CUREDI007LV007

Question(s) at stake:

Whether the increase in the percentage of instruction hours conducted in the official language in Latvia complies with the Constitution, particularly the equality and the rights of minority groups to develop their culture and use their language.

Outcome of the ruling:

The Constitutional Court determined that the amendments to the Law on Education are consistent with the Constitution of Latvia and there are no legal barriers that would prevent the implementation of the education reform for minority schools.

Topic(s):

- Education
- State recognition of Groups and Their Practices

Keywords:

- Use of minority language in public education
- Regional or minority language
- Effective participation
- Right to maintain and develop a minority culture

Tag(s):

- Minorities
- Constitutional court
- Segregation
- Policy of memory

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Country:

Latvia

Official citation:

Latvian Constitutional Court, Judgement of 23 April 2019, Case no. 2018-12-01 aka Language of Education II (Izglītības ieguves valoda II: LR Satversmes tiesas spriedums lietā nr.2018-12-01. Latvijas Vēstnesis, 2019. 24. aprīlis, nr. 81)

Link to the decision:

https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/07/2018-12-01-12.-Saeimas-dep_latvie%C5%A1u-valoda-valsts-skol%C4%81s_ENG.pdf

ECLI:

No ECLI number / ECLI number unknown

Date:

23 April 2019

Jurisdiction / Court / Chamber:

Constitutional Court of the Republic of Latvia

Remedy / Procedural stage:

Constitutional review

Previous stages:

None

Subsequent stages:

None

Branches / Areas of law:

Constitutional law; Human rights law

Facts:

This court decision is commonly referred to as *Language of Education II*. The norms considered by the Constitutional Court form an integral part of the education reform that has been gradually implemented by the Latvian authorities over the past 20 years.

This judgment is largely based on the conclusions reached by the Constitutional Court in *Case No. 2004-18-0106* (CUREDI07LV005), which was delivered in May 2005. In that case, the Constitutional Court ruled that the challenged provisions of the revised Education Law (adopted by Latvia's Parliament on 5 February 2004) were consistent with both the Constitution and Latvia's binding obligations under international law.

In 2017, the Ministry of Education announced plans to further increase the use of Latvian as the official national language in the education process in minority schools. Specifically, at least 50% of teaching hours would be in Latvian for grades 1-6, 80% for grades 7-9, and the entire education process for grades 10-12 would be in Latvian, except for subjects related to minority language, culture, and identity. Despite a series of highly politicized debates within the country and opinions delivered by various international bodies relevant to minorities, such as the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) and the UN Committee on the Elimination of Racial Discrimination, the Parliament of Latvia adopted the new amendments in March 2018.

A group of 20 Members of Parliament, representing the interests of Latvia's minority voters, brought this case to the Constitutional Court. They argued that the wording of the amendments passed by Parliament in March 2018, as specified in the full case name, violates Articles 91, 112, and 114 of Latvia's Constitution. Article 91 guarantees equal treatment under the law and prohibits discrimination in the protection of human rights. Article 112 guarantees the right to education

for all. Article 114 stipulates that ethnic minorities shall enjoy “the right to preserve and develop their language and their ethnic and cultural identity”.

Ruling:

The Constitutional Court ruled that the case, as it pertains to the compliance of the contested amendments with Article 112 of the Constitution, which guarantees the universal right to education, is terminated. The Court also pronounced that the contested amendments are consistent with Articles 91 and 114 of the Constitution. Specifically, it confirmed that the amendments do not infringe upon the principle of equality before the law or result in discrimination that could infringe upon the realization of human rights (Article 91). Moreover, the Court found that the contested norms do not violate the right of ethnic minorities “to preserve and develop their language and their ethnic and cultural identity” (Article 114).

The judgment was final and went into effect upon its promulgation.

