

Bulgaria's Struggle to Make Sense of EU Human Rights Criteria

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Bulgaria's efforts to comply with EU human rights criteria for accession expose profound inconsistencies in EU human rights standards. The European Commission has regularly criticised Bulgaria on its frequently appalling treatment of its Roma minority, represented as a major obstacle to the country's bid for EU membership. However, the basis for this assessment is problematic, based on criteria for which there is no equivalent within EU law or practice. The EU thus appears to lack both the authority and the experience to monitor effectively Bulgaria's rights record. To hold Bulgaria and other countries accountable to standards not applied internally risks generating confusion and mistrust about the enlargement project as a whole, and raises fundamental questions about the importance of human rights within the EU generally.

Human Rights "Conditionality" after Amsterdam

The 1997 Amsterdam Treaty added a new open clause to Art. 6 of the Treaty on European Union (TEU), explicitly noting human rights as a "founding principle" of the European Union. If this is the case, strict adherence to the same principles must be required of any state seeking EU membership - and indeed human rights "conditionality" for accession are formally stipulated in two separate EU texts: the "political criteria" established by the European Council in Copenhagen 1993, and Article 49 of the Treaty on European Union (TEU), another Amsterdam innovation. However, uncertainties about the scope of human rights in European law and practice render the application of these principles problematic.

First, although the Copenhagen criteria and the TEU both refer to "liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law," they differ in one crucial respect. Where the 1993 criteria further demand "respect for and protection of minority rights," this clause is entirely omitted in the TEU. As a result, efforts by the EU to convince Bulgaria (and others) that its application is jeopardised by treatment of its Roma minority appear insincere. The European Union seems to be involved in imposing human rights externally, while failing to enforce them internally.

Second, the scope of "human rights" in Article 6 is not defined. The most obvious locus of human rights standards in Europe - the Council of Europe's European Convention on the Protection of Human Rights and Fundamental Freedoms, is not uniformly adhered to by all Member States, some of whom have not ratified certain of its protocols. The status of social, economic and cultural rights is particularly vague and potentially problematic. Although all member states of the European Union are party to the Council of Europe's European Social Charter of 1961, certain Member States have not yet included fundamental social rights in their constitutions, a fact which problematises the TEU Art. 6 formulation that "respect for these rights springs from the constitutional traditions common to the member states." Thus, although it is clear that EU membership is conditional on respect for human rights, it is not clear precisely which rights, or according to what definitions.

Given these ambiguities, candidate governments could reasonably assume that the required "conditionality" includes all human rights conceivable in the relevant documents of the United Nations, the OSCE, and the Council of Europe. Indeed, in assessing the candidates' "progress towards accession", the European Commission regularly refers to instruments from each of these bodies, and a list of the status of ratification of relevant instruments is provided in the Commission's monitoring "Regular Reports." This circumstance provides little consolation to accession governments, however: a number of these instruments remain unratified by several Member States. Some, such as France, which does not recognise the existence of minorities within its territory, evince no interest whatsoever in international instruments for the protection of minority rights. While this may go some way to explaining the absence of minority rights

standards in the TEU, as a signal to candidate countries, such as Bulgaria, it verges on hypocrisy.

Effectively, in its assessment of the countries seeking accession, the Union may adopt any definition of any relevant rights whatsoever, while its internal "conditionality" remains so controversial that it fails to offer any guidance or definition at all.

Bulgaria's Roma: a question of human rights or politics?

Since commencing negotiations for EU membership in 1998, Bulgaria has taken numerous steps to demonstrate its commitment to human rights principles. The European Commission 1997 "Opinion" on Bulgaria's application for accession considered that the country was "on the way" to fulfilling the criteria. [1] In its "Regular Reports" of 1998 and 1999, the Commission affirmed that Bulgaria adequately respects human rights and freedoms, and meets the political criteria for accession.

Indeed, the legislative enthusiasm of Bulgaria with respect to international human rights law resulted in rapid ratification of charters and conventions, to which many Member States are still not parties. Between September 1998 and August 1999, Bulgaria signed and/or ratified four separate human rights instruments. [2] In December 1998, with one protocol on the death penalty down and one to go, the National Assembly voted to abolish capital punishment and thus increase the efficiency of ratifications. Those sentenced to death at the time (since 1990 a moratorium had been in force) had their sentences commuted to prison terms.

