

Estonia, Latvia and the European Commission: Changes in Language Regulation in 1999-2001

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Estonia and Latvia have each introduced "integration policies" to address the specific situation of their large minorities, mostly Russian speakers. In both countries, the European Union has provided political and financial backing for these programs. A primary objective of the programs is to ensure bilingualism among minority individuals, and the approaches are strikingly similar in both countries. For example, both countries envisage a reduction in minority language education, particularly at secondary level. Latvia aims to have bilingual education only at primary level - from 2004, secondary level education is to be in Latvian only. In Estonia, minority-language primary education is to continue, but from 2007 on, state secondary schools will be either bilingual or Estonian only. Both countries impose strict limitations on the use of minority language in television (and, in Latvia, radio) broadcasts. Strict linguistic requirements have also been imposed in the private and public employment sectors of both countries. [1] These are hardly "minority friendly" policies, but they are often justified with reference to the special privileges enjoyed by these same minorities - Russians in particular - under the Soviet regimes in Estonia and Latvia. [2] The balance, it is claimed, must be redressed in favour of the "titular" (i.e. Estonian and Latvian) ethnic groups. However, there is little evidence to support these claims. A study by Norwegian scholar Paul Kolstoe, taking account of sociological statistical data, concluded that "during the post-Stalinist period the Russian diasporas were culturally and linguistically privileged in relation to other non-titular groups in the republics, but were usually not so privileged in relation to titular groups." [3] In what follows, I look briefly at the history of spoken languages in both countries, the regulations introduced during the time of independence, and the specific recommendations of the European Commission in the context of accession.

1. Historical background

Almost the entire territory of today's Estonia and Latvia was conquered in the Thirteenth Century by German crusaders. Throughout the subsequent rule of various "Great Powers" (Poland, Sweden, Denmark, Russian Empire), the area remained under the control of German nobles and landlords, and German culture, religion, and language prevailed for 700 years. At the end of the nineteenth century Russian supplanted German as the official language, including in education. In 1920, Bolshevik Russia recognised the independence of Estonia and Latvia, and the "local languages", which had survived in spite of foreign dominance, became official for the first time.

Independence was to be short-lived however. In 1940, Estonia and Latvia were incorporated into the USSR, a situation which continued until 1991. During this period Estonia and Latvia enjoyed an emasculated national-territorial autonomy as so-called Soviet Socialist Republics (SSR). Russian was re-introduced alongside the titular languages in educational, academic and cultural institutions. But Estonian and Latvian remained official languages in government bodies and courts.

Estonians and Latvians nevertheless had good reason for concern at the expansion of Russian-use in the official domains during the Soviet period. Russian prevailed in certain institutions in both countries (especially those under the direct control of Moscow). In addition, large-scale migration from other parts of the former USSR led inexorably to increased use of Russian, as the *lingua franca* for newcomers as well as the historical minorities (the overwhelming majority of both groups were Russians). These groups rarely learned the local languages - indeed, the level of proficiency among ethnic Russians stood at 15% in Estonia and 22.3% in Latvia by

1989. [4] Migration (and deportation) further contributed to structural demographic alterations which also gave rise to serious concerns - by 1989, ethnic Estonians and Latvians constituted only 61.5% and 52% respectively of the total populations. [5]

Conflicts over language use became frequent in Estonia and Latvia during the 1970s and 80s. According to Ina Druviete, one of the architects of the current Latvian language policy, the only choice for non-Russians at that time was voluntary self-assimilation:

- [The SSR policy of] bilingualism is a mechanism of language shift. Long-time group bilingualism is almost impossible if opportunity of access to the dominant language is present and socio-economic factors motivate a shift to the dominant language. Some general factors facilitating access to the dominant language were: huge migration, universal schooling, exogamy, required military service, mass media, especially TV etc [6]

Nevertheless, by 1989 approximately 99% of Estonians and Latvians claimed the language of their ethnic group to be their mother tongue. [7] Such figures hardly bear out claims of entrenched linguistic assimilation policies by the Soviet authorities.

2. Language regulation in Estonia and Latvia after 1989

In 1989, it was claimed to be necessary to "protect" the Estonian and Latvian languages, and special language laws were adopted to ensure their status as "State" languages. [8] The laws included requirements to conduct all work in state entities, organisations and enterprises in these languages only: this was the first introduction of professional linguistic requirements in these countries. Given the high number of Russian-speakers among the population, some provisions to guarantee the use of Russian for official purposes were kept.

