the Csango.

2005: 152-169). This included especially contestation over education in Hungarian and whether the Hungarian minorities had a right to a state-funded Hungarian-language university. In 2000, Constantinescu lost to Iliescu, but had an established cooperation with the UDMR, which supported the government in return for support for many of its proposals (Mato, 2002).

The CoE and the HCNM got involved in the situation of the Hungarian minorities in 1993, the HCNM's first year of existence. The CoE Parliamentary Assembly assessed the situation of the Hungarian minorities as a part measuring whether Romania was ready to join the CoE. Romania was advised to introduce a law on national minorities in order to codify national minority rights, as well as to expand Hungarian teaching, particularly in geography and history (Council of Europe, 1993). The HCNM also recommended a law on national minorities in 1993, but later abandoned the subject when Romania did not introduce such a law after becoming member of the CoE in 1993 (van der Stoel, 1993; 1995a). In general, the two organisations had little success with their recommendations prior to the change in government in late 1996 and the issuing of the EU's Opinion on Romania's Application for Membership of the EU in 1997 (EU Commission, 1997b).

During this period, the government attempted to pass legislation in line with the demands of the organisations, such as a law granting minority members the right to use their language with public authorities in areas with more than 20% minority members, although this draft law was blocked in parliament. In the case of the Babes-Bolyai University, a Hungarian-Romanian language university in Cluj, which proved very controversial within the government as well as beyond it, the government managed to establish Hungarian and German sections within the University. This was much applauded by the HCNM (van der Stoel, 2000a; 2000b).

The EU (or rather the Council) started to address the issue with the 1995 Stability Pact, when it made Hungary and Romania sign a bilateral treaty on good neighbourly relations. According to this treaty the two countries would recognise the inviolability of each others' borders and ratify the CoE's Recommendation 1201 granting minorities extensive rights, albeit with the memorandum attached that the Recommendation did not grant any collective rights.

In the first couple of Regular Reports from the EU Commission on Romania's Progress towards Accession, bilateral relations with Hungary was framed as the most important issue, but in its 1999

and 2000 Reports it treated education as the most important issue, thus adopted a stance more in line with the other two organisations (EU Commission, 1997b; 1998a; 1999; 2000). All three organisations called for creating the possibility of tertiary education and communication with public institutions in Hungarian and other minority languages. Interestingly, the EU in its 1997 Opinion referred to the CoE's Recommendation 1201 and Framework Convention for the Protection of National Minorities (FCNM) as international documents which Romania was recommended for ratifying and recommended to adhere to (EU Commission, 1997b). The other two organisations, on the other hand, have in their recommendations to the Romanian governments almost solely relied on documents stemming from their respective organisations, such as Recommendation 1201 in the case of the CoE and the 1990 OSCE Copenhagen Document in the case of the HCNM. The only exception is that the HCNM throughout the late Nineties and the early Millennium increasingly used the FCNM as backing for his arguments.

As mentioned, Iliescu and his PDSR cooperated with the UDMR after winning the election in 2000. I will argue that this cooperation, strange as it may seem considering PDSR's previous anti-Hungarian rhetoric and cooperation with extremely anti-Hungarian parties, is quite logic considering the pressure from the organisations. Not only had they condemned Iliescu's opponent in the second round of the presidential elections, Corneliu Vadim Tudor, for his nationalist language, they had also strongly praised the previous government for its cooperation with the UDMR (Gallagher, 2005: 261-266). Iliescu and his party must have realised that the only way to gain EU (and NATO) membership lay in conciliation with the UDMR. The reward came in 2002 with the EU's and NATO's decision to include Romania in the coming enlargements (Mato, 2003).

In fact, the cooperation between the second Iliescu government and the UDMR proved more effective in terms of provision for the Hungarian minorities than the previous government had, although the UDMR now was an external partner rather than a member of the government. In return for its support the UDMR got among others the mentioned ratification of the Law on Public Administration, the right to use Hungarian and other minority languages in court and with police officers were the minority languages speakers constitute 20% of the population, and the right to use foreign flags and symbols (Radio Free Europe, 2001a; 2003c). The government also opened up for school textbooks printed in Hungary, as long as they were approved by the relevant Romanian authorities (Radio Free Europe, 2001b). Yet there were also disagreements, both between the

government and the UDMR, primarily over whether the Hungarian minorities had a right to a state-funded Hungarian-language only university, and within the UDMR, over whether the party should demand a Hungarian autonomous region (Radio Free Europe, 2003a; 2003d; 2004).

