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THE RIGHT TO EDUCATION IN MINORITY LANGUAGES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS – RECENT CASE LAW

Introduction

The right to education is guaranteed by international human rights law, underpinned by the principle of equality and the principle of non-discrimination. It has been confirmed in many international law instruments, universal and regional. According to the authoritative statement by the committee established for monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR): „Education is both a human right in itself and an indispensable means of realising other human rights.”¹ Furthermore, education has to satisfy „4 As”: it has to be available, accessible, acceptable and adaptable.² According to the ICESCR, primary education should be compulsory and free, and secondary education „shall be made generally available and accessible” while „higher education shall be made equally accessible to all”. The right to education is one of the fundamental human rights recognised in the majority of international treaties and soft law instruments, both at the general and regional levels.³ The right is also recognised, explicitly or through interpretation,

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¹ CESCR, Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No.13(1999) - The right to education (Article 13 of the Covenant), Available at: [https://www.ohchr.org/en/resources/educators/human-rights-education-training/d-general-comment-no-13-right-education-article-13-1999\(G9946216.doc\)](https://www.ohchr.org/en/resources/educators/human-rights-education-training/d-general-comment-no-13-right-education-article-13-1999(G9946216.doc))

² Language of instruction, especially for minorities and indigenous population, is considered under acceptability. Tomaševski 2001, 15.

³ See references in: UNESCO 2023.

in most national constitutions or similar legal sources.⁴ Nevertheless, the full content of this right remains open to interpretation and adjustments as to what is included in it (e.g. what levels, what language), who are the beneficiaries, and what are the duties of States in fulfilling it.

As we stated above, there seems to be a disagreement as to the language of instruction in education – should it be only in the official language(s) of the state or should members of national minorities be entitled to have education in their own language? The fact is that many minorities speak languages that differ from that of the majority or the official language. The language is an important part of their identity, and its neglect or even its loss negatively affects not just individuals, equally children and adults, but their community as a whole. As a consequence, they often face discrimination, marginalisation and exclusion. Education is one of the most important tools to preserve the special minority identity.

The European Convention on Human Rights (hereafter: ECHR, the Convention) is a fundamental human rights treaty for all 46 European countries that are members of the Council of Europe.⁵ It is often considered to be the best existing system for the protection of human rights with the mandatory jurisdiction of the European Court of Human Rights (hereafter: ECtHR, the Court). It has also profoundly influenced the development of the international law of human rights. The right to education, however, was not included in the Convention itself, but in its Protocol No. 1. Article 2 of the Protocol provides as follows:

„No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and

⁴ German Federal Constitutional Court (Bundesverfassungsgericht, BVerfG), decision of 19 November 2021, found, for the first time, that children have a constitutional right to education. See: German Federal Constitutional Court 2021.

⁵ The Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature in Rome on 4 November 1950 and came into force on 3 September 1953. It has been amended subsequently by 16 additional protocols. Protocols are separate treaties and are binding only on the states that ratify them. All information available at: <https://www.echr.coe.int/home>, accessed: 03.03.2025.

to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”⁶

The language of instruction is obviously not mentioned in this rule. In one of the landmark cases concerning education and language rights, the Court rejected claims that language of instruction could be subsumed under „philosophical convictions” of the parents and concluded that the ECHR’s right to education did not include a right to be educated through the medium of a particular language.⁷ This view was reaffirmed in the *Cyprus v. Turkey* case in 2001 when the Court stated that „this provision does not specify the language in which education must be conducted in order that the right to education be respected”.⁸ Nevertheless, in this case, the Court found a violation of the right to education in the fact that the Greek-speaking pupils residing in the occupied part of Cyprus had no possibility to continue their education in the same language at the secondary level.⁹ The latter decision seemed like opening the door to the right to minority language education (hereafter: MLE) at least in some circumstances. As Robert Dunbar concluded:

⁶ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 009), signed on 20 March 1952, in force since 18 May 1954. Monaco and Switzerland signed it but have not ratified it. Available at: <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=009>, accessed: 03.03.2025.

