

INTEGRATION AND EXCLUSION

LINGUISTIC RIGHTS OF NATIONAL
MINORITIES IN EUROPE

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Language Policies in Latvia: Lessons for Minority Protection

Boriss Cilevics

1. INTRODUCTION

Language policies have become the major factor shaping strategies of accommodation of diversity throughout Europe. In many countries, linguistic identity has become crucial in structuring societies along cultural lines, thus replacing the religious affiliation that used to be dominant in previous centuries. Therefore, linguistic rights have turned into the core of a still rather vague modern concept of national minority rights.

The first more or less comprehensive universal standards for linguistic rights appeared only in 1990, in the CSCE Copenhagen document.¹ Several years later, this political declaration was transformed into a legally binding Framework Convention for the Protection of National Minorities (FCNM).² Almost simultaneously, another instrument based on a different concept, the European Charter for Regional or Minority Languages (ECRML)³, was opened for signature. Co-existence of these two main elements of the modern framework of minority protection marked an implicit legal conflict described by an astute scholar as “*language rights vs speaker’s rights*”.⁴

1 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990.

2 Framework Convention for the Protection of National Minorities, entered into force on 1 February 1998.

3 European Charter for Regional or Minority Languages, entered into force on 1 March 1998. Unlike FCNM, the Charter is a treaty for the protection of linguistic diversity, therefore, languages – and not the persons speaking these languages – are subjects of protection, in a sense, “the right-holders”.

4 Pavlenko, Aneta, “Language Rights Versus Speakers’ Rights: On the Applicability of Western Language Rights Approaches in Eastern European Contexts”, 10 (1) *Language Policy* (2011), 37-58.

The Copenhagen document reflected, and FCNM inherited, a liberal approach. It declares acceptance of diversity and non-interference by states in private area (free use of mother tongue by individuals, including in public; the right to establish and maintain private educational, cultural, and religious institutions and associations; the right to practice religion and disseminate and exchange information in a mother tongue; etc.). In the meantime, recognition of diversity in public areas, such as instruction of or in a mother tongue in public schools or use of a minority language before public authorities, appeared conditional, and adaptation of the governance system to cultural diversity limited and supplemented with rather vaguely defined conditions and reservations (*adequate opportunities ... in conformity with applicable national legislation*). In turn, the ECRML deals primarily with public areas, although it simply offers a long list of possible measures the States Parties could take, fully depending on their goodwill.

The system of monitoring compliance with these instruments remained rather weak. Minority rights are not justiciable *per se*, with few exceptions, i.e. they cannot be invoked before national or international courts.⁵ Neither the FCNM nor the ECRML envisages procedures for individual complaints. Therefore, individual rights of persons belonging to minorities still remain subordinate to the rights of nations and languages (whatever these philosophical, rather than legal, concepts mean).

Development of language legislation and linguistic policies in Latvia after the restoration of independence offers an instructive example. In this Baltic state, the changes in the field of language use were the most radical and rapid. In fact, they occurred simultaneously with relevant international standard setting and were subject to emerging monitoring. The case of Latvia saliently demonstrates both achievements and weaknesses of the current international system of minority protection, as well as main challenges, controversies, and problematic areas within this system.

This paper highlights these problematic areas on the basis of Latvia's experience and formulates some questions for the further evolution of minority protection from a practitioner's rather than an academic perspective.

5 Virtually all successful relevant cases in the ECtHR are related to prohibition of discrimination of the persons belonging to minorities in enjoyment of "general" rights, e.g. the right to association (ECtHR, Appl. No. 57/1997/841/1047, *Sidiropoulos v. Greece*, judgment of 10 July 1998; ECtHR, Appl. Nos. 29221/95 and 29225/95, *Stankov et al. v. Bulgaria*, judgment of 2 January 2002), freedom of expression (ECtHR, Appl. No. 109/1996/728/925, *Radio ABC v. Austria*, judgment of 20 October 1997), the right to be elected (ECtHR, Appl. Nos. 27996/06 and 34836/06, *Sejdic and Finci v. Bosnia*, judgment of 22 December 2009), the right to education (ECtHR, Appl. No., *D.H v. Czech Republic*, judgment of 13 November 2007).