Main quotations on cultural or religious diversity:

“Likewise, the rights of ethnic minorities that are guaranteed in Article 114 of the Satversme are aimed at ensuring balance in society, by creating a benevolent environment for the preservation of the languages, ethnic and cultural singularity of ethnic minorities, at the same time ensuring due respect for constitutional values. This purpose can be implemented if society in general and, inter alia, ethnic minorities themselves also perceive exercising the rights of ethnic minorities as enriching society in general. Exercising the rights of ethnic minorities may not be aimed at social segregation and threaten social unity.” (Section 23.2) “[T]he State has the obligation to ensure the possibility to acquire in state and local government schools education that consolidates the common identity of a democratic society.” (Section 23.2) “The Preamble to the Constitution (Satversme) reveals values that are the foundation for creating an inclusive democratic society. The Latvian language is one of these values. It is an integral part of the constitutional identity of the Latvian State. The function of the official language to serve as the common language of communication and

democratic participation follows from the constitutional status of the official language." (Section 24.2) "the Latvian language performs the functions of the only official language, i.e., it is the common language of communication for all residents of Latvia and a language that unites the/a democratic society […] Hence, all persons who reside permanently in Latvia should know the language of this state; moreover, on the level allowing full participation in the life of democratic society. Members of society, who understand and respect the values upon which the Satversme is founded, is the pre-requisite for the existence of a democratic state governed by the rule of law." (Section 24.2) "Due to migration facilitated by the occupational power, the issue of language use became relevant. Although part of the migrants of the Soviet period were not ethnic Russians, in Latvia, their only language of communication was Russian. The issue of communication was resolved by implementing general Russification, allowing the use of Russian in daily communication without any restrictions and imposing the use of it in state institutions." (Section 24.2) "In the field of education, Russification was implemented by paying special attention to learning of the Russian language in schools with Latvian as the language of instruction as well as by establishing schools with Russian as the only language of instruction and, thus, in fact, creating a segregated system of education." (Section 24.2) "This [obligation] relates to the aims of the Official Language Law, inter alia, the aim to include representatives of ethnic minorities in Latvia's society, respecting their right to use their native language or other languages, and to increase the influence of the Latvian language in the cultural space of Latvia, thus facilitating social integration." (Section 24.3)

Main legal texts quoted in the decision:

International law:

- International Covenant on Civil and Political Rights (ICCPR) (Articles 26 and 27)
- International Covenant on Economic, Social and Cultural Rights (ICESCR) (Preamble, Articles 13 and 29)

- Vienna Convention on the Law of Treaties (VCLT) (Article 31)
- Convention on the Rights of the Child (CRC) (Articles 29 and 30)
- First Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (Article 2)
- Framework Convention for the Protection of National Minorities (FCNM) (Article 14)
- International Law Commission, "Draft Conclusions on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties" (2018) (A/73/10)
- Venice Commission, Opinion No. 902/2017, "On the provisions of the Law on Education of 5 September 2017, which concern the use of the State Language and Minority and other Languages in Education" (CDL-AD(2017)030-e) (11 December 2017)

Domestic law:

- Latvia's Declaration upon Ratifying the Framework Convention for the Protection of National Minorities (FCNM)
- Constitution of the Republic of Latvia (Articles 85, 91, 112, and 114)
- Law of the Republic of Latvia on Education (Sections 1, 3, and 41)
- Law of the Republic of Latvia on General Education (Sections 2 and 3)
- Law of the Republic of Latvia on Constitutional Court
- Official Language Law of the Republic of Latvia
- Rules of Procedure of the Saeima of the Republic of Latvia
- Regulation of the Cabinet of Ministers of the Republic of Latvia No. 747, "Regulation Regarding the State Standard in Basic Education, the Subjects of Study Standards in Basic Education, and Model Basic Education Programmes" (27 November 2018)

Cases cited in the decision:

ECtHR case law:

- *Cyprus v. Turkey* (Appl. no 25781/94, 10 May 2001).

- *Ingebjørg Folgerø and Others v. Norway* (App. no. 15472/02, 27 June 2007.
- *Oršuš and Others v. Croatia* (App. no. 15766/03) 16 March 2010.
- *"Relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium (Merits)* (App. nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64, 23 July 1968).

