

LANGUAGE POLICIES IN LATVIA: LESSONS FOR MINORITY PROTECTION

Boriss Cilevics

Integration and Exclusion. Linguistic Rights of National Minorities in Europe.

International conference, Vilnius, 27 November 2015

Language policies have become the major factor shaping strategies of accommodation of diversity throughout Europe. Linguistic identity has become crucial in structuring societies along cultural lines, replacing religious affiliation. Therefore, linguistic rights have turned into the core of, still rather vague, modern concept of national minority rights.

The Copenhagen document reflected, and FCNM inherited, a liberal approach. It declares acceptance of diversity and non-interference by states in private area. Recognition of diversity in public area, such as instruction in a mother tongue in public schools or use of minority language before public authorities, remains conditional. Adaptation of the governance system to cultural diversity is limited and supplemented with rather vaguely defined conditions and reservations.

The system of monitoring compliance with minority rights instruments remains rather weak. Minority rights *per se*, with few exceptions, are not justiciable, i.e. cannot be invoked before national or international courts. Neither FCNM nor ECRML envisages procedures for individual complaints.

Development of the language legislation and policies in Latvia after the restoration of independence offers an instructive example. The changes were the most radical and rapid here. 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 and controversies within this system.

The demographic situation in Latvia 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 publication of books, theatre, etc. in

Latvian 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. Only about 20% of persons belonging to the Russian-speaking minority were proficient in the Latvian language. Ethnic Latvian society, mobilized in the course of Atmoda (Awakening), demanded quick and radical changes.

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

Undoubtedly, policies aimed at support and promotion of the Latvian language were legitimate and necessary. The question is, however, what kind of methods can be used to achieve these legitimate goals.

Like in many other European states, antropomorphic 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.

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 culturally neutral enterprise owned equally by all citizens, regardless of their ethnic origin and language. The Constitution of 1922, re-enacted in 1993, was, however, based on the civic nation concept and did not offer any legal ground for such interpretation of the Latvian statehood. This contradiction resulted in adoption of several constitutional amendments, to “rectify” the text so that to make it comply with the “ethnic” nation-state concept. This process culminated in 2014 by adoption of a preamble to the Constitution stating, *inter alia*, that “*The State of Latvia... has been established... in order to guarantee the existence and development of the Latvian nation, its language and culture throughout the centuries*”.

The concept of legal continuity and “restored citizenship” substantially restricted participation of the Russian-speaking minority in political decision-making and thus made quick changes feasible. However, this exclusion provoked 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 a democratic dialogue.

On the other hand, radical reforms were implemented in the context of already existing, though limited, framework of minority rights. Even vague and nascent standards created external limitations, mostly in a form of political conditionality.

The language regime that emerged in Latvia has some peculiar features. In public discourse, speaking Latvian is presumed “natural”, while minority languages seen as a sort of anomaly. In the meantime, historical cultural and linguistic diversity and centuries-long close contacts between speakers of different languages predetermine rather high tolerance at the everyday level. Besides, external restrictions in a form of human rights standards, recognition of cultural diversity as the basic European value, as well as pragmatic considerations related to labour market, mobility etc., make a 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*”. Three areas where use of minority languages is permitted can be singled out.

First, **religious practices** where state’s interference would amount to infringement of the freedom of conscience.

Second, **private communication** between individuals. (However, here an essential problem arises of where the border between public and private lies.)

Third, the law specifically singles out **ethnic cultural associations**.

In my paper, I consider several key areas where the practices of Latvia indicate problematic areas in the minority protection framework. Now I will contain myself to merely mentioning some of these areas.

First, **recognition of minority languages**. The inconsistent legal framework creates ambiguity on 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 the persons belonging to minorities vulnerable to bureaucratic decisions and 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, FCNM declares minority rights “*an integral part of universal human rights*”, which must be implemented without discrimination.

Second, the **use of minority language before public authorities**. Relevant FCNM provision is particularly cautiously worded. Latvian legislation disregards substantial regional differences and explicitly prohibits use of minority languages in communication between an individual and public authority (with the exception of some emergency situations). In some cases, this can lead to the situations when public services are not universally accessible which can be defined as *effective denial* of the rights guaranteed by law. In my view, this problem is to be considered from the point of view of equality, in particular, in the context of the EU non-discrimination directives.

Third, **professional and occupational linguistic requirements**, particularly in private sector. The governmental regulations establish minimum language requirements for a long list of positions that includes almost all possible jobs. No analysis was made of whether or to what extent a certain job relates to legitimate public interest. This situation, too, is to be considered in terms of equality and non-discrimination. 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 significance for actual performance of professional functions, puts the persons belonging to minorities, for whom a required language is not a mother tongue, in a disadvantaged position.

In my paper, I also consider **effectiveness of political conditionality**. While external intervention, undoubtedly, substantially contributed into improvement of legislation and practice and abolishment of discriminatory provisions in some areas, in other cases, on the contrary, the situation of persons belonging to national minorities even deteriorated as a result of intervention of international organizations.

Finally, the experience of Latvia is instructive with regard to very topical concept of society integration. Mastering official language is, no doubt, one of the key conditions for successful integration. However, 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 Latvia, minority languages are often 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 it.

Therefore, developments of the language policies in Latvia highlighted a number of issues essential for further evolution of both standards and implementation of linguistic minority rights. So far, linguistic policies are often seen outside of general framework of equality and non-discrimination. This approach is clearly obsolete nowadays and must be reconsidered. In particular, recognition of minority languages, as well as such aspects of the language policies as the use of minority languages before public authorities or professional and occupational language requirements, have obvious relevance to non-discrimination. In particular, conditions envisaged in FCNM for the use of minority languages before public authorities, in substance, reflect general proportionality test.

This is a logical effect of the progress in interpretation of non-discrimination: from formally equal treatment to full an effective equality, when different treatment is sometimes needed to ensure substantive equality. In fact, modern interpretation of minority rights is about the same. In due course, the concept of minority rights may be even fully integrated into the paradigm of full and effective equality.