2. LANGUAGE POLICIES IN THE MAKING

A number of publications have already described the language situation in Latvia and its historical evolution, Soviet legacy, and relevant legislative and policy developments after the restoration of independence.⁶ Assessments and conclusions of researchers substantially differ. We will not touch upon the aspects most often covered, in particular the use of languages in public education and minority education reform that caused serious tensions from 2002 to 2004,⁷ or the spelling of minority names, the issue that so far has produced the most voluminous – and controversial – case law.⁸ Other, less known dimensions of the language policies also offer interesting food for thought.

The restored state faced serious challenges. The demographic situation had greatly changed during the Soviet period, bringing the share of ethnic Latvians to only slightly over 50%. While Soviet authorities, in accordance with declared policies of "support for national cultures of the USSR peoples", generously financed the publication of books, theatre, etc. in Latvian (needless to say, under strict ideological control), and preserved parallel education systems in Russian and in Latvian up to the university level, the area of official functioning of Latvian was severely curtailed. According to the last USSR census, only about one-fifth of persons belonging to the Russian-speaking minority were proficient in the Latvian language.⁹ Ethnic Latvian society, mobilized in the course of *Atmoda* (Awakening), demanded quick and radical changes. A number of external factors also contributed into shaping language policies.

Under these circumstances, the language regime developed in Latvia reflects an aspiration for delayed completion of nation-building forcibly interrupted by the Soviet annexation in 1940. In this process, symbolic aspects of the use of languages often

6 Kamenska, Anhelita, *The State Language in Latvia: Achievements, Problems and Prospects* (Latvian Center for Human Rights and Ethnic Studies, Riga, 1995); Cilevics, Boriss, "Language Legislation in the Baltic States", in Koenig, Matthias and De Guchteneire, Paul (eds), *Democracy and Human Rights in Multicultural Societies* (UNESCO Publishing/Ashgate, 2007), 167-184; Jarve, Priit, "Language Legislation in the Baltic States: Changes of Rationale?", paper presented on the Panel "Language Laws: Nation-Building, Ethnic Containment, or Diversity Management?" at the ASN 2000 Convention, 13-16 April 2000, New York; Druviete, Ina, "Linguistic Human Rights in the Baltic States", 127 *International Journal of the Sociology of Language* (1997), 161-185; Ozolins, Uldis, "Between Russian and European Hegemony: Current Language Policy in the Baltic States", 6 (1) *Current Issues in Language & Society* (1999), 6-47; Poggeschi, Giovanni, "Language Policy in Latvia", *Noves SL. Revista de Sociolingüística* (Autumn 2004) 1-10. See also state reports on implementation of FCNM at <http://www.coe.int/en/web/minorities/country-specific-monitoring#Latvia> and NGO reports at http://www.minel-res.lv/coe/report/NGO_Report_FCNM_Latvia_2007.pdf, <http://cilvektiesibas.org.lv/media/attachments/30/01/2012/NationalMinoritiesinLatviaENG.pdf>.

7 Silova, Iveta, *From Sites of Occupation to Symbols of Multiculturalism: Re-conceptualizing Minority Education in Post-Soviet Latvia*, (Information Age Publishing, Greenwich, CT, 2006); Silova, Iveta, "Bilingual Education Theater: Behind the Scenes of Latvian Minority Education Reform", 13 (4) *Intercultural Education* (2002) 463-476.

8 ECtHR, Appl. No. 59727/00, *Šiskina and Šiškins v. Latvia*, admissibility decision of 8 November 2001; ECtHR, Appl. No. 71557/01, *Kuharec/Kuhareca v. Latvia*, admissibility decision of 7 December 2004; ECtHR, Appl. No. 71072/01, *Mentzen/Mencena v. Latvia*, admissibility decision of 7 December 2004; HRC, Communication No. 1621/2007, *Leonid Raihman v. Latvia*, views of 28 October 2010, CCPR/C/100/D/1621/2007.

9 Kamenska, *op.cit.*

dominate over practical ones related to communication between persons and between individuals and state institutions.

A common discourse of the need to protect small and vulnerable languages is reinforced in Latvia by historical circumstances. Concerns about position of the majority language were much more justified here than in many other European states. Undoubtedly, policies aimed at support and promotion of the Latvian language were legitimate and necessary. The question, however, is what kind of methods can be used to achieve these legitimate goals.

