European Union Enlargement and the Protection of Minorities

Current state of knowledge

In 1993, the Copenhagen European Council meeting declared the criteria to be met by the Central and Eastern European countries seeking membership of the European Union ('Copenhagen criteria'). One of these criteria is that each candidate country must achieve 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'.

The European Council's requirement in relation to minorities had particular resonance in these candidate countries. Upon declaring their independence of the Soviet Union, the Baltic States inherited significant Russian minorities with distinct cultural and linguistic traditions. In Latvia, the introduction of new citizenship and language laws meant that most of this minority was excluded from citizenship and the benefits this involved. The remaining candidate countries—including the Czech Republic—had Roma minorities that had experienced long-term alienation and discrimination.

The inherent difficulty in meeting the Copenhagen criteria's minority requirement is that the minimum standard of protection required, and the most appropriate means of achieving it, are not specified. The European Commission has provided some guidance in its regular reports on each candidate country, but its approach to each country's efforts to meet the requirement has lacked consistency.

At the time the European Council declared the Copenhagen criteria, the European Union ('EU') legal framework did not make any specific provision for minority protection. The main sources of minority rights protection within Europe were the Council of Europe's human rights instruments, which set out the various political, social and economic rights asserted by minority groups, and provide mechanisms to enforce them.

In recent years, the developing jurisprudence of the European Court of Justice ('ECJ'), and certain treaty amendments, have meant that human rights principles have been accorded a greater role within EU law. For example, article 6(2) of the Treaty of the European Union provides that the EU respects fundamental rights guaranteed by the ECHR and the constitutional traditions common to the Member States as general principles of

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2 For example, the Council of Europe has adopted the European Convention on Human Rights and Fundamental Freedoms, the European Charter for Regional or Minority Languages, and the Framework Convention for the Protection of National Minorities.
EC law. The ECJ may consider a Member State’s compliance with these fundamental rights in relation to its implementation of EC law, but compliance with these human rights standards is not justiciable in its own right. Therefore, while the EU has not legislated specifically in relation to minority protection, it may interpret EU treaty provisions, and the laws made pursuant to them, in accordance with the protections set out in the ECHR and other relevant instruments. However, as only citizens of Member States may enjoy the benefits of EC law, minorities who are denied citizenship in their Member State would not have standing to enforce these provisions.

In summary, the European Council expressed the concern that the Central and Eastern European candidate countries should join the EU only once they had achieved the stability of institutions guaranteeing respect for, and protection of, their minority populations. In April 2003, these countries—including Latvia and the Czech Republic—signed an Accession Treaty with the Member States that provides a framework for their accession to the EU on 1 May 2004. Once these countries gain membership, the EU’s power to enforce human rights protections in relation to these minorities will be limited.

**Aim of the essay**

The aim of the research is twofold. First, the essay will discuss the legal basis for the Copenhagen criteria’s requirement that in order to be eligible for EU membership, a candidate country must have achieved stability of institutions guaranteeing respect for, and protection of, minorities.

Second, the essay will evaluate the practical implementation of the minority requirement. It will compare the markedly different approaches taken by Latvia and the Czech Republic in relation to their minorities, and will argue that although both countries have been assessed as eligible to join the EU, neither country has fully satisfied this aspect of the Copenhagen criteria. This highlights the inconsistencies in the EU’s approach to the requirement, and suggests that the EU’s commitment to minority protection may have been more apparent than real. Finally, the essay will suggest reasons for the EU’s failure to require full implementation of this requirement.

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3 In addition, Article 7 provides a mechanism for suspending a Member State’s membership rights for a ‘serious and persistent’ breach of human rights.
Outline of the essay structure

Introduction
This section will provide an overview of the essay topic and the main issues and arguments to be discussed.

The EU enlargement process
This section will provide a brief overview of the EU enlargement process, including the reasons the candidate countries have sought EU membership and the EU’s concerns regarding the incorporation of these countries in light of their minority populations.

The legal protection of minorities
This section will discuss the requirement of the Copenhagen criteria in relation to minorities, and the ambiguities inherent in its drafting. It will then discuss the basis within EU law for this requirement. This will involve a discussion of the European human rights instruments dealing with the protection of minority rights, the EU’s evolving approach to the protection of fundamental rights, and the structural limitations on enforcing such rights within the EU legal framework.

Latvia and its Russian minority
This section will provide a brief overview of the Soviet policy of Russification, the Latvian citizenship and language laws and their impact on the Russian minority, and the implications of non-citizen status within Latvian society. It will discuss the European Commission’s initial opinion regarding Latvia’s ability to satisfy this aspect of the Copenhagen criteria, the Latvian program of integration through naturalisation and language education, and the Commission’s response to these efforts.

The Czech Republic and its Roma minority
This section will provide a brief overview of the position of the Roma within Czech society, and the discrimination and violence experienced by them as a group. It will discuss the European Commission’s initial opinion regarding Czech’s ability to satisfy this aspect of the Copenhagen criteria, the Czech program—which has focused on protecting Roma rights through affirmative action, anti-discrimination measures, and promotion of Roma culture—and the Commission’s response to these efforts.

Conclusions regarding the Latvian and Czech approach to minority protection
This section will draw conclusions regarding the markedly different approaches taken by Latvia and the Czech Republic in relation to this aspect of the Copenhagen criteria. It will argue that the primary reasons for these
different approaches are historical, and will evaluate these reasons in the context of human rights. It will then discuss the practical implications for these minorities in asserting their rights once each country has acceded to the EU.