⁷ *Belgian Linguistic Case*, Judgement of 23 July 1968, Series A, No. 6. The case concerned a specific linguistic situation in Belgium where three languages enjoy official status. According to the national legislation the language of education shall be Dutch in the Dutch-speaking region, French in the French-speaking region and German in the German-speaking region. The Court did not see any problem in the national legislation. However, in some Dutch-speaking districts there were schools open to French speaking children depending solely on their residence and not vice versa. The Court concluded that such practice was discriminatory.

⁸ *Case of Cyprus v. Turkey*, (GC) Judgement of 10 May 2001, § 277.

⁹ *Ibid.*, §§ 278-280.

„The decision in *Cyprus v. Turkey* certainly does not create a general right to minority medium education. In this sense it does not dismantle the Belgian Linguistic Case. The ruling may imply, however, that a right to use the minority language as a medium of education (MOI) could arise in circumstances where children from a linguistic minority do not speak the language of the school they are required to attend. Its impact remains to be seen.”¹⁰

Indeed, the chance to see the impact of this decision came recently in several cases concerning Latvia’s handling of the education of the Russian-speaking population. The ECtHR of the Council of Europe was called to give its ruling on the duties of a state party with respect to education in minority languages for members of national minorities. In three consecutive decisions delivered in 2023 and 2024, the Court basically went back to the 1968 decision on the Belgian linguistic rights but with some new reflections on the decisions delivered in the meantime.

2. Minority Language Education in Latvia

The three cases discussed here concerned legislative amendments of 2018 and 2022 increasing the proportion of subjects to be taught in the state language (Latvian) in public and private schools, as well as in pre-schools, so the use of Russian as the language of instruction was consequently substantially reduced. Two judgments were delivered in September and November 2023, respectively. The third judgment was delivered in July 2024. All three judgments became final, meaning that there was no intervention by the Grand Chamber of the Court.¹¹

Latvia has had a controversial history with its Russian-speaking population. During the period of the Soviet occupation (1940 – 1991), the country was exposed to strong Russification, while the Latvian

¹⁰ Dunbar 2022, 29.

¹¹ Article 43 of the ECHR provides for the referral to the Grand Chamber as a kind of appeal within three months from the date of the decision of the Chamber.

language was subordinate in public life. Since its independence, Latvia has undergone a process of raising the importance of Latvian as the only state language through different measures, including in education. However, at the same time, a considerable number of the pupils were enrolled in Russian-only schools, resulting in their inadequate mastery of Latvian.¹² The number of hours taught in Latvian had been gradually increasing since 1995, and the final amendments to the relevant provisions of the Education Law and the General Education Law were passed on 22 March 2018 (hereafter: 2018 Reform). Consequently, Latvian was introduced as the primary language of instruction in all public and private primary and secondary schools.¹³ In primary schools, Latvian should be taught no less than 50% in lower grades, up to 100% in upper secondary schools. From 1 September 2020 onwards, secondary schools were authorised to offer a specialised minority language and literature course, and other specialised subjects related to minority languages, identity, and culture as extracurricular activities.¹⁴ In pre-schools for children from the age of five, the main language of communication during play-based lessons was set to be Latvian, except for special activities related to learning minority languages and learning about ethnic cultures. Latvian should also be taught to younger children.

2.1. Valiullina – MLE in Public Schools

The Valiullina and Others Case concerned several applicants whose mother tongue was Russian regardless of their ethnicity. Namely, in the Soviet Union, Russian was considered „the language of interethnic

¹² In the 2011 census 62.1% of the total population were ethnic Latvians, 26.9% were ethnic Russians. According to the same census, 62.07% of the total population used Latvian within the family, and 37.23% used Russian.

¹³ Some exceptions were provided for schools established in accordance with international agreements, as well as schools providing instruction in official languages of the European Union (EU), in order to ensure the learning of those languages.

¹⁴ A detailed description and the chronology of these changes is found in the Case of Valliulina and others v. Latvia, Judgment of 14 September 2023, §§ 14-31.

communication” among members of various ethnic groups, so it is not uncommon that Russian is still used not just by ethnic Russians. The applicants were complaining that the 2018 Reform violated their right to education and that they were discriminated against in comparison to other pupils.¹⁵ They argued that the use of Russian had been significantly reduced in schools in Latvia and that schools could even decide to decrease their use further. In their submission, this situation amounted to a breach of Article 2 of Protocol No. 1. In their reply, the government relied on the Belgian Linguistic Case, claiming that its conclusions are still valid today and that the right to education did not include the right to access education in a particular language, but merely the right to access educational institutions existing at a given time. On the other hand, the applicants relied on some cases where the Court, apparently, decided in favour of minority languages, such as *Catan v. Moldova and the Russian Federation*,¹⁶ *Ádám v. Romania*¹⁷ or the *Cyprus v. Turkey* case as elaborated above.