The bulk of the Latvian political and intellectual elite saw the restored independent state as, first of all, a guardian of the Latvian language and culture, rather than a culturally neutral enterprise owned equally by all citizens regardless of their ethnic origin and language. However, the *Satversme* (Constitution) of 1922, re-enacted in 1993, was based on the civic nation concept and did not offer any legal ground for such interpretation of the Latvian statehood. This contradiction resulted in the adoption of several constitutional amendments to “rectify” the text so as to make it comply with the “ethnic” nation-state concept. In 1998, the provision stating that the Latvian language is the sole state language was introduced.¹⁰ Moreover, in 2014, a preamble was added to the constitution. The preamble, *inter alia*, declared:

The State of Latvia ... has been established by uniting historical Latvian lands and on the basis of the unwavering will of the Latvian nation to have its own State and its inalienable right of self-determination in order to guarantee the existence and development of the Latvian nation, its language and culture throughout the centuries. ... Since ancient times, the identity of Latvia in the European cultural space has been shaped by Latvian and Liv traditions, Latvian folk wisdom, the Latvian language.

The supporters of the preamble claimed that, in fact, such understanding of the Latvian statehood was fully shared by the founding fathers, and similar provisions were not included into the original text of the constitution simply because it “went without saying”. Besides, they referred to historical upheavals, occupations, and mass influxes of immigrants that required stronger measures for the protection of the Latvian language and culture than the authors of the constitution could foresee. Despite some opposition in the legal community and NGOs in Latvia, the amendment was overwhelmingly and enthusiastically supported in intellectual circles, in media, and by the public at large, despite the fact that the retroactive addition of such ambitious changes raises serious questions about compliance with the declared principle of legal continuity.

¹⁰ It is worth noting that even official English translations still use the wording “official language” instead of “the state language”, although the latter is much more precise. Obviously, the state language is in substance a much more comprehensive concept than official language.

Like in many other European states, an anthropomorphic approach was not only widely used in both political and public discourse but also reflected in law-making. The linguistic situation was described in such terms as death, survival, competition, etc., and liberal language policies labelled as unacceptable “*linguistic Darwinism*”.¹¹

Besides, the changing linguistic environment was seen as a symbolic sign of shifting geopolitical orientation. Doing away with the domination of the Russian language was perceived as a substantial element of the eradication of the influence of Russia.

Language policies have also become an effective tool for changing political and administrative elites.¹² While the state language requirements for civil servants are fully justified and necessary, the recruitment of the native speakers of Latvian and replacement of the Russian-speakers in various senior and medium-ranking positions was seen as a restoration of “historical justice” and legitimate rights of ethnic Latvians in “their own” nation-state.

The concept of legal continuity and “restored citizenship” substantially restricted participation of the Russian-speaking minority in political decision-making and thus made quick and drastic reforms feasible. This exclusion provoked increased alienation of the Russian-speakers and their rejection of new rules, which were seen as imposed on them contrary to their will rather than negotiated in the course of a democratic dialogue.

All these factors entailed a situation where “Latvian ... policy makers and their Western supporters ... adopted discourses of language endangerment, historic injustice, linguistic normalization, and language and ethnicity to conceal potentially illiberal and coercive nature of the new language policies”.¹³

On the other hand, these radical reforms were implemented in the context of an already existing, though limited, framework of minority rights. Even vague nascent standards created external limitations, mostly in the form of political conditionality. “General” human rights standards were more instrumental in this regard than “specific” minority rights instruments (e.g. the right to interpretation in criminal proceedings, free use of languages in religious practices as part of the freedom of conscience, or use of languages in private media as an element of freedom of expression). As to the latter, the judgment of the Latvian Constitutional Court is revealing, wherein the Court recognized language quotas for private media as being not in conformity with the constitution.¹⁴

¹¹ See e.g. Veisbergs, Andrejs, “Reality and Perceptions of Multilingualism in the Baltic sStates”, 21 (1) *Humanities and Social Sciences Latvia* (2013), 52-71, at 61.

¹² Steen, Anton, *Between Past and Future: Elites, Democracy and the State in Post-Communist Countries: A Comparison of Estonia, Latvia and Lithuania*, (Ashgate Publishing, 1997) 416.

¹³ Pavlenko, *op.cit.*

¹⁴ Judgment of the Constitutional Court in case No.2003-02-0106, www.satv.tiesa.gov.lv/upload/2003-02-0106E.rtf.