The Latvian Law on Languages (amended in 1992) and the new Estonian Law on Language (1995) [9] included bans and restrictions on using non-state language for public information, in some types of mass media and (in Latvia) even at meetings "open to the public". The implementation of professional and other linguistic requirements was monitored by special language inspections in both countries. Knowledge of the state language was tested in exams. The ethnic policies in both Estonia and Latvia in the early 90s, including aspects of the language laws, appear intended to promote the "voluntary" repatriation of minorities. At the same time, language is generally regarded as an essential element of national identity. In promoting the new dominance of the titular ethnic groups in Estonia and Latvia, local politicians saw language proficiency as the key, particularly in the public sector. Given the absence of large-scale language training, these policies resulted in *de facto* marginalisation of minorities by curbing their work opportunities and limiting access to decision-making processes. [10]

In 1998-1999, the "socio-linguistic" situation was claimed to be far from satisfactory, and the need to protect the state languages was re-emphasised. As a result, in 1999, the Estonian provisions on professional linguistic requirements were reworded: anyone who had not been educated through the Estonian language was required to take new exams. Language proficiency requirements were explicitly stipulated not only for local minority members but also for foreign experts. [11] In Latvia, a new language law was under discussion at that time. The draft included stricter rules regarding the use of non-state languages (including in the private sector); guarantees for the use of Russian in official situations were abolished. The Law was adopted in July 1999, but was not promulgated by the president. In December 1999 an amended version of the Law on the State Language was adopted. [12]

These legislative moves were criticised not only by the EU, as detailed below, but also by the OSCE High Commissioner on National Minorities. [13]

Finally, the recently adopted minority integration programs ascribe importance to the role of the state languages in both Estonia and Latvia. [14] Existing stringent language requirements in

both private and public sectors will, according to the official view, push minorities to improve their language proficiency. Teaching in the titular languages is now supported (to a limited degree) in various "integration" projects.

3. European Commission Recommendations

A. Estonia

The Commission's 1999 Regular Report on Estonia noted that adoption of the 1999 amendments to the Law on Language:

- [... could cause] conflict between the law and the obligations of Estonia under the Europe Agreement, in particular in the fields of free movement of persons, right of establishment, supply of services, capital movement and award of public contracts [...]. The most controversial provision of the amendments to the law is that the employees of business associations, NGOs and foundations and physical persons as entrepreneurs (self-employed) must use the Estonian language for offering goods and services while performing their work.

The Commission pointed out that the government draft decree texts relating to the private sector "suffer from a lack of precision in the definition of professions and that the language requirements are unjustified in relation to the stated objectives, thus constituting a possible restriction in the application of the Europe Agreement." [15] In keeping with this, the revised 1999 Accession Partnership introduced as a short-term objective: "align[ing] the language legislation with international standards and the Europe Agreement" (p. 1.4).

On 14 June 2000, the Estonian parliament adopted some amendments to the Law on Language, [16] abolishing language requirements for foreign experts, and including a special provision that:

- the use of Estonian by companies, non-profit associations and foundations, by employees thereof and by sole proprietors is regulated if it is in the public interest, which, for the purposes of this Law, means public safety, public order, general government, public health, health protection, consumer protection and occupational safety. The establishment of requirements concerning proficiency in and use of Estonian shall be justified and in proportion to the objective being sought and shall not distort the nature of the rights which are restricted. (Section 2 of. Art. 21).

Both the Commission and the EU Presidency welcomed these amendments, [17] and the next report (2000) stated that Estonia had made considerable progress, recommending, however, that appropriate secondary language legislation also be adopted. [18]

Six months later, on 16 May 2001, the government approved new private sector regulations. [19] The relevant law listed groups of employees required to know the State language at various degrees of proficiency. [20] Thus, the lowest level is required of public transport drivers, social workers and those vendors of goods and services who provide information to the public ("which should be in Estonian in the public interest", presumably for consumer protection. [21]) However, if goods and services may be dangerous to life, health, social safety or the environment, the same vendor should demonstrate a middle level proficiency. The highest level is required of *inter alia* captains of ships and planes.

The Commission's next, and most recent Report stated that "Estonia should ensure that in the implementation of this regulation the principles of proportionality and justified public interest are properly respected". [22] Indeed, the tension between Estonia's push to protect the state language and its international commitments regarding minorities has been compressed, through negotiations, into interpretation of a term of legal ambiguity: "justified public interest".

B. Latvia

The European Commission's 1999 Regular Report on Latvia states the following concerning the July 1999 Law on Language (i.e. that which was not promulgated):

- [the law] does not sufficiently integrate standards of proportionality and precision. It considers the mandatory use of the state language in the private sector as being the rule and not the exception. Its provisions are worded so broadly that they could impair the exercise of rights and freedoms guaranteed under the Europe Agreement, such as for example the exercise of business activities for enterprises from the European Union... [23]

As in the Estonian case, the revised Latvian Accession Partnership called on Latvia to align language legislation with international standards and the Europe Agreement as a short-term objective for the year 2000 (p. 1.4).