In its deliberations, the Court gave significant weight to the Latvian Constitutional Court case law. The Court also presented its understanding and interpretation of the cases relied on by the parties. Finally, the Court also considered the impact of the Framework Convention on the Protection of National Minorities (FCNM).

The Court agreed with the government’s argument that the conclusions from the Belgian case are pertinent in this case. The Court held that the right to education guaranteed by the first sentence of Article 2 of Protocol No. 1 „by its very nature call[ed] for regulation by the State, regulation which [might] vary in time and place according to the needs and resources of the community and of individuals”. However, „such regulation must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention” (§ 124). As to the

¹⁵ They were also alleging violation of Article 8 ECHR (right to private and family life). That claim was declared inadmissible for non-exhaustion of domestic remedies.

¹⁶ *Catan and Others v. the Republic of Moldova and Russia*, (GC) Judgment of 19 October 2012.

¹⁷ *Ádám and Others v. Romania*, nos. 81114/17 and 5 others, Judgment of 13 October 2020.

second sentence of Article 2 of Protocol No. 1, the Court repeated its opinion that „religious and philosophical convictions” of the parents do not include their linguistic preferences (§ 125). Furthermore, the Court opined that the education offered has to be officially recognised in order to be beneficial for the students. The emphasis of the right to education in Article 2 was therefore on public education in the official language (§ 122).

As for the cases relied on by the applicants, the Court insisted that they did not depart from this approach. In the *Catan Case*, the applicants were forced to switch from the Latin script to the Cyrillic script by the illegal authorities in Transnistria, but the *official script* of Moldova was Latin. In the *Cyprus v. Turkey Case*, Greek is one of the official languages of Cyprus, so the „Turkish Republic of Cyprus” (hereafter: „TRC”) had no right to deny education to the Greek-speaking pupils in Greek. In *Ádám*, students were complaining about their obligation to take double bachelor’s exams – in their minority language and the official language. However, the Court opined that the official language should not be evaded.¹⁸

However, reading the relevant paragraph in the *Cyprus v. Turkey Case*, the reliance on Greek as one of the official languages is not so clear. The Court supported the opinion that:

„the option available to Greek-Cypriot parents to continue their children’s education in the north is unrealistic in view of the fact that the children in question have already received their primary education in a Greek-Cypriot school there. The authorities must no doubt be aware that it is *the wish of Greek-Cypriot parents* [emphasis added] that the schooling of their children be completed through the medium of the Greek language...” (§ 278)

¹⁸ In this case the Court made one of the very few references to the European Charter for Regional or Minority Languages (ECRML) to prove that learning minority languages should not be to the prejudice of learning the official language.

The emphasis seems to be on „the wish of the parents” and the fact that children have already finished primary education in a different language. On the other hand, the „TRC” authorities are only *de facto* authorities, and the legality of their decisions has been questionable.¹⁹

Furthermore, the Court was not convinced „that there is sufficient international material to warrant the conclusion that the right to education as enshrined in Article 2 of Protocol No.1 to the Convention includes the right to access educational institutions in a language of one’s choice.” (§ 134) This view was reinforced by the Opinion of the Venice Commission in 2020.²⁰ Nevertheless, the opinion of the Venice Commission only broadly accepted the legislative amendments, but it also stated that the reform did not strike a fair balance between protecting the language rights of minorities and promoting the state language. The Venice Commission also stressed that minorities should have access to higher education in their own language. The Court ignored these arguments.²¹

The applicants further relied on the FCNM and its articles promoting linguistic rights of members of national minorities, among others, to have teaching in or of their language (Article 14). Latvia is a state party to the FCNM and is bound by these provisions. The FCNM, said the Court, „is indeed regarded as the most comprehensive international standard in the field of minority rights.” However, it has not been ratified nor even signed by all member states (38 of 46 member states are parties to the FCNM), and its Article 14 is not unconditional:

„As noted in the Explanatory Report to the Framework Convention (§§ 75-79), its Article 14 leaves the State Parties a wide margin of discretion with regard to providing for the teaching of minority languages or teaching in such languages in their ed-

¹⁹ See the arguments laid in the Case of *Loizidou v. Turkey* (GC), 18 December 1996, §§ 42-44.