Meanwhile, despite quite stringent legislation and policies on citizenship and language, Latvia remained a state with no record of incidents of ethnically based violence. The question of why and how Latvia managed to avoid violent conflict deserves separate consideration. Apparently, striving to preserve peace and avoid violence was the top priority for both ruling elites and minority groups, and this helped not to cross “red lines” in potentially tense situations.

This phenomenon contributed to a somewhat reticent attitude towards implementation of stringent language legislation. Social behaviour is often in contrast with public rhetoric, and practice routinely differs from law. The Russian language is still frequently used in situations where it is not required by law or where the law remains silent on language use. This is true with regard to the prohibition against using any but the state language in written communication with public authorities. Often, municipalities with sizable minority populations find ways to bypass this prohibition (for example, by providing translation services, or when a civil servant writes down an applicant’s words and allows him or her to sign). Another example is the use of languages in healthcare. While no command of minority languages by medical staff is required by law, in practice, doctors and nurses, with very few exceptions, give preference to the Hippocratic oath over the language legislation. However, for a younger generation of ethnic Latvians, proficiency in Russian is much less common, and more and more often goodwill is of little help without the ability to speak the Russian language.

3. LATVIAN MODEL: “DESIGNATED AREAS” FOR MINORITY LANGUAGES

Thus, the language regime that emerged as a result of the interaction of various factors mentioned above has some peculiar features. In public discourse, speaking Latvian is presumed “natural”, while minority languages are seen as a sort of anomaly. In the meantime, historical cultural and linguistic diversity – centuries-long close contacts between speakers of different languages, including widespread mixed marriages – predetermines rather high tolerance at the everyday level and a generally forthcoming attitude towards speaking Russian. Besides, external restrictions in the form of human rights standards, recognition of cultural diversity as a basic European value, and pragmatic considerations related to the labour market, mobility etc., make the goal of achieving factual monolingualism hardly feasible.

As a result, the language legislation and policies shape a paradigm of ‘*public monolingualism + certain designated areas for minority languages*’. The law singles out three areas where use of minority languages is permitted.

First: religious practices where the state’s interference would amount to infringement of freedom of conscience (“secular” activities of religious organizations, such as financial reporting or communication with authorities, are subject to the same language requirements as other organizations).

Second: private communication between individuals. However, here an essential problem arises of where the border between public and private lies. The State Language Centre’s recommendation to speak only Latvian at work, even in informal communication between employees, is one recent example.¹⁵

Third: the law specifically singles out ethnic cultural associations. In the early years of independence, these NGOs were expected to become real communities, to organize minorities and become their authorized representatives in relations with the state. However, it soon became apparent that these NGOs united only small numbers of activists. Besides, it was not rarely that several associations of the same minority were established (for the biggest Russian minority, several dozen often harshly competing NGOs were set up). Therefore, the model “*majority as the state nation and structured minority communities*” failed. Nevertheless, the law (and also practice, in particular in the composition of various advisory councils) still implies exactly this model.

4. RECOGNITION OF MINORITY LANGUAGES

The personal scope of application of the FCNM remains controversial. The convention itself does not contain a definition of a national minority. This was a pragmatic solution taking into account that decades-long efforts to arrive at a universally accepted definition failed. Instead, the Advisory Committee (AC)¹⁶ examines scope of application on a case-by-case basis and often criticizes States Parties for denying protection under the FCNM to certain groups.¹⁷

¹⁵ DELFI, 19 January 2015, <http://www.delfi.lv/news/national/politics/valodas-sargi-darba-vietas-aicina-runat-latvie-su-valoda-ari-politikus-mudina-intervijas-sniegt-tikai-latviski.d?id=45470090>.

¹⁶ Independent expert committee responsible for evaluating the implementation of the Framework Convention in State Parties, see <http://www.coe.int/en/web/minorities/advisory-committee>.

¹⁷ Typical wording of the AC’s opinions is the following: “In the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country ... Whereas on the one hand Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, on the other hand this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.”

Most of the FCNM States Parties restrict the number of recognized minority groups through declarations made upon ratification (either formulating general principles, such as citizenship, lasting and longstanding ties with the state, etc., or compiling exhaustive lists of recognized minorities)¹⁸ or in national legislation.

In Latvia, the existence of minorities is recognized in the constitution (newly adopted Preamble, as well as Article 114 that directly refers to the right “to preserve and develop” minority languages¹⁹, and therefore presumes that these languages exist).