The Law on the State Language, adopted in December 1999, included the following provision:

- the use of language in private institutions, organisations and enterprises (or companies) and the use of language with regard to self-employed persons shall be regulated in cases when their activities concern legitimate public interests (public safety, health, morals, health care, protection of consumer rights and labour rights, workplace safety and public administrative supervision) and shall be regulated to the extent that the restriction applied to ensure legitimate public interests is balanced with the rights and interests of private institutions, organisations, companies (enterprises). (Section 2 Art. 2)

"Public interest" is also frequently mentioned in Latvian language-related laws. Thus, employees of private institutions, organisations, enterprises (or companies), as well as self-employed persons, are to use the state language in record-keeping and documents if their activities relate to "legitimate public interests" (Section 2 Art.8). (Note the similarity to Estonia's "justified public interest"). Private institutions, organisations and enterprises (or companies), as well as self-employed persons who perform public function as required by law or other normative acts are to use the state language in record-keeping and documents which are required for performing their functions (Section 3 Art.8).

These provisions have far-reaching effects. Take, for example, the language requirements for organising meetings. One might think that such events could take place in non-State languages, especially given the great number of Latvian residents for whom Latvian is not a first language. But even this depends on the interpretation of "legitimate public interest". According to the Regulation on Ensuring Interpretation in Events of 22 August 2000 [24], "at events organised by private institutions, organisations, enterprises (companies), physical persons or international institutions, the organiser of the event ensures interpretation of information that concerns *legitimate public interests* into the state language, as well as providing versatile and complete information about the organised event." (p.2)

The European Commission's 2000 report on Latvia thus takes the following line:

- neither the Language Law itself nor the implementing regulations contain provisions that are manifestly incompatible with Latvia's obligations under the Europe Agreement. However, some of the provisions are worded such that they could give rise to different interpretations. It will therefore be important that the competent authorities only apply and enforce the Language Law and its implementing regulations to the extent required by a legitimate public interest, having regard to the principle of proportionality, as contained in Article 2 of the Language Law, and in view of Latvia's international obligations, as well as the rights and freedoms guaranteed under the Europe Agreement. These include, for example, the exercise of business activities for enterprises from the European Union. [25]

4. Conclusion

European Commission recommendations, based on the provisions of the Europe Agreement, were designed to ensure that Estonian and Latvian legislation employed a balanced approach to language proficiency requirements, particularly in the private sphere. The recommendations have resulted in amendments to the relevant laws in both countries, the latest of which introduces the notion of justified/legitimate "public interest".

Some important provisions in the language laws remained unaltered. For instance, the concrete requirements for certain professions have proved controversial (such as the high proficiency requirement for minority school teachers). At the same time, secondary legislation in Estonia and Latvia that stipulates professional linguistic requirements will affect mostly local minorities not foreign experts and investors. The Commission has thereby succeeded in protecting the interests of EU citizens, particularly in Estonia.

Linguistic requirements are a *de facto* limitation on freedom of expression. In terms of international law, both Estonian and Latvian language laws appear to have drawn on the possible restrictions on freedom of expression articulated in Art.19(3) of International Covenant on Civil and Political Rights and Art. 10(2) of European Convention on Protection of Human Rights and Fundamental Freedoms. An interpretation of "legitimate public interest" in the areas of public administration, consumer protection and workplace safety can be found, *inter alia*, in Art. 12 of the (not legally binding) Oslo Recommendations Regarding the Linguistic Rights of National Minorities. Nevertheless, certain pieces of Estonian and Latvian legislation do not appear to align with the clarifications offered in the Explanatory Note to these

Recommendations. For instance, it seems unlikely that "specific prescriptions for the additional use of the official language" in consumer protection could translate as a requirement of language proficiency for *all* vendors of goods and services dealing with the public.

From the perspective of an observer, however, when it comes to language legislation and minorities, the Commission and the governments of Estonia and Latvia appear to be involved in a low-key *pas de deux*. The Commission regularly reminds both countries of their obligations under international agreements, and the governments respond in the measure they see appropriate. Invoking "public interest" moves the stakes from legal text into legal interpretation, without resolving the issue. The promotion of bilingualism among minorities, as a rare area of agreement between the Commission and both governments, has subsequently become the key to minority policy in both countries, despite receiving bare support from minority representatives themselves.

