

Legal Indicators for Social Inclusion of New Minorities Generated by Immigration

Roberta Medda-Windischer

The author is a researcher at European Academy of Law, Bolzano/Bozen.

Introduction

In recent decades, most EU member States have experienced a marked increase in the number of third country nationals (TCNs) residing on their territory. Partly for political and humanitarian reasons, partly as a result of differing economic situations as well as the freedom of movement entailed by growing economic integration in Europe, an increasing number of people have settled with varying degrees of permanence in countries other than their countries of origin.

Following the conclusions of the Tampere European Council on the fair treatment of TCNs, it was agreed that the legal status of TCNs should be approximated to that of the nationals of the member States. [\[1\]](#)

The Council of Europe (CoE), while calling for stronger protection of migrants' rights, also recognises a clear link between migrants and minorities. The Parliamentary Assembly of the CoE recently stated: "The Assembly recognises that immigrant populations whose members are citizens of the State in which they reside constitute special categories of minorities, and recommends that a specific Council of Europe instrument should be applied to them." [\[2\]](#)

The above issues represented the most relevant elements of the LISI project (Legal Indicators for Social Inclusion of New Minorities Generated by Immigration, "the Project"), an EC-funded project launched at the beginning of 2002 by the 'Minorities and Autonomies' Department of the European Academy of Bolzano/Bozen in the framework of the EC Programme for preparatory actions to combat and prevent social exclusion. [\[3\]](#)

Legal indicators for social inclusions of new minorities generated by immigration

The primary objective of the LISI project was to devise common legal indicators for measuring social inclusion of new minorities originating from immigration. In the LISI project three geographical areas were examined that encompassed very different typologies of social exclusion. These areas were: the Province of South Tyrol, characterised by a special legal framework aiming to protect linguistic minorities; the Region of Styria, exposed to immigration linked to EU enlargement and to flows of refugees from the former Yugoslavia; and the town of London, with a long-standing immigration tradition in an urban environment. The geographical and social diversity of the examined areas maximised the potential applicability of the indicators in an EU-wide context.

The main assumption of the Project was that legal integration, namely access to rights, goods, services and resources is a necessary although not sufficient precondition for social inclusion of the new minorities. The development of common legal indicators is needed in order to assess and discuss challenges and trends in the field of social exclusion and to arrive at common understanding and diagnosis as well as at comparable data.

The LISI indicators measure the two major aspects of legal integration: legal equality, meaning equal rights and duties compared to citizens of the host country, and access to minority rights such as cultural, linguistic and religious rights. Throughout the implementation of the project, special emphasis was given to the gender issue within the above-mentioned categories.

The ultimate objective of the Project is to provide policy makers at various political levels, European, national, and local NGOs, international organisations, experts, and scholars with common indicators to measure social inclusion in a range of contexts. The identified set of indicators should produce standardised and comparable data in different countries and different contexts as well as assessing the impact of legal provisions on the social inclusion of the target group.

Definitions and categories of the LISI Project

At the outset, LISI partners agreed upon a set of common and clear-cut working definitions of basic concepts. This was an important phase of the Project because the choice of the precise target group, the meaning of the term inclusion and the scope of legal indicators would have exerted enormous influence on the implementation of the project research.

1. 'Old' versus 'New' Minorities

Drafters of international instruments have generally been unsuccessful in efforts to define the term *minorities*. There is no consensus neither among countries nor within the United Nations and regional organisations on this matter, [\[4\]](#)

and furthermore, it is extremely difficult to settle the question in the abstract. Some categories of non-citizens, for instance, should clearly enjoy many of the rights listed in the instruments devoted to minorities, but not necessarily all of them.

After identifying the various definitions of *minority* and recognising the difficulties of conceptualising the issues referred above, for the purpose of the LISI project, the partners agreed upon a working definition of *new minorities* originating from immigration. This definition encompasses different categories of TCNs [\[5\]](#) legally present on the territory of an EU member State and includes not only migrant workers with permanent or seasonal contracts, but also asylum-seekers, refugees, and ethnic migrants with the main focus on the integration of the first generation. A broad definition of the target group was chosen, in spite of having some methodological difficulties, because it has the advantage of better reflecting the social reality of most European countries.