Constitutional Court case law:

- Judgment in case No. 2018-11-01, 6 March 2019 "On Compliance of Para 1 and Para 2 of Section 3 (92) of the law "On Remuneration of Officials and Employees of State and Local Government Authorities" with Article 96 of the Satversme of the Republic of Latvia"
- Judgment in case No. 2017-28-0306, 29 June 2018 "On Compliance of Para 31 of the Binding Regulation of 9 June 2015 of the Riga City Council No. 148 'On the Real Estate Tax in Riga' with Article 91 of the Satversme of the Republic of Latvia and the First Part of Article 18 and the First Part of Article 21 of the Treaty on the Functioning of the European Union"
- Judgment in case No. 2017-17-01, 12 April 2018 "On compliance of Section 1 of the law 'Amendments to the Law on Privatisation of State and Local Government Residential Houses' adopted on 1 June 2017, and of the law 'Amendments to the Law on Land Reform in the Cities of the Republic of Latvia' adopted on 22 June 2017, with Articles 1 and 105 of the Constitution of the Republic of Latvia"
- Judgment in case No. 2017-03-01, 21 December 2017 "On Compliance of the Fourth and the Sixth Part of Section 30, the Fifth and the Sixth Part of Section 48, Para 5 of Section 50, and Para. 21 of the First Part of Section 51 of Education Law with the First Sentence of Article 100 and the First Sentence of Article 106 of the Satversme of the Republic of Latvia"
- Judgment in case No. 2013-17-01, 7 July 2014 "On Compliance of the First Sentence of Section 8 of the Law on Residential Tenancy with Section 105 of the Satversme of the Republic of Latvia"
- Judgment in case No. 2012-12-01, 13 February 2013 "On Compliance of the Words 'up to 31 December 2011' of Para 41 of Transitional Provisions of Law

on State Pensions with Article 91. and 109. of the Satversme of the Republic of Latvia”

- Judgment in case No. 2011-03-01, 19 December 2011 “On Compliance of Section 5 (4) and Section 21 (2.1) of Law on State Social Insurance with Article 1 and Article 109 of the Satversme of the Republic of Latvia”
- Judgment in case No. 2008-37-03, 29 December 2008 “On Compliance of Para 100 and Para 100.1 of 31 October 2006 Cabinet Regulations No. 899 ‘Procedures for the Reimbursement of Expenditures for the Acquisition of Medicinal Products and Medicinal Devices Intended for Out-patient Medical Treatment’ with Article 91 of the Satversme of the Republic of Latvia”
- Judgment in case No. 2005-02-0106, 14 September 2005 “On the Compliance of the Second Sentence of Section 59 (2) in the Part on Participation in Financing of Private Educational Institutions if the Programs are Implemented in the Official language of Education Law with Article 91 of the Satversme of the Republic of Latvia and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (in Interconnection with Article 2 of the First Protocol)”
- Judgment in case No. 2004-18-0106, 13 May 2005 “On the Compliance of Section 9, Paragraph 3 of the Education Law Transitional Provisions with Articles 1, 91 and 114 of the Republic of Latvia Satversme, Article 2 of the First Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as its Article 14 (linked with Article 2 of the First Protocol), Articles 26 and 27 of the International Covenant on Civil and Political Rights, Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, Articles 2 and 30 of the Convention on the Rights of a Child as well as Article 18 of the Vienna Convention on the Law of Treaties”
- Judgment in case No. 2001-04-0103, 22 December 2001 “On Compliance of Section 19 of the Official Language Law and the Cabinet of Ministers Regulation of 22 August 2000 Regulations No.295 ‘Regulations on Spelling and Identification of Names and Surnames’ with Articles 96 and 116 of the Satversme”

Commentary

Balancing the Official Language and Minority Rights in Latvia's Education System

The decision delivered in April 2019 by the Constitutional Court relied on its previous decision and provided further justification, largely emphasizing the state's aim to prioritize the official language over the rights of minorities.

Like the previous Constitutional Court decision, *Case No. 2004-18-0106* (CUREDI07LV005), this judgment cannot be assessed solely from the legal perspective as it involved a high degree of political debate both within Latvia and abroad. It also altered the previous status quo regarding minority education in Latvia by prioritizing the use of the Latvian language in public schools. Hence, it is difficult to argue that the interests of the various ethnic and linguistic groups in Latvia were fairly balanced, as "the legitimate aim of the state to support of the official language could always be acknowledged as prevailing over the rights of the specific groups of people" (Kascian 2019).

Since the judgment largely rests on the conclusions of *Case No. 2004-18-0106*, three important aspects of the case should be underlined.