**Evaluation of the EU approach to minority protection**

Having discussed the different approaches taken by Latvia and the Czech Republic, this section will evaluate the way in which the EU institutions have approached the minority requirement. It will discuss the EU’s approach to each country’s efforts, and the importance placed on minority protection within the broader context of the accession negotiations. Finally, the essay will argue that the EU’s commitment to minority protection may have been more apparent than real, and will suggest possible reasons for this.

**Conclusion**

This section will draw together and conclude the essay’s argument.

**Literature review**

Most of the research was conducted through the computer databases titled ‘Lexis’ and ‘Westlaw’. These were easy to use, but tended to bring up a lot of irrelevant articles in the search results. I searched Internet websites for primary sources, reports and articles, including the sites of the European Union (eg, on enlargement), the Open Society Institute, the Council of Europe, and the Minority Rights Group International. I also searched the Sydney University library catalogue for books on EU enlargement and on EU law and human rights. Although a number of books have been written on enlargement, Sydney University library does not hold most of them. I also searched the NSW State Library catalogue for these books.

**European Commission’s Agenda 2000 Opinion reports**

These reports represent the European Commission’s initial opinion on Latvia and the Czech Republic’s ability to satisfy the Copenhagen criteria, and the steps these countries would need to take in order to do so. In relation to minorities, the reports provide a useful insight into the Commission’s interpretation of the requirement, and the means by which it could be satisfied. They also provide a baseline from which to assess both countries’ subsequent efforts.

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7 For example the lack of guidance regarding the types of ‘institutions’ required, and the means by which a candidate country should guarantee ‘respect for’ and ‘protection of’ minorities.

European Commission’s 2002 Regular Reports

These are the most recent of the European Commission’s annual reports on Latvia and the Czech Republic’s efforts to meet the Copenhagen criteria in relation to their minorities. The reports provide up to date information on each country’s programs, and the Commission’s assessment of them. These reports should be considered in conjunction with independent analyses to ensure a properly balanced evaluation of each country’s progress.


This briefing outlines the historical background to the Russian minority problems in the Baltic States, and the particular social problems experienced by Latvia’s Russian speaking minority. In evaluating Latvia’s attempts to address these problems, the briefing paper provides a useful overview of the social and other issues that it considered needed to be addressed to satisfy this aspect of the Copenhagen criteria.

Open Society Institute, Monitoring the EU Accession Process: Minority Protection (2002), OSI, Budapest

This report provides an in depth analysis of each of the current candidate countries’ efforts to meet the accession criteria in relation to their minorities. The chapter on each candidate country evaluates the government’s efforts to afford protection to minorities, and to promote minority rights in terms of education, language, participation in public life, media and culture. The report provides an overview of the common problems and varying approaches taken by each country. As a well researched, independent report, it provides a useful counterbalance to the European Commission’s regular progress reports.


Baum provides a detailed, historical overview of the current EU enlargement program. He discusses in detail the political context in which EU enlargement has been negotiated, and the EU institutions’ approach to enlargement, and the development of the enlargement process through each relevant conference and summit. As Baum has relied heavily on primary sources, the book is a useful resource for further research.


Furtado analyses the way in which the Council of Europe’s human rights standards have been used to protect the rights of ethnic minorities. He discusses problems arising in relation to Estonia’s treatment of its Russian

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minority and evaluates the way in which it has implemented the Council of Europe’s instruments to protect minority rights. While the article focuses on the Council of Europe’s human rights standards, and on Estonia rather than Latvia, it is relevant to this essay because of the influence these human rights standards have had on the EU and due to the similarities between Estonia and Latvia’s minority problems.


Barrington discusses the evolving citizenship policies in each of the Baltic States. He notes that after gaining independence each of these States adoptive exclusive citizenship policies, which impeded the Russian minorities’ access to political, social and economic rights. He discusses the influence of the EU and other international organisations in persuading Latvia to amend its policy. The article provides a useful discussion of the official policies affecting Latvia’s Russian minority, the process by which these policies have been amended.


Kline discusses the EU’s limited powers in relation to human rights protections, the discriminatory treatment of the Roma minority within the Czech Republic, and the Czech government’s efforts to meet the accession requirement in relation to its Roma minority. She notes the paradox that while the EU does not have the power to directly impose human rights requirements on Member States, it has used the integration process as an opportunity to encourage the Czech Republic to provide greater protection for the Roma minority. This article provides useful information regarding the social and other problems facing the Roma, and the Czech Republic’s programs to address this.


Shelton outlines the framework of human rights protection within Europe. She discusses the frameworks established under the Council of Europe, the EU and the Organisation for Security and Co-operation in Europe, and notes the potential overlaps between them. She discusses the EU’s evolving role, and the institutional limitations on its activities in this context. This provides a useful background to the question of the EU’s power to require, and enforce, the protection of minority rights within those countries seeking membership.

Sleeper discusses the discrimination and violence experienced by the Roma minorities within several Eastern European countries, noting that the position of this minority has worsened since 1990. She argues that the candidate countries seeking to accede to the EU must implement these norms into their domestic legal systems. The article provides a useful analysis of the application of international instruments dealing with discrimination and the equal treatment of minorities in relation to Roma minorities within Eastern Europe.

Reading list

Books


Articles


**Reports**


Open Society Institute, *Monitoring the EU Accession Process: Minority Protection* (2002), OSI *Budapest*