The integration process of the LISI target group is determined by legal provisions regulating a broad range of life domains. The areas of concern identified by the LISI partners were:

- employment, housing, social security, education and media ;
- effective participation in public life, justice, citizenship, residence and right to family life.

In addition, a number of cross-cutting issues such as gender, inter-culturalism, monitoring systems, duties, and positive actions, have also been taken into consideration.

The LISI partners decided to avoid as far as possible any kind of discretionary evaluation of the indicators in term of their value. This is due to the difficulty in precisely evaluating what factors have most impact on the individual course of integration and at what stage.

2. Immigration policies

With regard to the definitions of other key issues under discussion, it is important to note that again, there is no general consensus on concepts such as *inclusion, exclusion, integration, assimilation, segregation*. Comparative analyses are thus hampered by the fact that as of yet, no common language exists for discussion. The term integration is, for instance, rejected in some countries, where more neutral expressions such as *insertion* or *incorporation* [\[6\]](#) or *coexistence* [\[7\]](#) are the preferred terminology.

Integration expresses a complex concept whose meaning can differ according to the country considered as well as political and historical circumstances. Concepts of integration range from multiculturalism to full assimilation and even segregation. [\[8\]](#) Generally, *integration* refers to the broader context of legal access to resources, rights, goods and services, whereas *social inclusion*, also includes a foreigner's individual choice to be part of the host community's social life.

In the LISI Project the terms *inclusion* and *integration* are to be understood as referring to a process of mutual accommodation between immigrants and the majority population, implying a two-way process of adaptation in which minority and majority groups learn from each other and borrow aspects of each other's culture. [\[9\]](#) According to this model, the inclusion of newcomers in the host society implies respect for the identities of migrant and host populations, positive interaction and peaceful cohabitation among all communities concerned. [\[10\]](#)

From this perspective, integration has a positive connotation, although integration may also exist in negative forms when the inclusion of new elements in a given polity has disintegrative effects. This is the case, for instance, when immigrants participate in petty criminal activity, or simply through illegal entry or irregular employment, which do lead to forms of social participation but at the same time undermine the rule of law in the receiving societies. [\[11\]](#)

The purpose of a comprehensive, long-term integration policy should be to ensure that immigrants could take an equal part in the life of society: participation and equal opportunities are thus the key elements in such policies.

From this perspective, it is vital to promote all areas of social integration, both separately and interactively, including the labour market, education, language, culture, and social and legal integration. Another central aspect is participation in public life by virtue of certain civic rights and civic duties.

From a cultural viewpoint, integration policies strive to bring immigrants into mainstream, society while simultaneously protecting minorities' ability to develop and

express their socio-cultural features. [\[12\]](#) This conception is based on two elements: reciprocity and socio-cultural diversity. The emphasis in this model is therefore *intercultural* integration or integration with preservation of the individual identity of both immigrant and receiving communities, as well as mutual exchange among different cultures. In this perspective *inter-culturalism* is a step forward in comparison to *multiculturalism*, which refers to the

development of immigrant populations with regard to language, culture, social behaviour, but yet remaining separate and distinguishable from the host population. [13]

The concept of integration adopted in the LISI project can be defined as *civic integration*, and is based on the idea of bringing immigrants' rights and duties, as well as access to goods, services and means of civic participation progressively into line with those of the nationals of their host state, under conditions of equal opportunities and treatment. From this perspective integration can be measured in terms of citizenship rights rather than of nominal citizenship status. [14]

The concept of “civic integration” is in line with the EU Charter of Fundamental Rights that moves towards the concept of “civic citizenship” aiming specifically at putting member states nationals and long-term third-country residents on a similar legal footing. The idea of civic citizenship was first introduced by the European Commission in its Communication on a

Community immigration policy [15] that is part of the follow up of the Tampere conclusions on the legal status of TCNs. This status would be acquired after five years' residence and would entail rights comparable to those of EU citizens, including the right to free movement and establishment through the European Union.