First, the historical context remains important for the Latvian Constitutional Court to adhere to the position from 2005. Specifically, the Court argued that the current ethno-demographic composition of Latvia is a result of the Soviet occupation and that this history should be taken into account when interpreting domestic laws and international legal instruments in a way that promotes harmony and avoids conflict within society. Developing its argument from 2005, Court has also argued that the binary system of education inherited from the Soviet era, which involved separate schools for students with Latvian and Russian language instruction, constitutes a "segregated system of education". To support this position, the Court refers to the unspecified recommendations of the FCNM Advisory Committee that segregation should be avoided to the largest possible extent "even if ethnic minorities wish to remain separated or segregated from the system of education".

Second, the Court has characterized the country's situation as *sui generis* and has argued that the Opinion of the Venice Commission on the 2017 amendments to Ukraine's education law does not apply to Latvia because the cases, in the Court's view, are substantially different. Moreover, the Court has noted that the judgment in *Case No. 2004-18-0106* established that the FCNM neither prohibits the implementation of norms defining the proportion of languages used in minority education nor restricts instruction in the official language. This approach of the Court suggests that minorities have no other choice but to accept the new proportions for the use of the official language in education. At the same time, it does not prevent the state from further increasing the quotas for the use of Latvian in minority schools. The Constitutional Court will likely use this logic in all further judgments on minority education in Latvia, as *Case No 2018-22-01* already demonstrates. As a result, appeals by minority representatives to the Constitutional Court alleging violations of domestic constitutional provisions may be seen as a futile remedy.

Finally, this situation can be characterized as a "dangerous precedent" for an EU member state to guarantee the rights of its citizens (Dimitrovs 2019). Dimitrovs (2019) also adds that it was the 2014 preamble of the Constitution, which has been cited on several occasions in the 2019 judgment, "has become the basis for revising the interpretation of minority rights". In other words, the case demonstrates that the revision of the existing domestic legal instruments that may reduce the scope of existing minority rights does not prevent the Constitutional Court from integrating relevant new legislative provisions into its case law on minority rights in education.

Subsequently, the Constitutional Court of Latvia delivered several new judgments that promoted a restrictive approach towards the use of minority languages in the country's education system and relied on the conclusions of this case.

Literature related to the main issue(s) at stake:

Case-specific publications:

- Dimitrovs, Aleksejs. 2019. “A Dangerous Precedent for Minority Rights: the Latvian Constitutional Court’s Ruling on Minority Schools”, *VerfassungsBlog*, available at <https://verfassungsblog.de/a-dangerous-precedent-for-minority-rights-the-latvian-constitutional-courts-ruling-on-minority-schools/> accessed 19 September 2021.
- Dimitrovs, Aleksejs. 2020. “Riga and Venice on a Collision Course: On the Controversial New Constitutional Court Decisions on Minority Languages in Latvia”, *VerfassungsBlog*, available at <https://verfassungsblog.de/riga-and-venice-on-a-collision-course/> accessed 19 September 2021.
- Kascian, Kiryl. 2019. “A Judicial Path to Nowhere? Challenging the Minority Education Reform Before Latvia’s Constitutional Court”, *VerfassungsBlog*, available at <https://verfassungsblog.de/a-judicial-path-to-nowhere/> accessed 19 September 2021.

General legal literature on the topic:

- Opinion on the recent amendments to the Legislation on Education in Minority Languages, adopted by the Venice Commission on 18 June 2020 by a written procedure replacing the 123rd Plenary Session, CDL-AD(2020)012-e Latvia, available at < https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)012-e> accessed 19 September 2021.
- Krūma, Kristīne, and Sandijs Statkus. 2019. “The Constitution of Latvia – A Bridge Between Traditions and Modernity”. In Anneli Albi and Samo Bardutzky (eds), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, 951-995. The Hague: T.M.C. Asser Press.

General literature on the topic from other disciplines:

- Ivlevs, Artjoms and Roswitha M. King. 2014. “2004 Minority Education Reform and Pupil Performance in Latvia”. *Economics of Education Review* 38: 151–166.

Disclaimer

All quotations on cultural diversity are cited as they are formulated in the English version of the judgment available on the website of Latvia's Constitutional Court. In some cases, minor adjustments are made.

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