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Languages and the law in Latvia: national identity versus minority rights

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Introduction

The purpose of this paper is to survey the laws governing language in the nations of the former Soviet Union. Time does not permit a review of all 15 countries' language laws, so I propose to analyze several individual cases that are of greatest interest.

The laws governing language generally take three different forms: constitutional provisions specifying the official language or languages of the state; statutes specifically adopted to determine the use of language in a variety of circumstances (e.g., what language or languages may be used in conducting official government business, how names are to be officially registered, etc.); and citizenship or electoral laws that require a familiarity with the national language as a condition of either citizenship or standing for elected office. It should come as no great surprise to observe that in most, if not all, cases these language laws are efforts to either establish or reinforce a sense of national identity.

Frequently, these national language laws conflict with the perceived linguistic rights of national minorities. From a legal perspective, this conflict has become especially controversial for those former Soviet republics that have become members either of the European Union or the Council of Europe. These European international organizations have adopted elaborate policies, treaties, and other legal provisions designed to safeguard the linguistic rights of national minorities. In what must surely be seen as an enormous (and perhaps unfair) irony, nations like Estonia and Latvia, which certainly suffered decades of

linguistic hegemony at the hands of the Russians, are now being called to account before European tribunals for their violation of the linguistic rights of their national minorities.

One other general observation: Again, it is no great surprise to observe that the clash between national language laws adopted to establish or reinforce a sense of national identity and minority language rights is greatest in those states with the largest percentage of minority linguistic groups, especially Russians. A perfect example of this can be found in the three Baltic nations: Lithuania, which has the lowest percentage of Russians in its population of the three Baltic states, has the most liberal laws on citizenship, but has adopted constitutional and statutory provisions designed to promote the national language. Estonia and Latvia have much larger Russian-speaking minorities and, as we shall see below, have adopted much more aggressive national language laws.

The Case of Latvia

The first case, therefore, that I would like to examine is the case of Latvia. Latvia has adopted legislation specifying Latvian as its official state language. The government has also promoted the teaching of Latvian in school, though it does permit education in other languages in places where Latvian-speaking students are in a minority. It has adopted very strict language requirements in its citizenship law, requiring that applicants for citizenship pass a language test that requires that the applicant must have “learned the Latvian language at a conversational level.” The national election law also requires that candidates for election to the national legislature must demonstrate competence in the Latvian language.

Latvia, of course, recently became a member of the European Union and before that was a member of the Council of Europe for more than a decade. As such, it is required to adhere to, among other things, the European Convention for Human Rights. In 1999, a citizen of Latvia, Ingrīda Podkolzina, brought a complaint before the European Court of Human Rights in Strasbourg, complaining that she had been removed from the list of candidates at the general election for insufficient knowledge of Latvian. She alleged that this constituted a breach of the right to stand as a candidate in an election, guaranteed by the convention. In 2002, the ECHR ruled in her favor.

Podkolzina had filed with the electoral commission as a candidate for parliament in the 1998 parliamentary elections on the National Harmony Party list. After she submitted

her filing papers, including a certification of her ability in the Latvian language, an examiner from the State Language Inspectorate, part of the State Language Centre, went to the Podkolzina's place of work and examined her orally to assess her knowledge of Latvian. The ECHR described the process:

As the applicant had not been notified of the visit, the examiner approached her while she was conducting negotiations with her business associates. Having informed the applicant of her intention to verify the level of her competence in Latvian, the examiner struck up a conversation with her in that language. During the conversation, which lasted over half an hour, the examiner asked the applicant, among other questions, why she supported the National Harmony Party rather than some other party.

The examiner returned next day accompanied by three persons whom the applicant did not know, who were to act as invigilators. The examiner asked the applicant to write an essay in Latvian. The applicant agreed to do so and began to write. However, being extremely nervous, because she had not expected such an examination and because of the constant presence of the invigilators, the applicant stopped writing and tore up her work.

The examiner then drew up a report to the effect that the applicant did not have an adequate command of the official language at the "third level", the highest of the three categories of competence defined in Latvian regulations.