The CoE, which issued its report on Romania's compliance with the FCNM, and the EU⁶ treated these issues in relatively similar manners. None of them endorsed the claims to a Hungarian autonomous region or a state-funded Hungarian-language university, the EU even explicitly argued that the Babes-Bolyai University and private Hungarian-language universities fulfilled the needs for Hungarian tertiary education (EU Commission, 2002b). Nonetheless, both organisations also endorsed the law granting the right to communication with public institutions in areas with more than 20% minority members and argued that it was important that this law would be fully implemented (Council of Europe, 2001; EU Commission, 2001b; 2002b; 2003b). This is not surprising in the case of the CoE, given that the FCNM's Article 10 operates with such a right, yet in a vague form and without stipulating a threshold (Council of Europe, 1995a). However, the EU was not in any way obliged to follow the FCNM, but nevertheless adopted positions close to the CoE, which probably is due to the close cooperation with the organisation and the HCNM. Representatives from the three organisations met annually in order to discuss the situation of the Hungarian minorities in Romania and coordinate their policies (Interview with former employee in DG Enlargement Martijn Quinn, 2005).

Furthermore, the only time the EU used a reference to provide backing for its argumentation was when it in 2002 referred to the CoE Council of Ministers' Resolution (2002) 5 on Romania's compliance with the FCNM (EU Commission, 2002b). Nevertheless, differences also existed between the organisations, such as the CoE's emphasis on discrimination, which was not shared by the EU. Yet, I will argue that the similarities outweigh the differences, especially when considering how the EU very well could have adopted a position very different from the CoE, given that the EU member states differed ardently on this issue, with states such as France and Greece being rather hostile towards minority rights.

⁶ The HCNM's recommendations on these are not yet available, but he also directed most of his attention to the issue of the Hungarian Status Law.

Slovakia

The period up to and after Slovakia became a sovereign state January 1 1993 was characterised by heated debates over the role of the Slovak nation and the minorities in the new state (Gyárfásová, 2001). The prime minister of the independent state, Vladimir Meciar, who, except for a brief period in 1994, ruled until 1998, often accused the Hungarian minority and the Hungarian leaders of being anti-Slovak. For most of this period, Meciar's Movement for a Democratic Slovakia (HZDS) had to rely on the support of the nationalist and anti-Hungarian Slovak National Party (SNS). Unlike Romania, there did not exist a unified Hungarian party until 1997, when the Party of Hungarian Coalition was formed by three relatively small Hungarian parties (Henderson, 2002: 48). Nonetheless, these parties were generally capable of presenting unified positions on the controversies over the role and rights of the members of the Hungarian minorities. The most controversial issue during the Meciar government (and to some degree also after) was the use of Hungarian in communication with public institutions and on road signs and other topographical information in areas with significant Hungarian populations. Early in the period a law prohibiting non-Slovak first names and forcing women to use the Slavic suffix *-ova* attached to their surnames also proved controversial, and later the administrative reform and the degree to which it would create regions with significant Hungarian populations was also contested.

The CoE and the HCNM got involved in the case of the Hungarian minorities in Slovakia in 1993, the CoE in connection with the accession of Romania to the organisation, the HCNM as part of his normal work. The HCNM's attention to the issue increased during the Nineties as relations between the government and the minority parties worsened. The CoE had some success in getting the law prohibiting non-Slovak first names and female names without the *-ova* suffix and the remains of the Benes Decrees (which discriminated against ethnic Hungarians) abolished. Nonetheless, the two organisations have not been too successful in their calls for among others a 20% threshold for using minority languages in communication with public institutions and on topographical information (Council of Europe, 1995b; 1999; van der Stoel, 1996).

