

LINGUISTIC HUMAN RIGHTS OF IMMIGRANTS IN EUROPEAN STATES (A CASE STUDY OF THE CZECH REPUBLIC)

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Abstract

This article investigates the policy of granting linguistic rights to immigrant minorities in European states. It is based on a research project designed as a case study of the Czech Republic. The methods employed are document analysis and semi-structured qualitative interviews.

The research shows that since the state does not forward any clear-cut policy towards immigrant minorities, their position mostly depends on their own activity. The main reason why some ethnic groups are treated less favourably is their own lack of interest in maintaining their culture.

Key words: linguistic rights – cultural minority rights - immigrants

Introduction

Linguistic rights include the right to minority language public education and access to learning the majority language, the right to multilingual signs and inscriptions, to public funding for activities promoting minority cultures, and to the use of minority language in contact with state authorities. It is generally agreed that language policies have a great influence on the position of minorities in the state. However, the issue of promotion of immigrant minority languages by the state is immensely complex and still unresolved.

This article is based on a case study of the Vietnamese and Ukrainian immigrant minorities in the Czech Republic ("CR" hereinafter). The two particular communities were chosen because they are similar in size, geographical dispersion, organization as a minority, and the history of their settlement in the territory of the CR. However, Ukrainians are given more advantageous treatment. While neither of these two communities is traditional in the territory, Ukrainians are in some respects treated as such. The methods employed are document analysis and semi-structured qualitative interviews with the leading figures of the two communities.

Part 2 of this article describes the criteria that states use to determine linguistic rights for minorities. The criterion of settlement history (i.e. the distinction between traditional and immigrant minorities) is treated on the first place as the most important one. Part 3 examines how the two communities selected for the case study meet these criteria. Part 4 describes the legal and practical treatment of the two communities. Part 5 compares the views of the leaders of the two communities. Part 6 concludes that both international and national legal provisions are unclear and that the extent to which

immigrant languages are promoted depends on their own activity and interest in state involvement in their cultural affairs.

Criteria states use to determine linguistic rights for minorities

Sources of the criteria

Policies towards minority languages can be influenced by international obligations derived from international law documents. This section is focused on sources of policies for European states.

Within the framework of the European Union, the Treaty of Rome (1957)¹ contains some provisions on teaching national languages and on working languages of the EU. However, minority languages are not treated. Resolutions of the European Parliament have resulted in the creation of European Bureau for Lesser Used Languages and MERCATOR Network.²

Several documents of the Council of Europe touch upon the topic of linguistic rights. The European Convention on Human Rights (1950)³ makes only a little reference to language rights. The obligations regarding language are limited to practical concerns such as understanding the language of court proceedings and the right to an interpreter. The European Charter for Regional or Minority Languages (1992)⁴ treats linguistic rights in more detail. More abstract language rights such as recognition, promotion, development and maintenance of regional and minority languages are guaranteed. Similarly, the Framework Convention for the Protection of National Minorities (1995)⁵ grants the right to develop one's own culture, and to preserve the elements of national identity, such as language and cultural heritage.

The Organization of Security and Cooperation in Europe has issued two documents concerning linguistic rights: The Oslo Recommendations Regarding the Linguistic Rights of National Minorities (1998)⁶ and The Hague Recommendations Regarding the Education Rights of National Minorities (1996)⁷.

Apart from European instruments, several universal (UN) documents provide basic treatment of linguistic rights. The International Covenant of Civil and Political Rights (1966)⁸ guarantees the right of persons belonging to minorities to "enjoy their

¹Treaty of Rome, 1957. Available at: <<http://www.treatyofrome.com/>>. Access on: 19/01/2009.

²European Bureau for Lesser-Used Languages. EBLUL calls for a legal base for the support of Europe's lesser used languages, 2006. Available at: <http://www.eblul.org/index.php?Itemid=37&id=97&option=com_content&task=view&lang=sv>. Access on 30/01/2009.

³European Convention on Human Rights, 1950. Available at: <<http://www.hri.org/docs/ECHR50.html>>. Access on: 30/01/2009.

⁴European Charter for Regional or Minority Languages, 1992. Available at: <<http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=148&CL=ENG>>. Access on: 30/01/2009.