²⁰ The European Commission for Democracy through Law (Venice Commission), On the recent amendments to the legislation on education in minority languages in Latvia (CDL-AD(2020)012, 18 June 2020).

²¹ Mitablinda 2023, 4.

ucation system. Factors such as a sufficient demand, sufficient resources, and a choice between teaching a minority language or teaching in it have to be taken into account. Also, those policies have to be implemented 'without prejudice to the learning of the official language or the teaching in this language'." (§ 134)

It is true that the FCNM does not prescribe an unconditional provision of minority language education. However, the Court ignored the opinions of the Advisory Committee (hereafter: AC) of the FCNM, a monitoring body under this treaty, on the scope of this article. In its Thematic Commentary No. 1 from 2006, the AC concluded:

„Notwithstanding the clauses in Article 14 (2) allowing for considerable flexibility for State Parties, the Advisory Committee is of the view that State Parties must actively pursue needs' assessments and involve minorities in the design and implementation of measures to ensure the implementation of Article 14, including the right unequivocally guaranteed under Article 14 (1)."²²

The Court did look at the Third Report on Latvia issued by the AC in 2018, however, not taking into account that it was adopted before the 2018 Reform.²³ Regardless, the AC already expressed concerns about the planned reduction of the scope of national minority languages teaching by 2020/2021 school year. The Committee of Ministers reflected their concerns in the recommendation to the Latvian authorities to „ensure the continued availability of teaching and learning in languages of national minorities throughout the country”.²⁴

²² Advisory Committee on The Framework Convention for the Protection of National Minorities, ACFC/25DOC(2006)002, 24. In 2024 the AC published a revised Thematic Commentary No. 1 based on their case law stating that „a narrow and restrictive interpretation” of the criterion „as far as possible” is inappropriate. Thematic Commentary No. 1 on Education under the FCNM, 2024, § 98.

²³ Third Report on Latvia, ACFC/OP/III(2018)001REV, adopted in February 2018, made public in October 2018. The 2018 Reform was adopted in March 2018.

²⁴ CM/ResCMN(2021)9, adopted on 3 March 2021.

Based on all these arguments, the Court rejected the claim as being incompatible *ratione materiae*, so not covered by the Convention. However, the Court went on to examine whether the claim is covered by Article 14 in connection with Article 2 of Protocol No. 1. Namely, the applicants claimed that they were treated in a discriminatory fashion when compared to persons in the same or similar position. Discrimination under Article 14 has to be connected with „the enjoyment of the rights and freedoms set forth in [the] Convention”. Since the claim is connected with the right to education, it falls within the ambit of the said Article 2 (§147). The Court has so far developed ample criteria for discrimination in its case law. Accordingly, persons have to be in the same or similar position and treated differently with no objective and reasonable justification. The justification is based on the legitimate aim pursued, and it has to be proportional.

The Court accepted that Russian and Latvian pupils were in a relevantly similar situation and that the language of instruction could be perceived as the grounds for a difference in treatment (§ 194). In this case, the Court looked at the position and role of the official language of the state and concluded that it presents „one of the fundamental constitutional values” together with „the national territory, the organisational structure of the State and the national flag” (§ 187).²⁵ The official language should guarantee its citizens the right to use that language in their private lives as well as in their dealings with the public authorities „without hindrance”. This gives, according to the Court, the state a wide margin of appreciation with respect to measures intended to protect a given language and such measures would constitute „the legitimate aim”. The other legitimate aim pursued by Latvia is „the principle of unity of the education system”, ensuring equal chances to all pupils (§§ 199-201).

A specific weight, in this case, was given to the historical circumstances of the Latvian language during the Soviet occupation.

²⁵ It is interesting to note that USA does not have an official language. Available at: <https://www.usa.gov/official-language-of-us>, accessed: 03.03.2025.