On 10 August 1998 the State Language Centre sent the chairman of the Central Electoral Commission a letter certifying the level of knowledge of the official language attained by a number of candidates on the lists registered for the parliamentary elections. Although the letter referred to the report drawn up by the examiner from the State Language Inspectorate, the report was not appended to it. According to the certificate, of the nine candidates actually examined only the applicant did not have a command of Latvian at the "third level". Twelve other candidates, who had not been required to take an examination, had documents certifying that their knowledge was at the requisite level.

By a decision of 21 August 1998 the Central Electoral Commission struck the applicant's name out of the list of candidates.

The statutory provision that was involved in this case was Section 5(7) of the Latvian Parliamentary Elections Act, which provides that "persons who do not have a command of the official language at the third (upper) level of knowledge" may not stand as candidates in parliamentary elections. What constituted a command of Latvian at the third level was defined in the 1992 regulations on certification of knowledge of the state language, which defined the third level as follows:

Mastery of the spoken and written language is required for agents and employees whose professional tasks entail management of an undertaking and organisation of labour, or ... frequent contact with the public, [and for those] whose duties have to do with the well-being and health of the population (for example, members of parliament, persons managing public or administrative institutions or their structural units, boards of directors, inspectorates or undertakings, their deputies and secretaries, senior specialists, advisers, auditors, employees of Latvian cultural, educational and scientific bodies, doctors, assistant doctors, lawyers and judges). ...

This level of knowledge of the official language entails the ability to:

- (1) converse freely;
- (2) understand texts chosen at random; and
- (3) draft texts relating to one's professional duties.

In deciding this case, the European Court of Human Rights reviewed the applicable national legislation and international treaty law, and concluded that under the human rights convention, “requiring a candidate for election to the national parliament to have sufficient knowledge of the official language pursues a legitimate aim” and is therefore permissible. However, the court found that even though Podkolzina had a valid language certificate of linguistic competence, as required by Latvian law, the State Language Centre decided to subject her to a new language examination. The court questioned the procedures followed in this second exam and stated that it

can only express its surprise over the fact—related by the applicant and not disputed by the Government—that during the examination the applicant was questioned mainly about the reasons for her political orientation, a subject which quite clearly had nothing to do with the requirement that she should have a good knowledge of Latvian.

These procedures and the lack of a guarantee of objectivity in the second examination meant that the “procedure applied to the applicant was in any case incompatible with the requirements of procedural fairness and legal certainty to be satisfied in relation to candidates' eligibility.” As such, the treatment of Podkolzina constituted a violation of her rights under the European Convention on Human Rights.

Another interesting and more recent case before the ECHR, dealt with a Latvian citizen who married a German man named Mentzen. She applied to the Latvian Nationality and Migration Service for the issuance of a new passport in her married name. The passport

that was subsequently issued listed her family name as *Mencena*. The Nationality and Migration Service explained that “the changes in the written form of her surname had been made on the basis of Regulation no. 174 on the transcription and identification of forenames and surnames in documents, which required all surnames and forenames to be reproduced ‘in accordance with the spelling rules of the Latvian literary language’ and ‘as near as possible to their pronunciation in their original language’. Consequently, the affricative consonant “tz” was replaced by the letter “c”, which is pronounced [ts] in Latvian and therefore has the same phonetic value. Likewise, the inflectional ending “-a” was added to the applicant's surname, denoting the feminine nominative singular.”

Mrs Mentzen argued that “the manner in which her surname had been transcribed in her passport had infringed her right to respect for her private and family life, as guaranteed by Article 8 of the [European Convention on Human Rights].” In evaluating this claim, the court concluded “that the phonetic transcription and grammatical adaptation of the applicant's surname carried out to the detriment of the original spelling amounts to interference with her right to respect for her private and family life. Such interference will not infringe the Convention if it was “in accordance with the law”, pursued one or more legitimate aims under paragraph 2 of Article 8 and was “necessary in a democratic society” to achieve that or those aims.” The court concluded, however, that the Latvian linguistic regulations were in accordance with a legitimate state aim. They noted

The Government outlined the difficulties the Latvian language had faced during the 50 years of the Soviet regime. They emphasised in particular the Latvian authorities' continuing concerns regarding the preservation and development of the language. In the Government's view, the situation in which the Latvian language currently found itself justified the adoption and implementation of strict rules governing correct usage. In that connection, the Court reiterates that, by reason of their direct and continuous contact with the vital forces of their countries, the authorities, especially the national courts, are in principle in a better position than the international judge to give an opinion on the need for interference in such a special and sensitive area

Mrs. Mentzen's claim was denied.