In the meantime, Article 5 of the main special piece of legislation, the State Language Law, declares that “[a]ny other language used in the Republic of Latvia, except the Liv language, shall be regarded, within the meaning of this Law, as a foreign language”.²⁰

In turn, several other laws, notably the education law, refer to “minority languages” (e.g. in the context of minority education programmes that can be implemented in public schools).

Therefore, the existing legal framework creates a certain ambiguity regarding whether minority languages exist in Latvia and when “foreign languages spoken in Latvia” should be treated as minority languages. This offers room for arbitrariness and makes persons belonging to minorities vulnerable to bureaucratic decisions.

This situation well illustrates one of the key problems of the modern framework of minority protection: as a matter of fact, it is up to national authorities to decide which groups within their jurisdiction can claim protection as national minorities. In the meantime, the FCNM declares minority rights “an integral part of universal human rights”, and, as such, they must be implemented without any discrimination.

5. USE OF MINORITY LANGUAGES BEFORE PUBLIC AUTHORITIES

The provision on the use of minority language before public authorities, a crucial element of linguistic minority rights, is particularly cautiously worded in the FCNM. In contrast to the previous versions of Latvia’s language laws, the State Language Law, which took effect in 2000, stipulates that state and municipal institutions may accept applications from individuals only in the state language, and applications in other languages must be

provided with duly certified translation. The law is silent with regard to oral communication between individuals and civil servants.

Therefore, Latvian legislation disregards substantial regional differences (in some districts in Latgale, in the eastern part of Latvia, the proportion of Russian-speakers historically amounts to 80 to 90%) and prescribes uniform language rules for the entire state’s territory. This is why the FCNM was ratified with declarations. One of them stated that the relevant provision of the FCNM (Article 10, paragraph 2) will be applied “*without prejudice to the Satversme (Constitution) of the Republic of Latvia and the legislative acts governing the use of the State language that are currently in force*”. Thus, in substance, it was a reservation rather than a declaration: instead of adjustment of national legislation in accordance with the provision of international instrument, the latter was simply disregarded.

As mentioned above, in practice these stringent restrictions are not strictly enforced and are often somehow bypassed. Indeed, non-implementation can be one of the ways to deal with inadequate legislation, though it is hardly the best.

This situation highlights a fundamental weakness of the FCNM provisions: they are worded as commitments of a state party, rather than the rights of persons within the state’s jurisdiction. Indeed, language is an essential element of the quality of public services. If these services are provided in a language that is not a mother tongue for a substantial share (or even majority) of the local population, and many local residents have limited command in this language, the question arises of whether this is compatible with the idea of public services in a democratic state, which must be universally accessible. In practice, this means that the rights guaranteed by law cannot be universally enjoyed in reality, a situation that can be defined as ‘*effective denial*’ of the constitutional rights.

This problem is to be considered from the point of view of equality, in particular in the context of the EU non-discrimination directives. Such ground as language is not explicitly excluded from the scope of the Race Directive, and there is no reason to treat it differently from other prohibited grounds for different treatment. The FCNM formulates a number of preconditions for the use of minority languages before public authorities. In substance, these preconditions reflect a general proportionality test. Indeed, if the share of persons belonging to a linguistic minority is big enough, one has good reason to expect that these persons will be sufficiently represented in civil service, and that awareness of minority language among civil servants will be rather common. Therefore, offering public services in a minority language should be neither overly expensive nor a disproportionate burden.

¹⁸ List of declarations at <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=157&CM=2&DF=18/04/02&-CL=ENG&VL=1>.

¹⁹ <http://www.saeima.lv/en/legislation/constitution>.

²⁰ <http://likumi.lv/doc.php?id=14740>.

Thus, denial of the use of minority language before public authorities may, in certain situations, amount to violation of human rights.²¹ Relevant case law is so far very limited.²² However, further practice in application of equality law will hopefully bring more clarity.

6. PROFESSIONAL AND OCCUPATIONAL REQUIREMENTS

The issue of language requirements for civil servants and other employees is, in principle, more clear. A democratic state not only has the right but is obliged to ensure that officials who fulfil certain public functions have a command of the official language. This stems from the same concept of quality of public services. However, it is much less clear whether similar requirements can be extended to the private sector. If so, how far can a state go?