The Court relied on the concept of „constitutional identity” previously accepted in the Savickis case:²⁶

„The Court considers that the questions pertaining to the need to protect and strengthen the State language go to the heart of the constitutional identity of the State, and it is not the Court’s role to question the assessment made by the Constitutional Court in that regard unless it was arbitrary, which the Court does not find in the present case.” (§ 208)

Latvia has accordingly pursued legitimate aims, and it also acted proportionally. The Court was satisfied that teaching of or in Russian was ensured „in varying proportions” and that the changes were introduced gradually - three years were sufficient to adapt to the new model of education. The Court disregarded the fact that parts of the education cycle take longer than that.²⁷

Finally, the Court came to the conclusion that there was no violation of Article 14 in connection with Article 2 P.1 and that there was no discrimination against the Russian-speaking pupils in Latvian schools. In an interesting additional remark, the Court stated that it was aware of „several international and European bodies” recommendations to preserve the language rights of Latvian minorities, but decided that they had no impact on the Convention.

2.2. Džibuti – MLE in Private Schools

The 2018 Reform of education legislation also affected private primary and secondary (general and vocational) schools. Parents of children attending private schools using Russian as the language of instruction were complaining about the increase in the proportion of subjects to

²⁶ Case of Savickis and Others v. Latvia, (GC) Judgment, 9 June 2022.

²⁷ The 2018 Reform distinguished between cycles from 1 to 6 grade, 7 to 9 and finally 10 and 12.

be taught in Latvian in private schools, so the use of Russian as the language of instruction was consequently reduced.²⁸ The applicants claimed that prior to the 2018 Reform, education in the State language had been mandatory only in public schools and that the amendments affected their right to education in accordance with Article 2 of Protocol No. 1.²⁹ They further claimed that this case was different from the Belgian Linguistic Case that dealt with public schools. In this case, the right to education provided for by Article 2 of Protocol No. 1 had to be read in conjunction with Article 13 of the FCNM and other international material that included the right to have an education in a private school in a minority language (§ 88). The applicants alleged that private schools were not part of the state education system in Latvia.

On the other hand, the government denied these allegations, claiming that private education formed part of the Latvian education system. Amongst other reasons, private schools had to comply with the requirements set for obtaining a licence to establish a school by the Ministry of Education and Science; upon completion of an educational programme (private or public), pupils received state-approved certificates attesting to the completion of their studies. Thus, the state assumed responsibility for the quality of education and could set requirements as to the content of the curriculum, as well as how much the language of instruction was used in private schools. Consequently, the government decided not to contribute to the funding of the schools that do not use the Latvian language. When the complaints were dealt with by the Latvian Constitutional Court, it found that although the use of minority languages was not prohibited, the rights of minorities had been restricted and „less restrictive measures were possible”.

The ECtHR basically repeated its reasoning from the Valiullina Case, finding that Latvia was not violating Article 2 of Protocol No. 1 since the Convention did not cover the right to have education in any

²⁸ Case of Džibuti and Others v. Latvia, Judgment of 16 November 2023.

²⁹ Similar to the Valiullina Case, they also claimed violation of Article 8, but that claim was dismissed due to the failure to use domestic legal remedies (§§ 79, 81).

other language but the official one (§ 93). The Court took account of the views expressed by the Latvian Constitutional Court:

„It appears that as regards minorities’ right to education, the Latvian Constitution affords a higher level of protection than the Convention, which does not include a specific provision concerning minority rights apart from the prohibition of discrimination under Article 14 of the Convention. ...However, this does not affect the Court’s finding that Article 2 of Protocol No. 1 to the Convention is not applicable in the circumstances of the present case; the Constitutional Court’s findings cannot be taken to expand the scope of the relevant provision under the Convention, which does not include the right to access education in a particular language.” (§ 94, 95)

As far as the violation of Article 2 P. 1 in conjunction with Article 14 was concerned, the Court examined the allegations of discrimination against the Russian speaking pupils in comparison with the pupils being taught in Latvian or the EU languages. Similarly to the Valiullina Case, the Court found that the applicants were in a similar situation to the Latvian-speaking pupils and that the difference in treatment was based on the language. However, the measures taken to enforce the official language could be considered as pursuing the legitimate aims:

„§ 139. Taking into account that private schools were considered to form part of the State educational system, the Court concludes that the need to protect and strengthen the Latvian language and to restore the unity of the State educational system to facilitate equal access to it were legitimate aims in the present case concerning private schools.”