As it was the case with Romania, the EU first addressed the Hungarian minority in Slovakia in connection with the 1995 Stability Pact. In November 1995, the EU Council also criticised, as did the HCNM, the State Language Law which strengthened the position of Slovak without any provisions for minority languages (Henderson, 2002: 75; van der Stoel, 1995b). The Meciar

government was already increasingly unpopular with the EU due to its attempts to remove President Michael Kovacs (Henderson, 2002: 44-45). Also the bilateral treaty with Hungary, which was agreed in connection with the Stability Pact (at the same time that Slovakia handed in its application for membership of the EU), proved difficult (Tesser, 2003: 512-513). It took the parliament more than a year to ratify the treaty, and this happened the same day that the State Language Law was passed, thus more than indicating that this was part of a deal between Meciar and SNS. The latter got the Language Law in return for supporting the treaty which was crucial for Slovakia's chances of EU membership (Tesser, 2003: 517-519).

The EU's dissatisfaction with the Meciar government culminated in the 1997 Opinion on Slovakia's Application for Membership of the EU, in which Slovakia as the only state was deemed as not meeting the political criteria (EU Commission, 1997a). The Meciar government's treatment of President Michael Kovacs and attempts to manipulate democratic institutions were given as the main reasons, yet also the treatment of the Hungarian minorities was severely criticised. The criticisms continued from both the EU and the HCNM until the elections in September 1998 (EU Commission, 1998b; van der Stoep, 1998). Like it was the case with Romania, the EU in the beginning placed great emphasis on the bilateral treaty with Hungary, but later increasingly turned to the domestic aspects of the issue which also primarily occupied the other organisations. Interestingly, the EU relied much on the HCNM's criticism of the developments in its 1998 Report, stating for instance regarding the Law on Municipal Elections (which would have fixed representation in municipal councils along ethnic lines):

“The OSCE High Commissioner on National Minorities had indicated that the draft law violated a number of international principles and standards on free elections and individual human rights. He subsequently regretted that, contrary to the usual practice, his objections were not taken into account and that the Law had been adopted without the amendments required to ensure that it would conform to the international standards (EU Commission, 1998b)”

Furthermore, the EU also commended the government for following the CoE's recommendations on the legislation on non-Slovak names and topographical information (EU Commission, 1997a). These two examples, I will argue, are good examples of how the EU would rely on the HCNM and

to a lesser degree the CoE for interpreting whether states would be in compliance with international standards. Thus, both the behaviour of the states and the international standards were interpreted by the CoE.

The EU's reliance on the other organisations continued during the government of Meciar's successor, Mikulas Dzurinda. Dzurinda formed a coalition government consisting of various anti-HZDS parties, including the SMK, the Party of the Hungarian Coalition (Keesing's Record of World Events, 1998). This inclusion was very much applauded by the three organisations, particularly the EU. When the SMK threatened to leave the coalition in the summer 2001 over disagreements over the administrative reform and the preamble to the constitution, representatives from different EU member states warned that this would seriously damage Slovakia's chances of EU membership, which made the SMK withdraw its threats (Brusis, 2003: 12; Henderson, 2002: 54). The main causes of the dispute were the SMK's demands for a region encompassing most members of the Hungarian minority (preferably with extended self-government) and for a change in the reference in the Constitution from "We, the Slovak people" to "We, the people of Slovakia" (Gyárfásová, 2001: 43; Radio Free Europe, 2000).

Also the government followed the recommendations of the three organisations to a large degree, although it obviously is hard to say to which degree this is due to the pressure from the organisations or the SMK. Most notably, the government introduced the Law on the Use of Minority Languages, which was advocated during the Dzurinda period by all three of the organisations and during the Meciar period by both the HCNM and the EU. This law, which granted minority members the right to use their mother tongue in communication with public institutions in areas with more than 20% minority members, was criticised by the SMK which abstained during the parliamentary vote (Keesing's Record of World Events, 1999). The Law and the uncertainties concerning its relation with previous legislation and its implementation was clearly the issue to get most attention from the three organisations (Council of Europe, 2000; EU Commission, 2001c; van der Stoel, 1999).