⁵Framework Convention for the Protection of National Minorities, 1995. Available at: <<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=157&CL=ENG>>. Access on: 30/01/2009.

⁶Oslo Recommendations Regarding the Linguistic Rights of National Minorities, 1998. Available at: <http://www.osce.org/documents/hcnm/1998/02/2699_en.pdf>. Access on: 30/01/2009.

⁷Hague Recommendations Regarding the Education Rights of National Minorities, 1996. Available at: <http://www.osce.org/documents/hcnm/1996/10/2700_en.pdf>. Access on: 30/01/2009.

⁸International Covenant of Civil and Political Rights, 1966. Available at: <<http://www2.ohchr.org/english/law/ccpr.htm>>. Access on: 26/10/2008.

own culture” and to “use their own language”.⁹ The Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)¹⁰ calls for state policies which enable minorities to develop their culture and language.¹¹ More particularly, the Declaration requires states to provide opportunities for minority members to “learn their mother tongue or to have instruction in their mother tongue”¹². Finally, the Convention on the Rights of the Child (1989)¹³ guarantees the right of a child to his or her cultural identity and language.¹⁴ Moreover, the Convention specifically addresses the rights of children belonging to national minorities and grants them the right to enjoy their own culture and to use their own language.¹⁵

Some documents of UNESCO treat linguistic rights in more detail. The Universal Declaration on Linguistic Rights (1996)¹⁶ was initiated by UNESCO and signed by an assembly of representatives of non-governmental organizations, experts, PEN centres, and consultant bodies. It advocates detailed guidelines for state policies regarding preserving minority languages and cultural characteristics. At the same time, the Declaration mentions the necessity of access of minority members to the majority language.¹⁷ The Universal Declaration of Cultural Diversity (2001)¹⁸ sets out general principles of supporting cultural pluralism and also establishes the respective role of UNESCO.

The UN Office of the High Commissioner for Human Rights has produced the International Convention for the Protection of the Rights of All Migrant Workers and the Members of their Families (1990)¹⁹. The sections relevant to linguistic rights are those on education.

Criterion of settlement history

The history of a minority in a country is an important factor for determining the country’s policy for regulating the respective language. Some international law documents distinguish between traditional and immigrant minorities. Some documents, on the other hand, criticise such a distinction and advocate equal treatment for both kinds of minorities.

Within Europe, the most significant instrument promoting the distinction is the Council of Europe’s European Charter for Regional or Minority Languages (1992).

⁹International Covenant of Civil and Political Rights, 1966, op.cit., Article 27.

¹⁰Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992. Available at: <http://www.unhchr.ch/html/menu3/b/d_minori.htm>. Access on: 26/10/2008.

¹¹Ibid., Article 4.2.

¹²Ibid., Article 4.3.

¹³Convention on the Rights of the Child, 1989. Available at: <<http://www.unhchr.ch/html/menu3/b/k2crc.htm>>. Access on: 26/10/2008.

¹⁴Ibid., Article 29.

¹⁵Ibid., Article 30.

¹⁶Universal Declaration on Linguistic Rights, 1996. Available at: <<http://www.unesco.org/cpp/uk/declarations/linguistic.pdf>>. Access on: 12/12/2007.

¹⁷Ibid., Article 13.

¹⁸The Universal Declaration of Cultural Diversity, 2001. Available at: <<http://unesdoc.unesco.org/images/0012/001271/127160m.pdf>>. Access on: 12/10/2008.

¹⁹International Convention for the Protection of the Rights of All Migrant Workers and the Members of their Families, 1990. Available at: <<http://www.unesco.org/most/lnlaw21.htm>>. Access on: 27/01/2009.

The Charter explicitly excludes the languages of immigrants from its scope. According to its Article 1, the definition of minority languages “does not include [...] the languages of migrants”.²⁰

The most noticeable document expressing the opposing view is the Universal Declaration on Linguistic Rights (1996). Article 1 explicitly includes immigrants among language groups. Article 5 criticises the attitude of differentiating between traditional and immigrant minorities by saying that “the rights of all language communities are equal and independent of the legal or political status of their languages as official, regional or minority languages”.²¹

Other criteria

The size of a linguistic group is an important factor for determining the linguistic politics towards the group.²² It is more practicable and efficient for a state to develop the language of a minority whose number is significant. In addition to the count of the linguistic group as such, the number of school-aged children plays an important role in terms of minority language education.