Moreover, and equally as in the Valiullina, the Court ascertained that „the 2018 legislative amendments as regards private schools were implemented gradually and flexibly”. As far as financing was concerned,

the Court emphasised that neither the FCNM nor the ECHR obliges states to finance private schools, but Latvia was financing part of the expenses.³⁰ The Court found that „the difference in treatment was consistent with the legitimate aims pursued, proportionate, and did not amount to discrimination on the grounds of language.” (§ 150)

Furthermore, the Court examined the similarity of the situation of the pupils whose mother tongue was an official language of the EU and who pursued their education in these languages in private schools. Here, the Court identified a different context and concluded that the exception to allow for education in one of the official languages of the EU was granted in order to ensure the in-depth learning of EU languages in Latvia (§ 154). This difference in treatment was thus justified and could not be considered as discrimination against the Russian schools. The authorities did not, in any case, forbid the learning of Russian and just used their wide margin of appreciation in education, concluded the Court.

2.3. *Djeri – Minority Language in Pre-school*

The final decision in the *hat-trick* scored by the ECtHR concerning minority language education dealt with pre-school education, both public and private. The application of parents and children who identify themselves as belonging to the Russian-speaking minority in Latvia was triggered again by the 2018 Reform and the 2022 amendments.³¹ The new legislation meant that the use of Latvian was increased in all pre-schools, and the use of Russian was consequently reduced.

³⁰ At present, the state and/or municipal authorities provide funding to private schools as regards teachers' remuneration, catering for pupils in classes one to four, and various study materials (§ 146). DeVarennnes and Kuzborska 2019, 44 observe: „The prevailing consensus would seem to indicate that while currently human rights do not require the funding of private minority schools unless there is a situation which might be discriminatory, authorities must not prevent the establishment of such schools.” Similarly, Paz 2013, 202.

³¹ Case of *Djeri and Others v. Latvia*, Judgment of 18 July 2024.

Municipal authorities in Latvia must ensure equal access to pre-school education for children from the age of one and a half, but pre-school education is compulsory only from the age of five. The law prescribes that preschool education programmes must prepare children for primary education starting at the age of seven. Accordingly, children have to be able to use Latvian in primary education. The amended legislation provided that from five years of age, „the main language of communication for children in play-based lessons shall be the Latvian language, except when children take part in activities with the purpose of learning a minority language and [about] an ethnic culture.”³² Given the fact that preschool becomes compulsory only at the age of five, the Court considered that there are actually two phases of preschool education in Latvia and concluded that only the compulsory phase of preschool is covered by the right to education in Article 2 of Protocol No. 1. Only this phase has the aim to prepare children for primary education and it therefore „falls ‘within the ambit’ of Article 2 of Protocol No. 1 taken together with Article 14” (§§ 106-122).

The Court then proceeded to examine the allegations of discriminatory treatment of Russian-speaking children when compared to those speaking Latvian. By now, the Court has already developed and adopted firm principles of interpretation of the 2018 Reform and its impact on schools using Russian as the language of instruction. The Court relied on its findings from the Valiullina Case that Latvia has a wide margin of appreciation when regulating the promotion of its state language in education. Another legitimate aim was the unity of the education system, but also to remove the consequences of the separated education systems introduced during the occupation. Finally, the purpose of the 2018 Reform was to facilitate equal access to education in the state language, so it applied equally to public and private educational institutions. Surprisingly perhaps, the Court considered that Latvia has an even wider margin of appreciation in preschool education despite the acknowledgement that „international recommendations emphasise the importance of early learning in the mother tongue

³² Regulation no. 716 (2018), Annex 2 and 4.

for children’s overall personal and cognitive development” and „may be seen as calling for the States to be afforded a narrower margin of appreciation” (§ 148). The argument in favour of such a conclusion, the Court found in the fact that only half of the member states of the Council of Europe have a compulsory preschool education, so there is no unified practice by the state parties.

This time, the Court took into account the critical views expressed by the Venice Commission and the AC FCNM from 2018 about the need to keep a bilingual approach in preschool education, but it was satisfied that the Latvian Constitutional Court gave a satisfactory interpretation of the impugned regulation and „clarified that a bilingual approach could also be used throughout a child’s pre-school education” (§ 154). The Court, therefore, concluded that there was no discrimination with respect to preschool education.