A new draft of the State Language Law, tabled in 1998, substantially expanded the list of employees subject to language requirements. This encountered objections from the OSCE and the EU, as restrictive provisions could limit the right to freedom of movement for workers and entrepreneurs. After lengthy discussions, the final provision was worded so as to require command and use of the state language from “employees of private institutions, organisations and companies, as well as self-employed persons, if their activities affect the legitimate public interests (public security, health, morality, health care, protection of consumer rights and employment rights, safety in the work place, supervision of public administration)”.

Again, implementation appeared crucial. As the FCNM AC diplomatically mentioned in its opinion in 2014, “the concept of ‘public interest’ that is routinely referred to in the context of the implementation of the state language policy, lacks clarity”.²³ Governmental regulations adopted in 2000 after negotiations with the OSCE were replaced in 2009 by much more voluminous normative act.²⁴ According to the new version, in the private sector an employer is in charge of defining language requirements for employees. However, a long list of professions and jobs supplied with *minimum* language requirements was annexed to the regulations, thus limiting the employers’ possibilities of evaluating

the needed level of state language command. The list includes almost all possible jobs, starting with agricultural workers and office cleaners.

Apparently, no analysis was made of whether or to what extent a certain job relates to legitimate public interest. The logic of the drafters, routinely reflected in public rhetoric, was of a different nature: every participant in the domestic labour market must speak Latvian simply “because this is Latvia!”. As a result, language requirements often appear excessive in practice. For example, in predominantly minority-populated areas, service providers often diligently learn Latvian and obtain the required language certificate but have little chance to practice it, since they communicate with clients in Russian. Nevertheless, the State Language Centre regularly examines implementation of the regulations and imposes fines.

This situation, too, is to be considered in terms of equality and non-discrimination. Linguistic capacities may indeed represent an essential element of professional qualifications, but this is not always the case. The language requirements must be set and applied in a proportionate and non-discriminatory manner. Flat and arbitrary application of these requirements when they have little or no significance in the actual performance of professional functions puts persons belonging to minorities, for whom a required language is not a mother tongue, in a disadvantaged position, i.e. discriminates against them.

7. EFFECTIVENESS OF POLITICAL CONDITIONALITY

In political rhetoric, the EU accession negotiations with the Baltic states are often presented as a success story: it is believed that related political conditionality greatly contributed to improvement of the general climate with respect to minority rights. Several researchers, however, offer a more reluctant evaluation.²⁵ Indeed, the EU had neither standards nor expertise in the field, and these negotiations turned into bargaining with the governments that was not based on clear principles, with no involvement of civil society or minorities themselves.

Effective negotiations were often low profile and not public, and it is not easy to trace how certain changes have been achieved. In this chapter, we will consider one example wherein the reasons and consequences are well known; namely, abolition of linguistic requirements for elected officials in Latvia.

21 de Varennes, Fernand. *A Guide to the Rights of Minorities and Languages* (COLPI, Budapest, 2001), 124.

22 HRC, Communication No. 760/1997, J.G.A. Diergaardt et al. v. Namibia, views of 6 September 2000, CCPR/C/69/D/760/1997.

23 AC FCNM Second opinion on Latvia, adopted on 18 June 2013, published 3 January 2014.

24 <http://likumi.lv/doc.php?id=194735>.

25 Hughes, James and Sasse, Gwendolyn, “Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs” *Journal on Ethnopolitics and Minority Issues in Europe* (2003) No.1, 1-37; Poleshchuk, Vadim and Tsilevich, Boris, “The Baltic States before EU Accession: Recent Developments in Minority Protection”, in: *European Yearbook of Minority Issues, Vol. 2*, (European Academy & European Centre for Minority Issues, Leiden/Boston: Martinus Nijhoff Publishers, 2004), 283-305.

The laws on both parliamentary and municipal elections adopted in the early 1990s stipulated that proficiency in the state language was an obligatory precondition for standing. In order to be registered on the candidates list, a citizen had to submit a certificate of the highest level of proficiency in the state language (unless he or she received school education in the Latvian language). Moreover, even if a candidate possessed the required certificate, a state language inspector could at any time examine his or her language capacities, and if in the inspector's view these capacities did not correspond to the highest level, the candidate had to be struck off the list.

