

**Seminar on "The Protection and Participation of National Minorities as a
Condition for Successful European Integration"**
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**A view of a Parliamentarian on the Role of Minority Issues in the Process
Towards European Integration**

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I. European Union and minority protection

The ideas of minority protection and participation are inherent for the EU founding principles - subsidiarity, first of all. In fact, the united Europe is a "union of minorities". The entire system of decision-making is elaborated in a way to allow each of these "minority groups" to participate effectively in making the decisions affecting it. In this view, the experience of the EU offers a unique example of thoroughly elaborated rules and procedures.

In the meantime, there is a striking difference in how the EU approaches different kinds of discrimination and minority rights. While a lot of detailed binding regulations have been adopted to ensure equal opportunities and equal treatment between women and men, very few documents exist to address the problem of ethnocultural diversity and the rights of ethnic and national minorities (mostly declarations and resolutions which are not binding, as a matter of fact).

These documents' language is political rather than legal. In particular, Article 13 of the Treaty on European Union does not "prohibit" discrimination, but "combats" it. Besides, "its protection does not extend to EU residents who are not EU citizens. The directives "[are] limited in scope by not addressing certain important types of discrimination". This "[is] a substantial problem, especially in the light of enlargement and the situation of certain minority groups in applicant countries. A number of criticisms were made of the directive on racial discrimination: in particular the omission of references to religious discrimination (often closely linked to discrimination based on race and ethnicity), public services and institutions, and incitement to racial hatred and violence" .

"The 1989 Community Charter of the Fundamental Social Rights of Workers recognises the importance of combating every form of discrimination in order to ensure equal treatment for all.

Thus, very few existing anti-discrimination directives are rather limited in scope. A directive on the principle of equal treatment between persons irrespective of racial or ethnic origin - a part of the anti-discrimination package adopted recently by the Council – will automatically become part of the Community's *acquis*. However, prohibition of discrimination is only the very first, initial stage and by far does not cover the entire scope of minority rights as enshrined in modern human rights instruments.

So far the EU has not adopted any legally binding instruments devoted specially to minority rights.

"The Community was often criticised for the lack of a specific legal base for action going

beyond equal treatment for men and women in the employment field".

Moreover, the EU member states are more reluctant to undertake legal responsibilities in the field of minority rights by ratifying other international instruments. Two EU member states (Belgium and France) did not even sign the Framework Convention for the Protection of National Minorities, while among the candidate states so did only Turkey. Among eight Council of Europe member states who signed but have not ratified this Convention, four are the EU member states (Greece, Portugal, the Netherlands and Luxembourg), while only two are candidate states (Poland and Latvia).

The EU member states apparently prefer the European Charter for Regional and Minority languages, with its "a la carte" approach and broad possibilities to choose various options, to the Framework Convention - with its rather vague but legalistic concept.

"The suggestion was made that, in order to avoid double standards, all EU Member States should, without delay, ensure the speedy adoption, with commitments to ratify without reservations, the proposed Protocol No. 12 to the European Convention on Human Rights. Broad ratification was also urged of the Framework Convention for the Protection of National Minorities as well as the declaration concerning Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination."

Although the European Court of Justice has dealt with several cases connected with human rights, no one of these cases was related to the rights of minorities.

Finally, the EU has no specialised institutions within its ramified bureaucratic framework to deal specifically with the minority rights.

In the meantime, the conditions of respect to human rights and specifically minority rights are included into the so called Copenhagen criteria - i.e. the requirements a candidate state must meet in order to claim full-fledged membership in the European Union.

Thus, a question arises: how the EU can evaluate a candidate state's compatibility with the Copenhagen criteria with regard to minority rights if the EU has neither documents nor institutions/procedures to assess the situation?

Apparently, there are two possible ways. First, the EU may rely on the conclusions of other European organisations, e.g. the Council of Europe and the OSCE. Second, the EU can arrive at the conclusion simply through political bargaining with the governments of the candidate states.

The first approach seems to be applied, although to a limited extent. In particular, the OSCE High Commissioner on National Minorities is consulted on regular basis by the European Commission. As to the second possibility, it seems to be rather dubious. National parliaments of the candidate states are involved in the accession negotiations in a limited degree. Thus, if a minority is represented in a Parliament it has a chance to be heard by the EU representatives, although even in this case a minority's possibility to speak out is cannot be compared with the opportunities of the government. However, no institutionalised opportunities to participate in the accession negotiations are envisaged for minority and human rights NGOs.

John Packer, Legal Adviser to the OSCE High Commission on National Minorities: "We have serious concerns that if there is not an EU internal (human rights) assessment process and if there is not a continual annual reporting, new states which become EU members might feel less pressure to meet those (human rights) standards."

To sum up: somewhat surprisingly, the accession negotiations procedures stipulate almost no room for minority participation, contrary to basic principles of the European Union.

What are the causes of this situation? Several of them can be mentioned:

- well-developed regional/decentralisation approach within the EU, what makes special procedures based on minority rights approach redundant - however, it can be hardly applicable to the "non-territorial" minorities;
- deeply rooted traditions of "old democracies" allow to resolve minority related issues without special instruments and arrangements;
- and the last but not least - absence of a single "majority" within the EU predetermines the necessity to modify "traditional" principles of minority protection.

The problem is that all these principles can hardly effectively work when applied to the candidate states.

II. The case of the Baltic States

Main trends of the minority policies in the Baltic states reflect common features of the "new democracies" and, in the meantime, demonstrate peculiarities of these states. Main hurdles for minority participation in public administration in the Baltic states are the following.