It is worth noting that the rights conferred by the Charter of Fundamental Rights under the chapters Dignity, Freedoms, Equality, Solidarity and Justice are already valid for all persons regardless of their nationality. This includes, for instance, that everyone has the rights to freedom of associations at all levels, in particular political, trade unions and civic matters. The principle of universalism applies also to the most rights of the Charter under the chapter on Citizens' rights. Both nationals of the member States and immigrants residing there have the rights to good administration, of access to documents and petition the European Parliament or the European Ombudsman. Yet there are important exceptions, rights that are reserved only for the nationals of the member States, including the rights to vote and stand as a candidate at EP and local elections.

3. Legal Indicators

Legal indicators are one of the categories of indicators proposed by the

Council of Europe. [16] They address the legal framework in which immigrants live, and reflect the country's political perception and tendencies on immigration policy as well as determine how far migrants have access to crucial sectors of the host society.

By devising legal indicators only, the LISI project aims at complementing existing research and analyses conducted in the field of migrants' social exclusion, which do not always consider the legal aspects pertaining to social integration to a sufficient degree. Classical empirical analyses of the social integration of the LISI target group are, in fact, usually based on social indicators, i.e. statistical data, which are generally available only to a limited degree and are often not suitable to support comparative analyses because they are usually based on different survey methods.

Methodology and LISI Indicators

In the LISI project legal indicators are devised to measure social inclusion, and the indicators are accordingly formulated as questions on *accessibility* rather than on *obstacles*, measuring means of inclusion and integration in national legal provisions relevant to the target groups. In order to generate a set of indicators that can be easily applied by different users, the indicators are shaped as closed questions offering a *yes* or *no* option, indicating a positive attitude towards inclusion if answered *yes* and negative attitude if answered *no*. Obviously, certain categories of target groups are excluded from the scope of some indicators by definition, such as voting rights at national elections or citizenship claim for seasonal workers. Due to the rigidity and complexity of some indicators, the possibility to add explanatory comments was introduced. This option can be used in cases in which a simple *yes* or *no* answer is not sufficient to reflect the existing legal situation in a country and, in particular, to record the actual implementation of some legal provisions. The advantage of this system is that non-legal considerations can be taken into account without challenging the fundamentally legal characteristics of the LISI indicators.

Finally, in order to identify shortcomings and pitfalls in national legislation, the LISI indicators should be used by a variety of actors ranging from government officials to NGO representatives. In this way, problems pertaining to the implementation of legal provisions or concealing indirect discrimination can emerge from the comparison of different comments even in the presence of consistent answers related to the mere existence or non-existence of an abstract norm.

Examples taken from different areas of concern serve to illustrate how the LISI indicators function and are formulated.

- Is it possible to obtain the least restricted work permit within the national legislation within 5 years [17] of residence?
- Is it possible for TCNs to apply for citizenship based on their residency in less than 5 years?
- Is it possible for migrant workers to obtain a permanent permit to stay within 3 years of legal residence?
- Do TCNs have the possibility to apply for family reunification immediately upon their arrival in the host country?

Other indicators refer, more specifically, to migrants as minorities as well as to inter-culturalism:

- Are there legal provisions for TCN detainees ensuring the respect of their religious beliefs?
- Does the labour law provide for cultural and religious diversity among workers, including TCNs (e.g. flexible holidays)?
- Are there any legal provisions taking into account cultural diversity of clients in the medical sector?
- Are there legal provisions to promote awareness raising of minority issues such as cultural diversity in the national curriculum for all children?
- Is there a legal provision obliging schools to offer optional mother – tongue language courses for TCN children?
- Do immigrants have the right to declare their ethnic/national background in census and other official/statistical data?

Conclusions

The LISI indicators constitute a useful tool for systematic comparisons across countries in specific policy areas and for generating inductive typologies or clusters of countries that show similar features in their approach to the legal integration of new minorities. They are a useful instrument for underpinning areas in which legal measures should be adopted by political bodies in order to counteract discrimination and forms of exclusion. These objectives are of considerable importance for the EU since they will help to identify common standards as well as obstacles for harmonization in specific policy areas.

In addition the LISI indicators are a helpful mechanism for national and international monitoring bodies, and may serve as an instrument in the hands of migrant communities to press for their rights and underpin their claims.

Footnotes

[1] Tampere European Council, Presidency Conclusions, 15 -16 October 1999, 5, para. 21.

[2] PACE, Recommendation 1492 (2001) on the Rights of National Minorities, 23 January 2001.

