ANTI-RACISM AND MINORITY RIGHTS: CONFLICTING OR COMPLEMENTARY APPROACHES?

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I will try my best to be brief, but I'm going to be a little bit provocative, frankly speaking. This can be noticed already from the title of my presentation: antiracism, anti-discrimination on the one hand and minority rights approach on the other hand. It seems that both principles, both concepts are very close and traditionally we use them jointly. This was the case also with this report. On the other hand, often these approaches conflict. The most apparent manifestation is the view, which is quite widespread, that minority rights are a kind of temporary concept, a kind of side branch of modern human rights, which must disappear very soon. This is a concept which is necessary to remedy some inequalities of the past, to fix some injustices of the past. As soon as it is done we will not need minority rights any longer. There is also another extreme, as we heard today from Nicolai Gheorge, in some countries where Roma are recognised as national minority. This recognition is used as a pretext to deny the need to develop anti-discrimination legislation, because the very recognition of Roma minority resolves problems. Why there is this conflict between the two approaches? In my view, the main reason is the historically established understanding of the very nature of minority rights. The historical idea of minority right protection appeared much earlier than the principle of non-discrimination. All these ancient treaties and provisions dealt with religious minorities, and the very concept of national or ethnic minority appeared much later.

The first minority treaty can be dated back to 1606: it was the so-called Vienna Treaty between the king of Hungary and the Prince of Transylvania, and contained a clause about the rights of Protestants in Transilvania. All these old bilateral and multilateral treaties on minority protection were based on the same concept: minority rights were considered as sort of special privileges granted to some groups, which due to some historical, religious or political reasons were particularly dear to contracting parties. In no way were minority right universal.

The system of minority treaties under the League of Nations may be the best evidence for this. Obligations in the field on minority protection were imposed on the states which lost World War I and those states who obtained independence as a result of the World War, as well as those states who gained some territories as a result of the war. But the victors, the states who won World War I, undertook no obligations in this respect.

It may be that the situation of Roma is the best illustration of this approach because the Roma have never had a kin state, which would take care of them and this is why the situation of this minority is the worst in Europe.

Between the World Wars the minority issue was exclusively a foreign policy issue, but it is a fact that the system of minority treaties appeared incapable of preventing World War II, and this is why the whole idea of minority protection was somewhat discredited. The United Nations, which developed a completely new approach to human rights based on the principle of universality of human rights, and the principle of non-discrimination was a corner stone to this approach.

But nation states were very reluctant to include minority rights in any way into this new system of human rights. The anti-discrimination approach was stressed instead. Thus, the legal concept of anti-discrimination and related, rather philosophical concept of anti-racism are much younger and they were institutionalised relatively recently, only after World War II. Even in the second half of the XX century the basic idea of this concept, like let's say, universal franchise, were quite alien in many countries - even in those quite advanced in terms of democracy. Historically this idea of non-discrimination had to be strongly established and all efforts were aimed at its establishment, and promotion of the philosophy of anti-racism. Minority rights understood in the sense of the League of Nations were perceived as a possible impediment to this new concept of equality. This is why the United Nations were reluctant over this issue. The first pertinent clause, i.e. Art.27 of the International Covenant For Civil and Political Right appeared only in 1966.

Is this reluctance well reasoned? Yes and no. On the one hand, non-discrimination aims at ensuring equality, minority rights aim at preserving diversity. Non-discrimination means the right to equality, while the minority rights mean the right to diversity. If we take the definition of discrimination which was partly quoted by Jim... The International Convention on the Elimination of All Forms of Racial Discrimination says that "in this Convention racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour or ethnic origin" and so on. So it's difficult to interpret this definition as going beyond the principle of equal treatment. Of course, there is some possibility to interpret non-discrimination in a broader sense, and in particular, to make the use of the Convention's wording "..which has a purpose or effect of…"**,** but nevertheless if you stick to this legalistic approach one can hardly claim something more than exactly equal treatment.