This issue was raised in the context of the next prolongation of the mandate of the OCSE mission to Latvia (established in 1993 with the aim to address the situation of non-citizens and minorities). Latvia was already at a rather advanced stage of accession negotiations with both the EU and NATO, and the presence of the mission was seen as marring this status. The language requirements for deputy candidates were picked out of the list of problematic issues. At that time, both the UN Human Rights Committee²⁶ and the European Court of Human Rights²⁷ had already found violations in two cases when this provision was applied.

After external pressure, in April 2002, the provisions were amended so that a candidate had only to indicate a self-evaluated level of state language proficiency in documentation when registering for elections. The amendments were presented by the US and EU as a sign of substantial progress and even as removal of the last obstacle to compliance of Latvia's minority policies with international standards.

However, the provision of the Parliament's Rules of Procedure that envisaged deprivation of an MP mandate because of insufficient command in the state language remains in force up to now. No attempts to apply this provision in practice ever happened, probably because it could result in another violation ruling in the Strasbourg court. Moreover, in 2010, the law on the status of municipal councillors was amended, and a similar provision was introduced: a mandate of an elected member of municipality can be annulled by the decision of the regional court if his or her command of the state language does not correspond to the level determined by the Cabinet of Ministers. Unlike with the national parliament, this provision was invoked in early 2015 when the State Language Centre initiated a procedure against a Russian-speaking councillor of Balvi.²⁸

Even more important, the cancellation of the discriminatory provision in 2002 was accompanied by a series of 'compensatory' measures. The government explained that the measures, imposed by NATO and the EU, were unjust but should be accepted for the

²⁶ HRC, Communication No. 884/1999, *Ignatane v. Latvia*, views of 31 July 2001, CCPR/C/72/D/884/1999.

²⁷ ECtHR, Appl. No. 46726/99, *Podkolzina v. Latvia*, judgment of 9 April 2002.

²⁸ "Diena", 20 May 2015, <http://www.diena.lv/latvija/zinas/bez-valodas-nav-mandata-14098536>.

sake of state security. In order to compensate the 'harm', government parties tabled a series of constitutional amendments.

The amendments stipulated that only Latvian and EU citizens have the right to vote in municipal elections (virtually all international organizations persistently recommended extending voting rights at municipal elections to all permanent residents, including non-citizens, but this recommendation was never included in the context of political conditionality). Besides, the provision that the Latvian language is the only working language of both the parliament and municipalities was elevated to the constitutional level. A special oath was introduced for elected MPs to have their mandates approved that, *inter alia*, included an obligation "to defend Latvian as the sole state language of Latvia". Finally, the provision of Article 104, which had stated that everyone has the right to address state and municipal institutions and to receive a reply of substance, was amended so that only replies in the Latvian language are guaranteed – therefore, the use of minority languages in communication with municipal bodies was actually banned by the constitution.

Therefore, intervention by the EU and NATO indeed helped to abolish one discriminatory provision in Latvian law (which in practice affected few people, however). Nevertheless, restriction of a citizen's right to be elected was retained and even expanded soon afterwards. Meanwhile, a number of other amendments that negatively affected much more persons and hindered compliance with other standards of minority rights (e.g. the use of minority languages before public authorities) were adopted as a 'compensation for concession'. Thus, one cannot but conclude that the situation of persons belonging to national minorities deteriorated as a result of intervention by international organizations.

This story highlights practical aspects of political conditionality: to put it simply, who formulates conditions and evaluates short- and long-term consequences of external intervention, and on what basis.

8. THE CONCEPT OF SOCIETY INTEGRATION AND LANGUAGE POLICIES

The need to facilitate integration is routinely referred to in debates on language policies with regard to national minorities, immigrants, and refugees. While command of the official language is undeniably one of the most important aspects of successful integration, its role is too often exaggerated. In Latvia, the main policy planning document, the

Guidelines on National Identity, Civil Society and Integration Policy (2012–2018), adopted by the government in 2011, sets the main task as integration of society “on the basis of the Latvian language, culture and national identity”.²⁹

The potential danger of excessive emphasis on language is that integration is understood as cultural assimilation rather than social cohesion. The latter is a much more comprehensive concept that comprises not only linguistic and cultural but predominantly social aspects of overcoming alienation and exclusion of vulnerable groups.

In the context of these language-oriented policies, minority languages are perceived not as integral components of a country’s cultural diversity but rather as foreign, and often hostile, elements that should be restrained and eradicated for the sake of national unity, understood in ethnic terms. The use of minority languages is deplored and rejected even when relevant law permits or prescribes it.