It is easier to develop a language of a group with compact settlement. It is also more efficient for the state to provide such a group with public institutions aimed at the development for the language, such as the possibility of communication with authorities in the language or the use of the language in elections.

A minority's organizational structure is a factor which a state may use to decide which linguistic rights should be granted to a community. A minority's willingness to organise itself shows its interest in cultural rights and active involvement.

How the Vietnamese and Ukrainians in the CR meet these criteria

In terms of settlement history, the Ukrainian community is more traditional. While the first Vietnamese came in the 50's, the first significant influx of Ukrainians happened already at the beginning of the 20th century. However, the groups are similar in the fact that most of their present members arrived in the territory after 1990.

Regarding size, the two ethnic groups are comparable: there are 17 462 legal permanent inhabitants of Vietnamese descent and 22 112 of those of Ukrainian origin. Out of these, the numbers of Czech citizens are nearly the same: about 1 500 of Vietnamese people with Czech citizenship and 1 484 Ukrainian people with Czech citizenship. These two ethnic groups form the largest groups of alien pupils at basic schools, the Vietnamese being the first largest group.

The two ethnic groups are comparable in their compactness of settlement, as both are settled in several large cities. Both have minority civic organizations and the Ukrainian ones are more culture-oriented. The Vietnamese, on the other hand, are more active in issuing minority language press.

²⁰European Charter for Regional or Minority Languages (1992), op. cit., Article 1.

²¹Universal Declaration on Linguistic Rights (1996), op. cit., Article 5.

²²Wolff, Stefan, *The Comparative Politics of Linguistic Diversity: National and International Dynamics*, Unpublished, 2006, p. 7.

Derived from these criteria, it can be concluded that the two groups should be given the same treatment by the state practice. It can be justified to give the Ukrainians more attention since they are more traditional in the territory. On the other hand, it would be righteous to prioritize the Vietnamese in the field of education, because there are more Vietnamese-speaking pupils.

Legal and practical treatment of the Vietnamese and the Ukrainian community

International obligations

The European Charter for Regional and Minority Languages was signed by the Czech Republic in 2000, ratified in 2006, and became legally binding on the 1st of March of 2007. Four languages are protected under Part II of the European Charter for Regional and Minority Languages: German, Polish, Romani, and Slovak. Part III applies to Polish and Slovak.²³

Other minority languages are protected under the Framework Convention for the Protection of National Minorities. According to the Ministry of Interior, these languages include Bulgarian, Croatian, Greek, Hungarian, Russian, Ruthenian, Serbian, and Ukrainian.²⁴

The Ministry of Interior does not mention the legal regime applicable to Vietnamese language. Apparently, Vietnamese is not considered as a significant minority language, as opposed to Ukrainian.

The legal definition of “national minority”

The term “national minority” is defined in the Minority Act.²⁵ The concept is linked to Czech citizenship: national minority is a community of citizens of the Czech Republic who fulfil certain criteria. They differ from other citizens by their common ethnic origin, language, culture, and traditions, they represent a minority of citizens, and they are willing to be considered as a national minority for the purposes of development and preservation of their culture.²⁶ Therefore, only those Vietnamese and Ukrainian people who are Czech citizens are considered as a minority in the sense of this Act. They have to acquire Czech citizenship in order to enjoy linguistic rights granted to national minorities.

The Minority Council

The principal state institution for national minorities is the Minority Council, which is a proactive and consultative body of the Government. The Minority Council is

²³Ministry of Foreign Affairs. Ministerstvo zahraničí ČR, Report on the signature of the European Charter for regional and minority languages No 15/2007 of the Collection of International Treaties, 2006. Available at: <http://www.sbirka.cz/NOVE/07m015.htm>.. Access on: 26/03/2007.

²⁴Jirasová, M., Pospíšil, M., & Sulitka, A. Česká republika v přípravě na ratifikaci Evropské charty regionálních či menšinových jazyků, 2005. Available at: <http://www.mvcr.cz/casopisy/s/2005/46/tema1.html>., Access on: 25/01/2007.