Another issue were the attention of the CoE and the EU arguably produced results, was tertiary education in Hungarian, especially the training of a sufficient number of Hungarian-language teachers (Council of Europe, 2000; EU Commission, 2001c). These demands can be said to be met

with the establishment of the Hungarian-language university in Komarno in 2004 (Radio Free Europe, 2003b).

Also the re-election of the Dzurinda is probably best understood as a result of the desire to join EU and NATO. Representatives of the two organisations and the most powerful of their member states, especially the US, signalled that a Slovakia governed by the HZDS would not have great chances of joining the two organisations (Radio Free Europe/Radio Liberty Newslines, 2002). This demonstrates the power of the attraction of the EU (and NATO).

When it comes to the EU's use of references to the statements of the other two organisations as backing for its own arguments, there has been a clear shift from relying on the HCNM to relying on the CoE during the Dzurinda government. Thus, the EU has in its Reports on the Dzurinda government not once referred to the HCNM, but has in 2001 and 2002 recommended that the government should follow the recommendations of the Opinion of the Advisory Committee on the FCNM and the CoE Council of Ministers Resolution based on the Advisory Committee's Opinion (EU Commission, 2001c; 2002c). This not only grants the FCNM great significance, as the EU argues that it is important to adhere to it, but also frames the CoE as an important institution as it has the authority to interpret the FCNM.

The Hungarian Status Law

The Hungarian minorities in the neighbouring states, especially Romania and Slovakia, had throughout the Nineties been a sore point in Hungary and a contested issue between Hungary and its neighbours (Balogh, 2001). In June 2001, the Hungarian government passed Act LXII on Hungarians Living in Neighbouring States, otherwise known as the Hungarian Status Law (2001). This Law was far from the first law in Europe which granted a special status to citizens of other states who had the same ethnicity as the majority of the state passing the law, so-called status laws. However, it differed from most other status laws in that these co-ethnics could enjoy their special status not only within the territory of Hungary, but also within the territory of neighbouring states (Fowler, 2004: 206-212). For instance, it included a benefit for parents sending their children to Hungarian-language schools and for students of higher education in Hungarian, as well as assistance to institutions of higher education and to organisations providing for the preservation of

Hungarian traditions, culture, higher education, etc (Act on Hungarians Living in Neighbouring States, 2001).

The Law proved extremely controversial with neighbouring states, particularly Romania and Slovakia, and with the three organisations. Romanian Prime Minister Adrian Năstase raised the issue within the CoE, which led to the compatibility of status laws with international law being the subject of a report from the CoE's Venice Commission (Kemp, 2004: 6; The Venice Commission, 2001). The Venice Commission is a body within the CoE advising on constitutional affairs, and which consists of legal experts from the different member states. The Venice Commission's Report, which came out 10th October 2001, did not comment on the Hungarian Status Law directly, but commented that although status laws in general constituted "a positive trend" in minority protection, they still had to operate within the confinements of international law. These were specified as the principles of:

1. the territorial sovereignty of states,
2. *pacta sunt servanda* (existing treaties should be respected and performed in good faith),
3. friendly relations among states, and
4. the respect of human rights, particularly the prohibition of discrimination (The Venice Commission, 2001, Section D).

This Report constituted the framework from within which the following debates about the Status Law would take place. When the HCNM two weeks later issued a statement on status laws (again without specifically addressing the Hungarian Law), he especially stressed the importance of respecting the territorial sovereignty of states (Ekeús, 2001). National minorities were defined as the responsibility of the states that they resided in, and status laws should not have legal effects on the territories of other states, unless bilateral agreements (which were strongly recommended) explicitly allowed for it. The EU also addressed the issue in its Regular Report on Hungary's Progress towards Accession in November 2001 (EU Commission, 2001a). It based its argument against the Law on the Venice Commission Report and argued that the Law should be in accordance with the principles set out in the Report, which it claimed was not the case at the moment. Furthermore, the EU also criticised the Hungarian government for not consulting neighbouring states when drafting the law, thus following the HCNM's argument.