Footnotes

[1] See Poleshchuk, V. (ed.), *Accession to the European Union and National Integration in Estonia and Latvia*, European Centre for Minority Issues, ECMI Report no.: 8, March 2001.

[2] The UNDP Report, *Integrating non-Estonians into the Estonian Society: Setting the Course* which was prepared in 1997 by local Estonian scholars put it as follows: "[...] current claims of oppression and discrimination of non-Estonians are of no value if they do not include comparisons with the oppression of and discrimination against Estonians over the previous half century." (Section II A).

[3] Kolstø, P., *Russians in the Former Soviet Republics*, Hurst & Company, London, 1995, p.102.

[4] Heidmets, M. (ed.), *Vene küsimus ja Eesti valikud (The Russian Minority and Challenges for Estonia)*, TPÜ Kirjastus, Tallinn, 1998, p. 18 (table 2); Kolstoe, P. (ed.), *Nation-Building and Ethnic Integration in Post-Soviet Societies. An Investigation of Latvia and Kazakhstan*, 1999, p. 108. Data of the 1989 census.

[5] Data of the 1989 census. See tables 1 and 2 in Zaagman, R., *Conflict Prevention in the Baltic States: The OSCE High Commissioner on National Minorities in Estonia, Latvia and*

Lithuania, European Centre for Minority Issues, ECMI Monograph No. 1, Flensburg, April 1999. In early 2000 official sources reported that the share of ethnic Estonians had reached approximately 65 % and the share of Latvians about 58 %. See tables 1 and 3 in Poleshchuk, 2001.

[6] Ina Druviete, *Sociolinguistic Situation and Language Policy in the Baltic States*, University of Latvia, Baltic Studies Programme, Riga, 2000, pp.20-21.

[7] Heidments, p. 18 (table 2); Kolstoe, p. 109 (figure 4.8). The Data of the 1989 census.

[8] Published in official state journals. In Estonia - Ülmnõukogu ja Valitsuse Teataja 1989, 4, 60; in Latvia - Augustākās Padomes un Ministru Padomes Ziņotājs (APMPZ) no. 20 (18.05.1989).

[9] Published in the official state journals, the Estonian Riigi Teataja (RT) I 1995, 23, 334; and the Latvian APMPZ no. 15 (16.04.1992).

[10] The majority of non-Estonians and non-Latvians are not citizens of the state of residence. The basic naturalisation requirement in both countries is rather high level of State language proficiency.

[11] Amendment published RT I 1999, 16, 275.

[12] Latvijas Vēstnesis (LV) 21.12.1999. Latvijas Vēstnesis - official state journal.

[13] See Vadim Poleshchuk, *Advice not Welcomed. Recommendations of the OSCE High Commissioner to Estonia and Latvia and the Response*, Lit, Münster, 2001 pp. 67-71 (for Estonia) and pp. 100-103 (for Latvia).

[14] State Program "Integration in Estonian Society 2000-2007", Tallinn, 2000; National Program "Integration of Society in Latvia. Short version", Riga, 2000.

[15] 1999 Regular Report from the Commission on Estonia's Progress towards accession, 13 October 1999, p. 15.

[16] RT I 2000, 51, 326.

[17] IP/00/626, Brussels, 16 June 2000; Pesc/00/86 Brussels, 19 June 2000/9521/00 (Presse 220) .

[18] 2000 Regular Report from the Commission on Estonia's Progress towards accession, 8 November 2000, p. 20.

[19] RT I 2001, 48, 269.

[20] According to the Law on Language (Section 5 Art.5), the basic level requires limited oral and elementary written proficiency in Estonian; middle requirements are oral and limited written proficiency; the highest requirement is full oral and written proficiency in Estonian. The middle level is required of, e.g., teachers of state and municipal minority schools.

[21] Professor Steven R. Ratner, commenting on a similar law in Latvia viewed from the perspective of international law, noted: "The author's argument to parliamentarians that no person had a right under international law to order cup of coffee in the Latvian language, be understood, and be served in the Latvian language anywhere in Latvia met with a combination of astonishment and resentment". Steven R Ratner, "Does International Law Matter in Preventing Ethnic Conflict?" in *New York University Journal of International Law and Politics*, vol. 32 no.: 3, Spring 2000, p.635.

[22] 2001 Regular Report from the Commission on Estonia's Progress towards accession, 13 November 2001, p. 23

[23] 1999 Regular Report from the Commission on Latvia's Progress towards accession, 13 October 1999, p. 18.

[24] LV 29.08.2000.

[25] 2000 Regular Report from the Commission on Latvia's Progress towards accession, 8 November 2000 p. 23.