A recent debate over the Oncology Patients’ Association disseminating information about free screening for breast cancer in the Russian language as well as Latvian is a valid example. The association claimed that the main risk group was women over 50, and many in this category are not fluent enough in the state language to understand medical information. However, the head of the State Language Centre dismissed this argument as a “demagogy”. In his view, this “will discourage people from learning the state language”, as “in no other country public communication with the society could take place in a language other than the state language” – typical discourse of ‘normalization’, even if the statement is factually wrong.³⁰

Another example of this kind is the recommendation of the head of another body, the State Language Commission, that the president of Latvia communicate with media only in Latvian.³¹ This is hardly compatible with the existence of private media in minority languages (and even the use of Russian, though limited, in public broadcasting), more so in the context of the ongoing “information war”, when the task of reaching out to the Russian-speaking audience is recognized as one of the top priorities.

Emphasis on language as the main tool for integration entails an ambiguous effect. On one hand, stringent language legislation and policies resulted in radical improvement in proficiency in Latvian among Russian-speakers. On the other, pressure discourages persons belonging to minorities from speaking Latvian, even if their command of Latvian is perfect. In other words, people become able to speak Latvian but do not wish to unless

forced by law. This trend was particularly clear at the time of growing tensions over minority education reform.³²

Therefore, the impact of stringent language policies on social cohesion is twofold. It promotes the common language but is detrimental to other dimensions of integration, such as culturally neutral common values, equality, and non-discrimination.

9. CONCLUSIONS

Development of language policies in Latvia highlighted a number of issues crucial for further evolution of both standards and implementation of linguistic minority rights. The key issue is ensuring coherence and complementarity between minority rights on one hand and the universal principle of non-discrimination on the other. So far, linguistic policies are still often seen as outside the general framework of equality and non-discrimination. This approach is clearly obsolete now and must be reconsidered. In particular, recognition of minority languages, as well as such aspects of language policies as the use of minority languages before public authorities or professional and occupational language requirements, have obvious relevance to non-discrimination. This may limit the traditionally accepted state’s discretion with regard to use of minority languages in the public sector. However, this is a logical effect of the progress in interpretation of non-discrimination, from formally equal treatment to full and effective equality, when different treatment is sometimes needed to ensure substantive equality. This approach is very close to the modern interpretation of minority rights. Moreover, in due course, the concept of minority rights may be fully integrated into the paradigm of full and effective equality.

Another important issue is how to make external intervention based on political conditionality effective in practice. While the positive impact of international actors in Latvia is undeniable, in some cases, as shown in this paper, external intervention had serious deficiencies and even led to deterioration of the situation.

Finally, the role of languages in integration policies becomes an increasingly topical issue with regard to not only national minorities but also, and rather, immigrants and refugees. Exaggerated emphasis on mastering official languages at the expense of ensuring effective equality and equal opportunities, not only in law but also in practice, leads to the understanding of integration as cultural assimilation rather than social cohesion.

²⁹ www.km.gov.lv/lv/doc/nozaru/integracija/Pamatnostadnes/KMPam_071011_integ.pdf.

³⁰ *Integration Monitor*, daily Latvian press digest on minority and social integration issues, Latvian Human Rights Centre, 20 May 2015, http://cilvektiesibas.org.lv/en/monitoring/search/?date_from=2015.05.20&date_to=2015.05.20&query=.

³¹ Latvian Public Broadcaster portal, 17 July 2015, <http://www.lsm.lv/lv/raksts/latvija/zinas/vvk-vaditajs-prezidentam-ar-latvijas-medijiem-vajadzetu-runat-tikai-latviesu-valoda.a138050/>.

³² Zepa, Brigita and Kļave, Evija, *Latviešu valoda: apguve, attieksmes, lietošana 1996 – 2008*. Baltic Institute of Social Sciences report, www.valoda.lv/downloadDoc_30/mid_527.

This may have much to do with the phenomenon of growing alienation of second- and third-generation migrants, who more often feel excluded and therefore tend to support radical views towards the societies in which they were born and grew up – in extreme cases, up to joining terrorist groups. Thus, as in the early 1990s, when minority-related conflicts were seen as the main threat to peace and stability in Europe, language policies again include a growing security dimension.