²⁵Act on Rights of Members of National Minorities, No 273/2001 of the Collection of Acts (“Coll.” hereinafter).

²⁶Minority Act, s. 2.

established on the basis of the Minority Act and is regulated by the Council's Statute. Each minority is represented by one to three members, according to the quantity of the minority and their historical and present position. The represented minorities are both traditional and immigrant: Bulgarian, Croatian, German, Greek, Hungarian, Polish, Romani, Russian, Ruthenian, Serbian, Slovak, and Ukrainian.²⁷ Ukrainians have one representative, while the Vietnamese are not represented.

There is no official procedure which a minority could undertake to become included and there is no written legal source containing the criteria for a minority to be considered. According to Milan Pospíšil, the secretary of the Minority Council, official recognition of a minority fully depends on the Government. A minority becomes included as soon as the Government decides that the minority is "consistent enough in the Czech society". Pospíšil noted that if a community shows consistent pressure, they become represented.²⁸

Legal acts treating minority linguistic rights

The most general treatment of linguistic rights of national minorities is embedded in the Charter²⁹ which is a part of the constitutional legal order. The Charter contains a general non-discrimination clause which applies to members of any national minority. Other relevant provisions of the Charter grant the right to development one's own culture, diffusion and reception of information in mother language, mother tongue education, and the use of one's mother tongue in contact with authorities. These specific provisions refer to implementation acts dealing with linguistic minority rights: the Minority Act, the Education Act, and others.

The Minority Act specifies the details of linguistic rights. A distinction is drawn between national minorities "living traditionally and for a long time in the territory of the Czech Republic"³⁰ (i.e. traditional minorities) and other national minorities (i.e. immigrant minorities). All national minorities are entitled to the use of personal names according to the grammatical rules of their language, and they are granted the right to promote their culture, and to diffuse and receive information in their language. In addition, traditional minorities are conferred the right to use multilingual signs and inscriptions, to use minority language in contact with authorities and in elections, to be educated in minority language, to establish minority language private schools, and to be awarded government grants for the promotion of their culture and for diffusion and reception of information in their language. Neither are national minorities of the Czech Republic enumerated in the Minority Act, nor are listed those which are to be considered traditional.

The Education Act³¹ contains detailed provisions on state-administered minority language education. This act is more favourable to immigrant minorities than the Minority Act: There is no distinction between traditional and other minorities. While

²⁷ Statute of the Government Minority Council, government decree No. 1034/2001 Coll., s. 3.

²⁸ Pospíšil, M. 2007, email.

²⁹ Charter of Fundamental Rights and Freedoms, No 2/1993 Coll.

³⁰ Minority Act, s. 8, translation mine.

³¹ Act on Pre-school, Basic, Secondary, Tertiary Professional and Other Education, No 561/2004

the Vietnamese and the Ukrainian minorities are not qualified even for private education according to the Minority Act, they are theoretically qualified for state education along the Education Act, on the assumption that there are adequate numbers of their children.

The right to interpreter in court proceedings is granted to foreign language speakers regardless of membership of a traditional minority and regardless of citizenship. The Charter states that "anybody who declares not to master the language of the proceedings is entitled to have an interpreter."³² This right is elaborated in the Code of Civil Procedure:³³ "The court will appoint an interpreter to the participant whose mother tongue is not Czech, as soon as this need is unfolded."³⁴ Similar rule is embedded in the Code of Criminal Procedure:³⁵ "Anybody who declares not to master Czech language is entitled to use in the proceedings his/her mother tongue or a language he/she claims to master."³⁶

According to both the Minority Act and the Funding Decree, minority language information and education are supposed to be supported by the state in the case of traditional minorities. In fact, the state sponsors diffusion and reception of information in languages of all minorities, including those who entered the territory of the Czech Republic in the 20th century and should not be considered as traditional (e.g. Greek, Ukrainian, etc.). The list of financed minorities is almost identical with that of minorities represented in the Minority Council and the distinction between traditional and immigrant minorities is apparently blurred. Members of the Vietnamese minority did not apply for any of these grants. However, since their history and position is similar to that of Ukrainians, they should be entitled to the same type of funding.