3. Conclusion

The rulings have been received with disappointment since the Court did not support the right to have education in minority languages.³³ Some argued that the use of the argument of ‘constitutional identity’ to justify a discriminatory treatment of an unpopular minority was especially problematic.³⁴ Furthermore, the Court failed to interpret the Convention in light of the new approach to minority language education development, especially within the Council of Europe. Treaties dedicated specifically to the protection and promotion of minorities and their languages have been in force in a number of member states for more than 25 years: the FCNM and the European Charter for Regional or Minority Languages (ECRML).³⁵ A strong emphasis on the protection of minorities has also developed within the Organisation

³³ Vrancken 2024; Mitablinda 2023, *op.cit.* 5.

³⁴ Ganty et al. 2023.

³⁵ One of the objectives of the ECRML includes ‘the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate levels’ (Art. 7.1.f). In addition, state parties may choose to provide education at

for Security and Co-operation in Europe (OSCE) and the High Commissioner on National Minorities (HCNM).³⁶ Nevertheless, the Court dismissed their legal value and decided to give preference to the national legislation and linguistic policies.

In an unfortunate coincidence, the AC of the FCNM was working on the opinion on Latvia at the time the Court was working on the Latvian cases. The Fourth Opinion on Latvia was adopted in October 2023 and made public in February 2024.³⁷ In it the AC expressed its concerns about the impact of the 2018 Reform but even more so of the subsequent amendments of the Law on Education and the Law on General Education adopted in 2022. The latter amendments were aimed at phasing out education in minority languages between 2023 and 2025 and move to Latvian as the only language of instruction at all levels, from preschool to upper secondary school. The AC found this practice to go against „both the spirit and the letter of Article 14 of the Framework Convention”(§ 162). In their opinion, the conditions under Article 14.2 were actually met in Latvia since the Russians and other minorities have been traditionally present in Latvia. Furthermore, 22% of students (more than 45.000 in total) followed programmes in Russian in 2021/2022, indicating a sufficiently high demand and the wish to have such education was clearly expressed to the AC by members of the Russian and other minority communities (§ 63). Consequently, the AC requested the Latvian authorities to reconsider their intentions.³⁸

It is true that the FCNM has not been adopted by all member states of the Council of Europe, and the ECRML has been adopted by 25 member states. Nevertheless, the number of state parties of the FCNM is 38; four more have signed it and only four decided against

all levels or a substantial part in the selected languages. Finally, the last option is to provide for the teaching of the relevant regional or minority languages (Art. 8).

³⁶ OSCE, HCNM web page: <https://www.osce.org/hcnm>, accessed: 03.03.2025.

³⁷ AC FCNM 2024, Fourth Opinion on Latvia, Available at: <https://rm.coe.int/4th-op-latvia-en/1680ae98f6>, accessed: 03.03.2025.

³⁸ At the time of writing this article, the Committee of Ministers had not yet adopted its recommendations.

signature and ratification: Andorra, France, Monaco and Turkey.³⁹ The Court has been known earlier to push for granting human rights even when such right is not provided for *expressis verbis* in the text of the Convention, but when „[t]he emergence of a common approach to dealing with a particular issue by the majority of High Contracting Parties – a European consensus – can contribute to the evolution in the way a particular right or freedom is understood by the Court”.⁴⁰ It is regrettable that the Court has not recognised the need to expand the linguistic human rights of members of national minorities in education under the Convention.

Bibliography

- Dunbar, Robert: Linguistic Human Rights in International Law. In: Skutnabb-Kangas - Tove - Phillipson, Robert (eds.): *The Handbook of Linguistic Human Rights*, 2022, 25-38.
- Ganty, Sarah - Kochenov, Dimitry Vladimirovich - Nugraha, Ignatius Yordan: Constitutional Identity vs. Human Rights: The ECtHR's Bizarre Turn in Three Latvian Cases. *VerfBlog*, 2023, available at: <https://verfassungsblog.de/constitutional-identity-vs-human-rights/>, accessed: 03.03.2025. DOI: 10.59704/55184a96adabe0b0
- Mitablinda, Gabriel: The Limits of Russian Minority Rights in the Latvian Education System. *Diritti comparati*, 19.12.2023. Available at: <https://www.diritticomparati.it/the-limits-of-russian-minority-rights-in-the-latvian-education-system/?print-posts=pdf>, accessed: 03.03.2025.
- Paz, Moria: The Failed Promise of Language Rights: A Critique of the International Language Rights Regime. In: *Harvard International Law Journal*, 2013, Vol. 54/1, 157-218.
- Tomaševski, Katarina: Human rights obligations: making education available, accessible, acceptable and adaptable. *Right to Education Primers no. 3*, 2001. Available at: https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf, accessed: 03.03.2025.