The debate over the Status Law continued for another two years. The HCNM would write several recommendations and invite representatives of the Hungarian government and international legal experts to the Netherlands in August 2002. At this meeting the experts and the Hungarian representatives came up with an amended version of the law which would be in line with the international standards, including the Venice Commission Report (Kemp, 2004: 21-23). He consistently emphasised the importance of respecting territorial sovereignty and not creating a political bond between Hungary and the Hungarian minorities, and that bilateral consultations with the neighbouring states were crucial (Kemp, 2004). Also the EU stuck to its position and emphasised adherence to the Venice Commission report and that a deal should be made with the neighbouring states, as well as emphasising that the parts of the Law which was contradicting EU legislation (EU Commission, 2002a). EU Commissioner Günther Verheugen further emphasised the EU position in a letter to Hungarian Prime Minister Medgyessy, where he among other stressed that the discrimination between ethnic Hungarians and non-Hungarians would be incompatible with EU legislation (Verheugen, 2002). Furthermore, he also emphasised that it would be undesirable to create a political bond between the Hungarian state and members of the Hungarian minorities, a bond which would compete with their allegiances to the state they are citizens of.

In June 2003 the Hungarian Parliament passed an amended version, which largely satisfied the organisations. The CoE Parliamentary Assembly had shortly before passed a resolution which was highly critical of the Law, stressing the undesirability of its extra-territorial effects and the discriminatory aspects of the Law, using the Venice Commission Report as backing (Council of Europe, 2003). This increased the pressure on the Hungarian government, which after the 2002 elections had changed from consisting of the right-wing Fidesz party and junior partners to consisting of the Socialists and the liberal Free Democrats. The law was recognised by EU as being compatible with EU law (although it warned that neighbouring states had to be consulted before implementing parts of the Law), and the HCNM as being consistent with his recommendations (Ekeús, 2003; EU Commission, 2003a).

The correspondence between the reactions of the three organisations was no coincidence. Besides relying on the Venice Commission Report, the three organisations also worked closely together, informing each other of their positions and coordinating them (Interview with former employee in

DG Enlargement Bernd Biervert, 2005; Interview with Simona Granata-Menghini, 2005). Thus the Venice Commission Report played an important role in creating a framework and legal basis for the arguments against the Law, but did also become more important as the actors referred to it. The authority of the Venice Commission stems from being, even more than the HCNM and the rest of the CoE, an independent organisation, which (unlike the HCNM and other parts of the CoE) would argue only on the basis of legal rules.

An Exchange between the Organisations

The case of the Hungarian minorities provides a lens through which it is possible to study the power and power relations of the organisations. Evidently, the EU relied way more on the CoE and the HCNM as backing for its arguments than the other way around. This, I will argue, implies that the EU referred to the statements of the other two organisations because it saw them as having greater authority than itself, at least within certain fields. It is also possible to argue that the way in which the EU aligned its position to that of the other two organisations is due to their greater constitutive power. This alignment can be seen in the EU's decreasing emphasis on the bilateral treaties and its increasing emphasis on issues that the other organisations treated as important, such as tertiary education in the case of Romania. Not only did the EU increasingly address the more of the same issues as the other two organisations, but it would also to a large degree (and increasingly over the years) adopt similar positions on these issues.

Nowhere is this seen more clearly than in the case of the Status Law, where the EU quickly adopted positions similar to the HCNM and used his interpretation of the relatively vaguely-worded Venice Commission Report, as well as his interpretation of the Report's application to the case of the Hungarian Status Law. As the Venice Commission Report did not mention the Hungarian Status Law and was imprecise on several points due to the lack of established standards within the area and disagreements within the Commission, different actors could interpret the Report in the way that they wanted (Interview with Simona Granata-Menghini, 2005). And this they did, with the Hungarian government claiming that the Law was in accordance with the Report, and the governments of the neighbouring states claiming the opposite (BBC Monitoring Service, 2001).