It should be noted that though Latvia is a member of the European Union, these cases were not decided on the basis of legal principles applicable to the EU. These cases were decided on the basis of the European Convention on Human Rights, which is applicable to all

46 members of the Council of Europe. Of the former Soviet republics, Armenia, Azerbaijan, Estonia, Georgia, Latvia, Lithuania, Moldova, Russia, and Ukraine are members of the Council of Europe and subject to its legal principles and jurisdiction. In addition, the Central and Eastern European members of the Council are Albania (13.07.1995), Bosnia and Herzegovina (24.04.2002), Bulgaria (07.05.1992), Croatia (06.11.1996), Czech Republic (30.06.1993), Hungary (06.11.1990), Macedonia (09.11.1995), Poland (26.11.1991), Romania (07.10.1993), Serbia and Montenegro (03.04.2003), Slovakia (30.06.1993), and Slovenia (14.05.1993).

The Council of Europe has adopted other documents relevant to these issues. Most important of these documents is the Framework Convention for the Protection of National Minorities, which entered into force on February 1, 1998. It is a comprehensive treaty that is intended to protect the rights of persons belonging to national minorities. States that ratify it undertake to protect minority linguistic freedoms, including

- the use of the minority language in private and in public as well as its use before administrative authorities;
- use of one's own name in the minority language;
- display of information of a private nature in the minority language;
- topographical names in the minority language; and
- learning of and instruction in the minority language.

Of the nations listed above as members of the Council of Europe, this treaty has entered into force with respect to all of them except Georgia, Latvia, and Moldova.

The Case of Tajikistan

Independent Tajikistan has faced a daunting task in establishing a coherent, cohesive sense of national identity. One element in this task has been a policy of establishing Tajik as the official state language, while also protecting the rights of non-Tajik speaking minorities. The Law on Languages, adopted by the Tajik SSR in July 1989, established Tajik as the official state language, though the statutory provision establishing Tajik as the official state language included the word "Persian" in parentheses following the word "Tajik."

The debate within Tajikistan as to whether the national language should be Tajik or Persian is interesting and echoes similar debates in Moldova and several nations of the former Yugoslavia. Some in Tajikistan argued that by identifying Persian as the official state

language, it would be possible for Tajikistan to link with their cultural heritage as represented in part by ancient Persian text. They also argued that identifying the language as Tajik would suggest that Tajik nationhood began only in 1924, when the Tajik nation was first established. Opponents of these views emphasized the fact that Persian is written in Arabic script, while the language of Tajikistan is written in the Cyrillic alphabet.

Article 2 of the 1994 constitution of Tajikistan, which remains in effect, states that Tajik (with no reference to Persian) is the state language and that Russian is a language of “interethnic communication.” It also states that “all nations and peoples residing on the territory of the republic have the right to use freely their native languages.” The 1989 language law, which remains in force, provides, among other things, that people are free to receive an education in their own national language. Also, in regions where the majority is not Tajik, government business can be conducted in the minority language.

This ambitious policy, however, is compromised by a number of factors including changing linguistic circumstances and a lack of resources. Prior to independence, Uzbek students in Tajikistan were taught in Uzbek using books published in Uzbekistan. Since the breakup of the Soviet Union, however, these shipments have ended and the extent and quality of Uzbek-language instruction in Tajikistan has suffered. The problem is compounded further by the fact that Uzbek is written in the schools of Tajikistan using the Cyrillic alphabet. However, the government of Uzbekistan has officially changed its alphabet to Latin script, meaning that in the future, Uzbek children from Tajikistan will not be able to read or write the Uzbek language of Uzbekistan.

Concluding Observations

It seems clear that the importance of language laws in the former Soviet republics is likely to be greatest—and conflicts most bitter—where the sense of national identity is weakest, as in the case of countries like Tajikistan or Kazakhstan, which have limited historical experience of nationhood, or where the sense of national identity is perceived as threatened by a linguistic minority, as in the case of the two Baltic states that have large Russian-speaking minorities.