Despite all this, the harshest criticism Bulgaria has suffered in the negotiating process relates to discrimination against the country's Roma minority in the country. The "Minority rights and protection of minorities" section of the Commission's reports has traditionally been Bulgaria's weakest area. And the situation is intolerable: the Roma minority is almost completely excluded from participation in local and national government; the educational system segregates Roma children in separate elementary, middle, and high schools; the health care infrastructure and utilities in Roma neighbourhoods are by far the worst in the country. Everything about the Commission's criticism is justified, except the fact that similar conditions in Member States suffer no reprimand.

Nevertheless, the review and reporting procedure which the Commission employs in assessing Bulgaria's human rights progress fails to reflect the reality in Bulgaria. Instead of gathering information through its own research and evaluation experts, or commissioning independent research, it relies heavily on official information from government or public administration sources. Perhaps for this reason, the reports appear to suffer from occasional lapses of fact and judgement. In 2000, reference was made to "voluntary" Ombudsman Offices, which have not appeared in Bulgaria since. [3] The most striking discrepancy between the Commission's evaluation and reality was evident in comments on the acclaimed *Framework Programme for the Full Integration of the Roma in Bulgarian Society*, adopted by the Bulgarian government in April 1999, after years of energetic pressure on the part of the European Union. Following its adoption, the Commission writes:

- Significant progress was achieved concerning further integration of Roma through the adoption of a Framework Programme for "Full Integration of the Roma Population into the Bulgarian Society" and establishment of relevant institutions at central and regional level. [4]

The Commission's assessment of "progress" is an inexplicable act of generosity on its part. Two years later, none of the objectives of the Programme have been achieved. The draft of a law prohibiting racial discrimination, prepared by experts more than a year and a half ago, is still awaiting presentation to the Cabinet of Ministers for deliberation before it can go Parliament's Legislative Commission.

Equally slow is the adoption and implementation of other relevant legislation that might open at least a possibility for mitigation of the pressing Roma minority problem. Several hesitant attempts on the part of the government to integrate schools in certain Bulgarian cities exhausted its initiative to "integrate fully" the school system, probably because the measures involved would be extremely unpopular with the general public. Initiatives to establish institutions such as a "National Committee for Prevention of Discrimination", and an Ombudsman to defend Roma rights, have thus far remained frozen at conception.

It is clear that the implementation of human rights conditionality in Bulgaria is deeply problematic. On the one hand, the specific human rights requirements Bulgaria is expected to meet remain vague - generally arising only when they are breached. On the other, the process of adoption of international human rights law is largely "mechanical" - adoption is rarely followed by implementation in domestic legislation. This allows the government to neglect or postpone the measures it is required to take.

Until these problems are adequately addressed by negotiators on both sides, human rights issues will continue to be a problem in Bulgaria, and an impediment in its bid for accession.

Cause for optimism?

There are nevertheless two chief sources for optimism for EU-aspirant countries. These lie in the recently-adopted Charter of Fundamental Rights of the European Union, and the European Court of Justice. The Charter constitutes a comprehensive "Bill of Rights", and offers a first indication of what is perceived to be "fundamental rights" in the European Union. The Charter provides some basis for definition of the "human rights" clause of TEU Art. 6 - and by extension, the criteria for accession, despite lacking binding legal power. Unfortunately, the Charter makes no reference to minority rights.

Second, the potential for intervention of the European Court of Justice (ECJ) in human rights matters generally is significantly increased, since the entry into force of the Amsterdam amendments to the TEU. As yet there is no jurisprudence relating to Article 6. The ECJ could choose to enhance its involvement in judicial review of human rights "conditionality" in the accession process, as well as supplying definitions of both "human rights and fundamental freedoms" and the accession "conditionality," through its jurisprudence.

The enlargement process could thus contribute to clearer delineation of human rights in both the Union and applicant countries. Alternatively, the term "human rights" risks becoming an empty piece of Euro-slang, designating a deliberately ill-defined concept, useful only in political obfuscation.

Footnotes

[1] Commission Opinion on Bulgaria's Application for Membership of the European Union, 1997, p.19.

[2] The revised European Social Charter; the Framework Convention for the Protection of National Minorities of the Council of Europe; Protocol No.6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms; the Second Optional Protocol to the International Covenant on Civil and Political Rights (the latter both concern abolition of the death penalty).

[3] 2000 Regular Report from the Commission on Bulgaria's Progress Towards Accession, p.24.

[4] 1999 Regular Report from the Commission on Bulgaria's Progress Towards Accession, p.75.