Yet, the HCNM had the power to interpret the application of the rules laid down in the Report to the Status Law case, and the authority to have this interpretation accepted by all parties. Even the

Hungarian government, who probably disagreed strongly with the HCNM, had to accept the claims of the HCNM and try to (appear to) be in accordance with them. Part of the picture is that the HCNM and EU often contacted the Venice Commission to have uncertainties clarified (Interview with Simona Granata-Menghini, 2005). This is probably another reason why the three organisations were closely aligned. Thus, whereas the HCNM might have held significant authority to interpret the application of the rules to the world (and hence also the authority to interpret the world), the Venice Commission definitely held the authority to interpret the rules for status laws, a set of rules which had not previously been defined, but were interpreted on the basis of other rules and practice (The Venice Commission, 2001). Nevertheless, it would be wrong to see the EU as uncritically adopting whichever position the HCNM or the CoE adopted. Rather, it picked many, but not all, of the recommendations of the other two organisations.

However, the EU had the power to interpret its own set of rules, the EU legislation (the *acquis communautaire*), which it, unlike the other two organisations, referred to quite often. The CoE, or more specifically the Advisory Committee on the FCNM, had the final authority to interpret the FCNM as well as states' compliance with it. And the Venice Commission had the authority to establish international standards in order to create a (however broadly defined) set of rules which all actors had to follow and could not question. The latter reveals how much authority the Venice Commission Report held, since, as Joseph Raz (1990) has argued, authority is about making certain interpretations binding and official. This way, the each organisation held authority regarding interpreting different subjects.

Using the distinction between different kinds of authority established by Michael Barnett and Martha Finnemore (2004), I will claim that the Advisory Committee and particularly the Venice Commission held considerable expertise authority, whereas the CoE Parliamentary Assembly held less of this kind of authority. Also the Venice Commission's restraint when it came to speaking on issues beyond its legalistic jurisdiction increased its status as an independent moral authority. The Parliamentary Assembly also held much less of the rational-legal authority associated with being a bureaucracy compared to the other two institutions. All three institutions had the delegated authority and the moral authority stemming from being part of the CoE, to which the member states had delegated authority to deal with national minorities, and which was set up to embody values such as

democracy and human rights. Furthermore, the CoE's moral authority also stemmed from being perceived as an organisation operating above the self-interests of states and other actors.

The HCNM did not have the same kind of authority as the CoE when it came to interpreting the rules of national minority protection. This among others due to its status as an institution which was created to act as a "broker" between governments and minority representatives or between different governments, rather than as an independent authority on the rules of minority policies⁷. Another factor is that the OSCE did not "own" a convention on minority protection the way which the CoE "owned" the FCNM, which over the years became *the* standard within the field. Nevertheless, the HCNM would refer to the OSCE Copenhagen Document, the FCNM, or "international standards" in the abstract, when he needed backing for his recommendations, although he could only interpret the rules in concrete cases, and not like the Venice Commission establish a set of authoritative rules which all actors should stick to. The HCNM also had the power to interpret the situation of the national minorities.

In terms of rational-legal authority, the HCNM held relatively little, as it was an institution consisting of one man and his secretariat. Hence, he could hardly claim to embody an impersonal set of rules, but could on the other hand use the moral authority inherent in being an elder statesman, detached from political life⁸. In terms of expertise authority, he could draw on various OSCE experts as well as experts from the member states, although this perhaps not matched the Venice Commission. Finally, he could refer to the authority delegated to him from the OSCE member states, as his jurisdiction consisted solely of OSCE states.

The EU held relatively little power to interpret the rules regarding minority policies, but could to some degree interpret the behaviour of the states. Nonetheless, as mentioned it would often rely on the other two organisations. In terms of authority, it held a large degree of rational-legal authority as a bureaucratic organisation, whereas it would hold little expertise authority, as it had no prior experience with national minority issues, and did not try to build up such expertise, but chose to rely on the HCNM and the CoE (Interview with former employee in DG Enlargement Martijn Quinn, 2005). Another reason for this cooperation is that the organisations this way could present a common position which would improve their situation vis-à-vis the states.

⁷Of the CoE institutions, only the Advisory Committee was established with this in mind.

⁸ Both the HCNMs, the Dutchman Max van der Stoep and the Swede Rolf Ekeus, were former diplomats.