Comparison of the views of the Vietnamese and Ukrainians in the CR

The aim of interviewing

The purpose of the interviews was to find out how the views of the Vietnamese and Ukrainians differ and to analyze whether the differences in views of the two groups substantiate the differences in their treatment. Minority key figures (Mr. Cau, a president of the Union of the Vietnamese in the CR and Mr. Rajcinec, a leader of the Ukrainian Initiative in the CR) were interviewed because they were able to address the politics of minority organizations and their preferences.

Access to the minority language

The first set of questions related to minority language education and to the access to learning the minority language. The purpose was to find out whether the minorities are interested in maintaining their language and in state involvement in these affairs.

The Vietnamese seem less interested in minority language education than Ukrainians. The Vietnamese are mostly concerned about adapting to Czech culture and

³² Charter of Fundamental Rights and Freedoms, Article 37, para. 4, translation mine.

³³ Code of Civil Procedure, No 99/1963 Coll.

³⁴ Ibid., section 18, translation mine.

³⁵ Code of Criminal Procedure, No 141/1961 Coll.

³⁶ Code of Criminal Procedure, s. 2, translation mine.

succeeding in the majority society. Ukrainians see more value in maintaining their language.

Access to the majority language

Secondly, the interviewees were asked whether they thought that minority members should have more access to learning Czech.

Both communities expressed needs for more opportunities of learning Czech. However, while the Vietnamese appeared interested because they want to settle permanently and succeed in the majority society, Ukrainians seemed more interested in relieving the situation of temporary guest workers.

Organizing cultural events for the Czech majority

This set of questions was based on the fact that the Vietnamese tend to organise less cultural events than Ukrainians. Ukrainians also often receive state funding for their activities, while the Vietnamese do not. The aim was to explore the reason for such inactivity of the Vietnamese. One possible explanation is that the Vietnamese are not interested in maintaining their culture, presenting it to the mainstream, and incorporating it into the Czech society. It is imaginable that Czechs are more interested in the culture of Ukrainians and other ethnic groups of European descent than in Asian cultures which appear more alien in the Czech society.

Neither of the two communities tends to organise cultural activities for Czechs. Ukrainians appear to be more confident about this, as they admit it openly.

The rights of traditional minorities

According to the Minority Act, certain rights are specifically reserved for the minorities which have lived in the territory of the Czech Republic traditionally and for a long time. These rights include minority language signs and inscriptions and the right to use minority languages with authorities, for elections, etc. However, in the state's practice, these rights are often enjoyed even by ethnic groups which can hardly be counted as traditional. The third set of questions was aimed at finding out whether the minorities have encountered any practical problems arising from the legal distinction between traditional and immigrant minorities.

Neither of these two groups perceived it as a problem that they do not have these rights. Both leaders stated that their organizations had more serious problems. However, these problems were of different kinds. The Vietnamese are striving for being recognised as a minority, which is a basic presupposition for the enjoyment of minority rights, including those which serve symbolic recognition rather than practical purposes. Ukrainians, on the other hand, are more interested in rights that would ease practical difficulties. Even though they are, contrastingly to the Vietnamese, on the level where they could strive for symbolic rights, they are not interested.

Representation in the Minority Council

Ukrainians, as opposed to the Vietnamese, are represented in the Minority Council. This can make state funding for cultural rights more accessible to them. Mr. Cau was asked whether he would like the Vietnamese to be represented. Mr. Rajčinec

was asked whether Ukrainians are satisfied with this form of representation or whether they would prefer some other form.

The Vietnamese find representation useful and they would like to be represented. Ukrainians, who actually are represented, do not find their representation useful. They evaluate the Council as slow and inefficient.

Conclusion

The minority policy in the Czech Republic is ambiguous, similarly to the situation of international and European law. No consensus has so far been reached concerning linguistic rights of immigrant minorities. The laws regulating minority linguistic rights are vague and their interpretation is inconsistent. Since the state does not forward any clear-cut position towards immigrant minorities, their position mostly depends on their own activity. The comparison of the views of leaders of the two most significant immigrant minorities yields that the main reason why some ethnic groups are treated less favourably is their own inactivity and lack of interest in maintaining their culture.