The key question is: does equal treatment always guarantee equality in practise? The EU Directive, just explained by Jim, goes much further. This concept of indirect discrimination is an extremely important concept, because in implies something more than just equal treatment. I'm afraid even if we stick to this the most generous interpretation of indirect discrimination, it is not enough. Because many serious practical things are not covered even by this concept of indirect discrimination. Let me mention some examples. First, the Race Equality Directive does not touch upon such an important issue as linguistic policy. Unlike in the UN document, language is not explicitly mentioned as a prohibited ground for discrimination in the Race Equality Directive. In practice, if we stick to this principle of equal treatment, then it is quite logical that if you have one official language in a country which is mandatory for everybody, it is very difficult to claim any discrimination in this respect because the rules of the game are equal for everybody, no one is discriminated against. However, in the extreme case when

some people belonging to minority do not at all have command of this official language, this provision is clearly discriminatory.

In any case, through these procedures, even if the persons belonging to minorities have good command of the majority language, this principle of using only one language everywhere puts them into a situation of inequality, particularly in the fields where elements of competition are present, like eg civil proceedings, as mentioned by Jim. Of course, if, lets say, two rivals in court are more or less equal in terms of proficiency, this aspect to whom the language of the court is a mother tongue and for whom it is not might appear decisive. The same is true about, let's say, entry exams to an university. Of course those who take this exam in their mother tongue receive some advantages. Nevertheless, it's difficult to claim any discrimination in this respect.

If we take concrete areas mentioned right now by Jim, training and re-training. Of course you know the problem of using minority languages education is one of the most controversial concept, and we don't have real legal standards in this respect. In my country, Latvia, all retraining of teachers (and actually in all other areas) financed by the state are held only in the state language. This is a concrete case.

Justice. I mentioned this case already: the language of the court. In criminal proceedings - yes, of course, free translation must be guaranteed for both defendants and witnesses. But not in civil cases! All documents must be submitted only in the state language, so this is a real problem.

In elections, in my country, as well as in Estonia, all people to be registered as candidates for the election, both at national and municipal level, must certify proficiency in the state language. Now a complaint from Latvia about this provision is being considered by the European Court of Human Right, it's a very interesting case, which according to unofficial information has been just ruled admissible.

Another example which I can maybe mention rather refers to faith and religious affairs, like holidays. In some countries of the region both Lutherans and Catholics are present, on one hand, and Russian Orthodox on the other. We know that there is two weeks difference between the dates when Catholics and Lutherans on one hand and Orthodox on the other hand, celebrate Christmas. In most of the countries only Lutheran Christmas is declared as official holiday, so, for the people belonging to the Orthodox faith it becomes problematic because it's up to the employer whether to give days off or not. This is exactly where the policy of multiculturalism might be efficient, but it's not implemented always and everywhere.

To sum up. The modern concept of minority rights is aimed at achieving full and effective equality as a main goal. This is much more than just equal treatment as implied by non-discrimination. Sometimes equal treatment is sufficient to provide full and effective equality, sometimes it is not.

I would like to mention a recent judgement of the European Court of Human Rights concerning a complaint by Roma from Great Britain. This is a very typical case. The Court's judgement against this complaint looks dubious at the least, but it is very difficult to blame the court because the court acted in full accordance with the letter and the spirit of the European Convention of Human Rights, as all the documents adopted at that time, in the '50s and '60s, emphasised non-discrimination as equal treatment. And if the Court interprets some other way? That Roma must be treated differently by British authorities because of their peculiar identity. It would be perceived as rather running contrary to the spirit of the European Convention.

Maybe the most excellent example of the coexistence of these two approaches is the right to education in minority languages, as I mentioned earlier. Let's take two basic documents in this field: the first one is UNESCO Convention Against Discrimination in Education, adopted in 1962. The main idea of this convention is clear: to fight and combat segregation in education, what was widespread at the time in many countries. Actually education in minority languages is not ruled out, but is mentioned merely as a kind of exception. Art. 2 says that when permitted in the state the following situation shall not be deemed to constitute discrimination within the meaning of Art 1. Subparagraph (b) says the establishment or maintenance of religious or linguistic reasons for separate educational systems or institutions offering such education and so on. So it's clearly tolerated, the Convention puts up with it, but it was not formulated as a right.

If you compare this Convention with a different document adopted much later, such as the Hague recommendations on the rights of minorities in education, the approach is totally different. Education in minority languages is declared to be a necessary prerequisite for the preservation of minority identity. But both documents exist now, both documents are not legally but politically binding, yet, one can hardly claim that these documents are consistent or even compatible. When choosing their policies in the field, states have a quite broad choice, and exactly in education the principle of non-discrimination is most often used to deny minority rights.