In terms of moral authority the EU held even less than the other two organisations. It could hardly claim to be independent from other concerns, as it easily could have reasons which had nothing to do with national minorities for claiming that a state's minority policy was not acceptable. Moreover, the EU member states in many cases did not themselves meet the standards advocated by the EU's DG Enlargement (Burgess, 1999; Johns, 2003). Probably, the EU member states were not too interested in establishing an EU standard which they could be held to account for (Kelley, 2002: 182). By referring to the CoE and the HCNM it could counter some of the criticisms of operating with double standards by arguing that they just wanted the same as the other two organisations. When it comes to delegated authority, the EU could also hardly claim that the accession states had delegated authority to it, as they were not yet member states.

Whereas the CoE and the HCNM held much power to constitute the world in terms of interpreting both the rules for minority policy and the policies of the CEE states, they held little direct power in Dahl's sense. The EU, on the other hand, held significant power to make the CEE states do what they would not have done if it was not for membership conditionality. This way I will argue that the organisations engaged in an "exchange of power", in which the EU drew on the arguments of the CoE and the HCNM, as they held the moral and expertise authority, which the EU lacked. Without them, it would have been much harder for the EU to argue against or for minority policies the way it has done. On the other hand, the HCNM and the CoE would have had relatively little direct power over the states, had their arguments not been picked up by the EU. Furthermore, they could simply point to their influence with the EU, meaning that the states would have to comply as doing otherwise could damage their chances of EU membership (for a similar argument regarding the OSCE, but not the CoE, see Sasse, 2005). This also explains why the states complied significantly more with the demands of the HCNM and the CoE once EU started its accession process in 1997 (Kelley, 2004b).

Conclusion

The Hungarian minorities in Romania and Slovakia has provided lens through which we can study the relations of power within the field of national minority politics in Europe. When the concept of power was broadened, it was possible to see that the CoE and the HCNM were far from powerless. Rather, the uneven distribution of different kinds of authority between the three organisations

opened up for an exchange between the organisations, which increased their combined power over Hungary, Romania and Slovakia as well as other CEE states. Hence, using a conception which opened for more dimensions took the analysis beyond the distinction between compliance and socialisation.

The kinds of power analysed here differed from the one used in most of the literature. First of all the power relations were in many cases indirect. Whereas it is possible to say that the EU held direct power over Hungary, Romania and Slovakia, it is hard to say that the CoE and the HCNM held much direct power over the states, and slightly misleading to say that they held direct power over the EU. Of course it is possible to say that they were in a position of symbolic power over the EU, which recognised their capacity to speak on the subject but misrecognised their power (Bourdieu, 1991). Yet, this differs from the Dahlian conception of power as intentional. This is the second way in which the conception of power used here differs from the classic one: power is not necessarily intentional, although it may very well be so. It is hard to argue (although also impossible to rule out) that the CoE and the HCNM deliberately sought to moral and expertise authority and the consequent positions and constitutive powers rather than to change the convictions of the governments by argumentation. I also find it hard to believe that the three organisations agreed the mentioned kind of exchange of different kinds of power.

Furthermore, the conception used differs from the classic conception in that power not necessarily has to be causal in the sense that it makes an actor do something it otherwise would not have done. In fact, the analysis is crucially shaped by the focus on the constitutive powers of the CoE and the HCNM to interpret the constitutive and regulative rules regarding national minorities, as well as the degree to interpret the world and the way in which the rules applied to it. Without these powers (which differed somewhat between the organisations), the CoE and the HCNM would have been powerless, but the EU's power would most likely also have been diminished. Thus, the differences between the organisations have not been detrimental to their power, but rather enhanced their combined power.

This does not mean that the existing literature on the relations between European organisations and post-communist states with national minorities should be discarded. Rather, studies such as Kelley's (2004a) and Hughes & Sasse (Hughes and Sasse, 2003) have provided important insights

into the importance of the direct power of the EU and the lack of this kind of power of CoE and the HCNM. The point is more exactly to claim that it is a mistake to see direct, intentional and causal power as the only kind, and consequently the CoE and the HCNM as powerless, and also to argue for more analyses of how other kinds of power have worked in this context. Finally, it demonstrates the importance of analysing how vaguely worded European norms were defined in practice, and of the power of being able to define such norms.

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