

‘Equality and Minority Rights and Policies’

**Eastern Partnership Programme, European Centre for Minority
Issues**

Minsk, 15 September

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The 1993 accession criteria, or Copenhagen criteria are the essential conditions all candidate countries must satisfy to become a member state of the European Union. The political criteria are: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;

- Equality (non-discrimination) applied to minorities = (many) minority rights
- Particularly prominent to avoid internal conflicts
- Fundamental for a “democratic”, fair, respectful and just society

The Framework Convention for the Protection of National Minorities and the UN Declaration on the Rights of Persons belong to National or Ethnic, Religious and Linguistic Minorities are both human rights documents – and much of their content are based on the application of the right of equality to minorities.

Equality does not mean identical treatment in areas such as language, religion or culture.

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms:

“Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination...”

Article 26, International Covenant on Civil and Political Rights

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, religion, language...



“Treat like cases as like.”

Aristotle, *Nicomachean Ethics*, V.3. 1131a10-b15; *Politics*, III.9.1280 a8-15, III. 12. 1282b18-23

- “Formal Equality” versus “Substantial Equality”
- “Equality of results” versus “Equality of opportunities”
- “Positive” versus “Negative” Obligations
- “Equality” versus “Discrimination”
- Laws in some countries only talk about a right to equality (and don’t mention non-discrimination);
- In international and European law, equality is (almost) always connected to non-discrimination

The “Three Estates” in France: aristocracy, clergy and the rest of the population: different laws for different estates



Déclaration des droits de l'homme et du citoyen

*« Tous les hommes sont égaux par nature et devant la loi. »
Selon la déclaration des droits de l'homme de 1795, «L'égalité consiste en ce que la loi est la même pour tous, soit qu'elle protège, soit qu'elle punisse. L'égalité n'admet aucune distinction de naissance, aucune hérédité de pouvoirs. »*

« All men are equal by nature and under the law... »

One law for everyone after the Revolution

THE UNITED STATES CONSTITUTION

We the People of the United States, ...

Article. I. Section. 2. Clause 3: Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons (this means $3/5$ of a person for slaves).

First attempt in 1919 to recognise equality, League of Nations

“The equality of nations being a basic principle of the League of Nations, the High Contracting Parties agree to accord as soon as possible to all alien nationals of states, members of the League, equal and just treatment in every respect making no distinction, either in law or in fact, on account of their race or nationality.”

Second ((Failed) Attempt in 1933 to prohibit racial discrimination in international law at the League of Nations (Polish Minorities Treaty extended to everyone, or only Germany)

... the Polish delegate suggested ... that “a minimum of rights must be guaranteed to every human being, whatever his race, religion or mother tongue”. (i.e. equality)

What exactly is equality without (racial) discrimination in international law?

How do you find this out?

The right to equality without discrimination on the ground of race in international law is – as with any human right in international law – what states have defined it to be under treaty (and customary) law.

Article 14, European Human Rights Convention

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... race...

Article 26 of the ICCPR

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race...

Convention on the Elimination of All Forms of Racial Discrimination

Article 1

...“racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, **on an equal footing**, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Article 26 of the ICCPR provides:

- All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Manfred Nowak maintains that “equality before the law” here means simply that the law must be applied in the same manner to all. This provision contains no guarantee of substantive equality but is rather aimed exclusively at enforcement. For him “equal protection of the law” is directed at the national legislature and imposes both negative and positive obligations. Such an interpretation, he notes, is consistent with the historical roots of the two phrases, “equality before the law,” which derives from the French Revolution, and “equal protection of the law,” from the Fourteenth Amendment to the US Constitution.

- M. Nowak, UN Covenant on Civil and Political Rights: CCPR commentary (Kehl, Germany: N.P. Engel, 1993), p. 459

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the “Race Directive”)

Article 2 (Concept of discrimination)

1. For the purpose of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.

2. For the purposes of paragraph 1:

(a) Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin.

(b) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Diergaardt v. Namibia, UN Human Rights Committee, 2000

In *Diergaardt v. Namibia* the majority of the members of the UN Human Rights Committee concluded that equality and non-discrimination may permit the use of other languages in addition to an official one. In other words, it may be unreasonable and unjustified in some circumstances – such as where a large number of people use a minority language – and therefore against the principle of equality not to provide for some use by state authorities by public authorities.

Principle of Equality in the Framework Convention on the Rights of National Minorities

Proportionality: Where public authorities at the national, regional or local levels face a sufficiently large number of individuals who use a minority language, the authorities must provide an appropriate level of service in this language.

The Framework Convention for the Protection of National Minorities uses the words in Article 10: "In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible..."), and finally the European Charter for Minority or Regional Languages talks about in Article 10: "within the administrative districts...in which the number of residents...justifies the measures specified below and according to the situation of each language").

Principles of Equality also in OSCE documents:

- Oslo Recommendations on the Linguistic Rights of National Minorities, the The Hague Recommendations on the Educational Rights of National Minorities, and the Lund Recommendations on Effective Political Participation of National Minorities.

Saint Cyril, 9th Century:



Does not the sun shine equally for the whole world? Do we not all equally breathe the air?

Do you not feel shame at authorizing only three languages and condemning other people to blindness and deafness?

Tell me, do you think that God is helpless and cannot bestow equality, or that he is envious and will not give it?

Merci Дзякую вам Thank you Merci

Go raibh maith agaibh thank you grazie danke gracias
shokria 謝謝 terimah kasi Dank U σας ευχαριστούμε
obrigado takker De благодаря ти hvala vam být zavázán
tebe tak for lán kiittää te köszönöm ありがとう þakka þú
takk skal du ha pasalamatan ka dziękuję mulțumesc
благодарю ddiolch 'ch eyvallah gratias ago vos eskerrik asko
salamat danko tank mihi gràcies takk danki
tapadh leat asante tamemmirt chyeju kaba sai go raibh
maith agaibh Khanganav Eso Blagodaram Kilissow
Bayarlalaa Giittus Litumezi Dakuyem