³⁹ States parties to the FCNM, <https://www.coe.int/en/web/minorities/etats-partie>, accessed: 03.03.2025.

⁴⁰ Council of Europe, The Doctrines and Methodology of Interpretation of The European Convention on Human Rights by The European Court of Human Rights, Available at: <https://rm.coe.int/echr-eng-the-doctrines-and-methodology-of-interpretation-of-the-europe/1680a20aee>, accessed: 03.03.2025.

- Varennes, Fernand de - Kuzborska, Elżbieta: Minority language rights and standards: definitions and applications at the supranational level In: Hogan-Brun, G. - O'Rourke, B. (eds.): *The Palgrave Handbook of Minority Languages and Communities*. 2019, 21-72. Available at: <https://doi.org/10.1057/978-1-137-54066-9>,
- Vrancken, Merel: Schools as the battlefield for enhancing national unity: curtailing minority language rights. In: *European human rights law review*, (2), 2024, 185 -189.
- CESCR: *Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No.13(1999) - The right to education (Article 13 of the Covenant)*, Available at: <https://www.ohchr.org/en/resources/educators/human-rights-education-training/d-general-comment-no-13-right-education-article-13-1999> (G9946216.doc), accessed: 03.03.2025. UNESCO: „Paper commissioned for the 2023 Global Education Monitoring Report, Technology and education”, Available at: https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_Technology%20and%20education%20in%20light%20of%20human%20rights_GEM%20Background%20Papers_July23.pdf , accessed: 03.03.2025.
- German Federal Constitutional Court (Bundesverfassungsgericht, BVerfG): *Decision of 19 November 2021*. Available at: <https://www.loc.gov/item/global-legal-monitor/2021-12-14/germany-constitutional-court-rejects-challenge-to-pandemic-prohibition-of-in-person-classes-finds-constitutional-right-to-education>, accessed: 03.03.2025.
- The Convention for the Protection of Human Rights and Fundamental Freedoms, Available at: <https://www.echr.coe.int/home>, accessed: 03.03.2025.
- The European Commission for Democracy through Law (Venice Commission): *On the recent amendments to the legislation on education in minority languages in Latvia (CDL-AD(2020)012, 18 June 2020)*.
- Advisory Committee on the Framework Convention for the Protection of National Minorities: Thematic Commentary No. 1 from 2006, ACFC/25DOC(2006)002, 24. (revised in 2024)
- Advisory Committee on the Framework Convention for the Protection of National Minorities: *Third Report on Latvia, ACFC/OP/III(2018)001REV, adopted in February 2018, made public in October 2018*. The 2018 Reform was adopted in March 2018.
- Council of Europe: *The Doctrines and Methodology of Interpretation of The European Convention on Human Rights by The European Court of Human Rights*. Available at: <https://rm.coe.int/echr-eng-the-doctrines-and-methodology-of-interpretation-of-the-europe/1680a20aee> , accessed: 03.03.2025.

European Court of Human Rights Jurisprudence

Belgian Linguistic Case, Judgement of 23 July 1968, Series A, No. 6.

Cyprus v. Turkey, (GC) Judgement of 10 May 2001,

Valliulina and others v. Latvia, Judgment of 14 September 2023

Catan and Others v. the Republic of Moldova and Russia, (GC) Judgment of 19 October 2012.

Ádám and Others v. Romania, nos. 81114/17 and 5 others, Judgment of 13 October 2020.

Loizidou v. Turkey (GC), 18 December 1996, §§ 42-44.

Savickis and Others v. Latvia, (GC) Judgment, 9 June 2022.

Džibuti and Others v. Latvia, Judgment of 16 November 2023.

Djeri and Others v. Latvia, Judgment of 18 July 2024.