[3] For further reference, see: <http://www.eurac.edu/minorities/lisi>.

[4] The Advisory Committee of the Framework Convention for the Protection of national Minorities (FCNM) has consistently held that the Framework Convention contains no definition of the notion of national minorities and that the individual contracting parties enjoy a margin of appreciation in determining the groups to which the Convention applies. Yet, in the occasion of the examination of some recent State reports, the Advisory Committee considered the possibility of enlarging the scope of the Framework Convention to new minority groups. Due to the significant proportion of non-citizens - including migrant workers - in the total population of the countries concerned, the Advisory Committee found that it would be possible to consider the inclusion of persons belonging to these groups in the application of the Framework Convention on an article-by-article basis, and noted that the authorities of the countries concerned should consider this issue in consultation with those concerned at some appropriate time in the future. ACFC, Opinion on Austria, adopted on 16 May 2001, ACFC/INF/OP/I/009, paras.19-20, 34; ACFC, Opinion on Germany, adopted on 1 March 2002, ACFC/INF/OP/I/008, paras. 17-18, 40; ACFC, Opinion on Ukraine, adopted on 1 March 2002, ACFC/INF/OP/I/010, para. 18.

[5] In the LISI project, the term TCN is used in all those cases where the whole target group (migrant workers, seasonal workers, asylum-seekers and refugees) is addressed, whereas a distinction in wording is made when the situation described makes it necessary.

[6] R. Bauböck, *The Integration of Immigrants*, Report of the 7th Meeting of the Joint Group of Specialists on Migration, Demography and Employment, Council of Europe, Strasbourg, 15-17 March 1994, CDMG(94)5.

[7] B. Winkler, *The Role of Civil Society in Promoting Integration*, Speech addressed at the ESC Conference on Immigration, 9-10 September 2002.

- [8] S. Castles, *The process of Integration of Migrant Communities*, Expert Group Meeting on Population Distribution and Migration, Santa Cruz. Winkler, *The Role of Civil Society in Promoting Integration*, Speech addressed at the ESC Conference on Immigration, 9-10 September 2002, uz, Bolivia, UN/UNFPA, 1993; M. Macura, D. Coleman, *International Migration: Regional Processes and Responses*, UN Economic Commission for Europe, UN Population Fund, Economic Studies n. 7, New York and Geneva, 1994, pp.41-76.
- [9] S. Castles, *The process of Integration of Migrant Communities*, Expert Group Meeting on Population Distribution and Migration, Santa Cruz, Bolivia, UN/UNFPA, 1993.
- [10] G. Zincone, ed, *Secondo Rapporto sull'integrazione degli immigrati in Italia*, Commissione per le politiche di integrazione degli immigrati, Dipartimento per gli Affari Sociali, Presidenza del Consiglio dei Ministri, Il Mulino, Bologna, 2000, p. 88.
- [11] R. Cagiano de Azevedo, *International Migrations as a Factor of Security and Cooperation in Europe and in the Mediterranean Region*, Introduction, Rome, Università degli Studi di Roma, 'la Sapienza', 1993.
- [12] Council of Europe, *Diversity and Cohesion: New Challenges for the Integration of Immigrants and Minorities*, Strasbourg, 2000.
- [13] S. Castles, *The process of Integration of Migrant Communities*, Expert Group Meeting on Population Distribution and Migration, Santa Cruz, Bolivia, UN/UNFPA, 1993.
- [14] R. Bauböck, *The Integration of Immigrants*, Report of the 7th Meeting of the Joint Group of Specialists on Migration, Demography and Employment, Council of Europe, Strasbourg, 15-17 March 1994 CDMG(94)5.
- [15] Communication from the Commission to the Council and to the European Parliament on a Community Immigration Policy - COM(2000)757. See also, European Commission, *Proposal for a Council Directive concerning the status of third country nationals who are long-term residents* - COM(2001)127.
- [16] Council of Europe, Directorate of Social and Economic Affairs, *Measurement and indicators of integration*, 1997, p. 190. The other two types of indicators are social or statistical indicators, and indicators concerning the attitudes and expectations migrants have regarding their destination countries.
- [17] References to time periods are based on empirical data available from EU-member States with a focus on the data from the three regions examined (South Tyrol, Styria, London)