In my country, Latvia, according to the law starting from 2004 all state funded secondary education will be provided only in the state language. The main reasoning behind this provision is the same – i.e. that we must "take care" of the children belonging to minorities. In order to completely exclude any possibility of discrimination towards them, we must guarantee that they speak the state language at the same level as native speakers. The only chance to guarantee this is that all of them graduate from schools with the same language of instruction. In my view, this is completely contrary to the very idea of minority rights, but nevertheless, this is what is declared by the government and accepted by the parliament and generally accepted by the European Union, because this issue was never raised by the European Commission, and the European Commission seems quite happy with the way Latvia deals with this problem of education for minorities.

If you take extreme cases, we know that some countries simply deny the existence of minorities, like France. This denial is formally based on the principle of equality: all citizens are equal, if it is recognised that some citizens are not equal, we would violate

this principle of equality, so this is why there is no minority in France. Some other countries like Greece and Turkey follow the same pattern. France and Greece are influential member states of the EU and of course this attitude must be taken into account by the EU and this very much shapes the EU policies in this respect. Of course, there is also a different extreme, like the policy of affirmative action or positive discrimination, which is rarely used now because of the very conservative interpretation **of** positive discrimination. These are extreme cases and the real situation usually is somewhere in between.

We can recall some academic substantiation like Will Kymlicka's approach and his concept of national minority versus migrant minority. According to Kymlicka, a national minority is interested, first of all, in preservation of identity, but migrant minorities are interested in successful and quick integration and even assimilation. Maybe this concept might work well in the countries like America and Canada, but it's hardly applicable in Central and Eastern Europe, because it's very difficult to define in our countries who is a migrant and who belongs to national minorities, because as a rule it is not people but borders which move in the past, and people changed their national affiliation without physically moving anywhere. It is a very dangerous concept which allows rejection of minority rights, because its criteria are very vague, to say the least.

To sum up: what can be done? The fact that many people and political activists see very well, is that still many influential people in many countries and international organisations perceive minority rights as a foreign policy issue. If you take e.g. Greece and Turkey - the only document that both states recognise in the field of minority rights is the Lausanne treaty of 1923, which singles out some minorities whose rights must be recognised by Greece and Turkey. But these states do not go further. Unfortunately, this is a reality which we should take into account.

In my view, that is very important to insist that the minority rights are an integral of human rights as the Framework Convention says, regardless of ratification or formal recognition. This is a standard. The question of how to understand this, so called, European standard in the field of minority protection - we should clarify the content, and the Framework Convention offers this clarification.

I'm a little bit afraid that amongst the consequences of adoption of Race Equality Directive, there might be some negative ones, too. I mean that the presence of the Race Equality Directive might be used to delay the further discussion on the necessity of minority rights in EU. Today, the EU has no it's own provisions, it's own standards on the field of minority rights because indeed it would be very difficult to find a kind of common denominator, let's say, between France and Greece, on one hand, and e.g. Finland on the other, because policies are very different. The problems related to minorities do exist in the EU member states but are usually handled using some general democratic procedures. Because of democratic traditions these problems can be often solved more or less successfully without special provisions, without special institutions and procedures particularly suited to these issues.

In my view, the EU will have to deal with these issues in the foreseeable future. Due to two factors. First, growing diversity within the EU as such. Even the share of the visible minorities in the EU member states is much higher that in Central and Eastern Europe, and not all of this people can be classified as a migrant minority according to Kymlickas' concept. Many of these people, indeed, increasingly demand respect of their dignity and identity. The EU will have to deal with this issue, it cannot be ignored.

The second factor is even more important. If the EU now turns a blind eye to the minority problems in the accession countries - what is likely to happen - it will be very costly for the EU itself, because these problems will not be removed after accession. The candidate states will rather simply "import" these problems into the EU, and they will become the internal problems of the EU. My point is that the EU has a vital interest in developing an effective system in handling growing ethnocultural diversity, combining both approaches, both non-discrimination and minority rights. Well, non-discrimination is already recognised, minority rights are not. It will be much more difficult for the EU to handle this issue after the accession has taken place, after enlargement. I believe, someone must explain this to the EU and I believe this project is a very proper institution to do this.

Thank you.