1. "The restored citizenship" concepts in Estonia and Latvia excluded most of minority groups from political participation. On the basis of the principle of "legal continuity", Latvia, Lithuania and Estonia declared restoration of their statehood, not established it anew. Therefore, also entity of citizens has been restored: only those persons who were citizens of these Baltic states before Soviet annexation in 1940, and their direct descendants, were recognised as "initial" citizens. Lithuania granted the right to obtain citizenship by registration also to those persons who entered Lithuania between 1940 and 1990, and their descendants. Latvia and Estonia, on the contrary, adopted rather strict conditions of naturalisation. As a result, of the main minorities in Latvia, only a relatively small fraction could take part in political decision-making after the restoration of independence: 38% of ethnic Russians, 19% of Belarusians, 6% of Ukrainians, 61% of Poles.
2. Full control over political decision-making allowed adoption of strict language policies. In particular, perfect command in the state language is demanded by law for candidates to national and local legislatures, as well as for employees in public office. This excluded from competition many minority representatives who's state language command was limited.
3. Finally, general policies aimed at consolidating the dominant position of the titular ethnic groups played an important role. In many post-communist countries, minority groups are often perceived as a threat to nation-building projects, and titular political elites tend to exclude minorities. In the Baltic states, this trend is particularly apparent due to historical reasons (annexation of the Baltics in 1940 and following policies of Russification).

Representation of minorities in legislative power reflects, as a rule, the level of political mobilisation of a minority, while representation of minorities in executive power is determined by the policies of a majority.

In all three Baltic states national minorities are underrepresented in public administration bodies, however, each state has its own peculiarities both in respect of minority mobilisation (the strength and role of ethnically-based political parties are particularly different), as well as in respect of the state's cadre policies.

The biggest national minority in Latvia and Estonia (however, it seems more relevant to speak about the Russian-speaking linguistic minority) represent a clear example of the so called "proletarian diasporas" – the case opposite to eg Hungarian minorities in Romania and Slovakia. Generally speaking, the level of ethnic mobilisation is rather low, minority political and social organisations are small and not influential.

In Lithuania, political parties of the Polish minority were relatively strong in early 90s but later lost much of their influence. In the meantime, political parties of the Russian minority never enjoyed serious support. Currently, ethnically-based political parties in Lithuania are of rather marginal importance. Several minority representatives are elected from different lists.

On the contrary, in Estonia - where Russian minority resides compactly in the capital Tallinn and in the North-East of Estonia - the "Russian" political parties used to receive absolute majority of votes of the Russian-speaking electorate. At the last elections, even two "Russian" lists competed, as a result, one of them failed to overcome the 5% electoral threshold.

In Latvia - with its largest but more evenly distributed throughout the urban areas and generally better integrated Russian-speaking minority - "explicitly Russian" political parties never gain considerable success in the both national and municipal elections. However, a coalition of the "pro-minority" parties - with essentially mixed ethnic composition of activists and candidates and liberal programme towards minorities - received a lion's share of minority votes.

These differences can be explained with different share of minority populations in three Baltic states, different level of social integration (mixed marriages, bilingualism, etc), as well as different level of recognition of minority rights in these countries.

As to executive power, there is practically no accurate and reliable statistics to evaluate participation of minorities. However, it is apparent that both in Latvia and Estonia Russian-speaking minorities are heavily underrepresented in the institutions of public administration. In fact, within 10 years after the restoration of independence a kind of peculiar social stratification has emerged in these states: while the positions in state and municipal administration are overwhelmingly occupied by titular ethnic groups, Russian-speaking minorities work mostly in private business.

III. Promotion of effective participation of minorities

Several methods have been elaborated recently to promote participation of minorities in public administration. Analysis of the key documents devoted to this issue allows to single out the following basic approaches:

- federalisation;
- non-federal territorial autonomy arrangements, including decentralisation;
- introduction of proportional/majoritarian electoral system to provide more adequate minority representation;

- special representation measures (reserved seats in the parliament and municipal legislatures; reduced vote threshold; allocation of guaranteed cabinet positions and seats);
- minority legislative veto;
- delegation of power;
- specialised administrative bodies dealing with minorities;
- advisory bodies.

Federalisation can be hardly seriously considered in the Baltic states simply due to their size. The idea of territorial autonomy is handled with extreme caution, because of concerns about possible secessionist and irredentist attempts. Special representation measures were used only once in Lithuania (in first post-independence elections, a reduced vote threshold was established for the Polish parties). Minority veto and delegation of power have never been used in any of the three Baltic states.

On the contrary, special administrative bodies to deal with minority cultural affairs have been established in all three Baltic states. The crucial issue here is the status of these bodies, their real authority, and the real amount of resources allocated to be at their disposal.

Also minority advisory bodies have been established in all three countries. It seems that in Lithuania this council (attached to the government) proved to be the most effective. In Estonia ("The Roundtable") and Latvia these councils (attached to the Presidents of State) are much less successful and have recently undergone major crises. Real capabilities of these bodies still remain rather unclear.

IV. Conclusions

The EU enlargement will entail not only further development of the minority standards in the candidate states, but will also require modification of the EU policies. In particular, there is a visible need to elaborate more strict legal provisions, particularly in the field of the rights of "dispersed" minorities.

Perhaps, the EU Charter of Fundamental Rights being drafted now might include some provisions on minority rights. Adoption of a special additional Protocol on minority cultural rights appeared impossible within the framework of the Council of Europe, although its Parliamentary Assembly has insisted on this since 1993. Maybe this will prove feasible within the EU. Ratification of the Council of Europe instruments – the Framework Convention for the Protection of National Minorities, first of all - by all the EU member states and probably by the European Union itself, might be another option.

Anyway, it is clear that transferring the basic principles and values of liberal democracy into legal provisions and enforcement mechanisms will be an extremely complicated task.