CUREDI007LV005

Question(s) at stake:

Whether the increase in the proportion of instruction hours in the official language in Latvia complies with the Constitution and international human rights laws, particularly the principle of equality and the rights of minority individuals to preserve and use their culture and language

Outcome of the ruling:

The Constitutional Court found that the measures prescribed by the amendments to the Law on Education are consistent with the Constitution of the Republic of Latvia and with Latvia's obligations under international human rights law. Therefore, under Latvian law, there are no legal impediments to the implementation of educational reforms, including those affecting minority schools.

Topic(s):

- Education
- State recognition of Groups and Their Practices

Keywords:

- Medium of instruction
- Non-discrimination
- Right to maintain and develop a minority culture
- Use of minority language in public education

Tag(s):

- Education
- Minorities

- Language rights
- Minority education

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Country:

Latvia

Official citation:

Latvian Constitutional, Judgement of 13 May 2005, Case no. 2004-18-0106 (Mazākumtautību skolas: LR Satversmes tiesas spriedums lietā nr.2004-18-0106. Latvijas Vēstnesis, 2005. 17. maijs, nr. 77 (2019/232.8))

Link to the decision:

http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2004/08/2004-18-0106_Spriedums_ENG.pdf

ECLI:

No ECLI number / ECLI number unknown

Date:

13 May 2005

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; Minority rights; Language rights

Facts:

On 5 February 2004, the Parliament of Latvia passed amendments to the Law on education. Section 9, paragraph 3 of the revised law required that all state and municipal schools offering educational programmes for national minorities comply with the state's education standards. These standards stipulated that at least 60 percent of the academic hours during the school year must be taught in the official Latvian language. Said standards also ensure that students in minority schools learn about subjects related to their language, identity and culture in their language.

On 22 June 2004, a group of 20 Latvian lawmakers challenged the amendment before the Constitutional Court, citing its contradiction of Articles 1, 91 and 114 of the Constitution, as well as several international legal norms that Latvia is a signatory to, including Article 2 of the First Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 14 of the said Convention (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, and Article 18 of the Vienna Convention on the Law of Treaties.

At the hearing, the petitioners stressed that they were not against the quotas as such but rather that the challenged amendment be declared invalid in order for the parliament to pursue a more flexible and reasonable solution to the issue. This solution, they argued, should be based on effective collaboration among all parties involved in the education process, including teachers, pupils, and parents. It should involve quality, efficiency, and accessibility as the fundamental principles of the educational process in Latvia.

Ruling:

The Constitutional Court ruled that the challenged norm of the Education Law is consistent with both Latvia's Constitution and the international legal instruments to which Latvia is a signatory.

The Constitutional Court began its concluding remarks by providing a historical evaluation of the Soviet period in Latvia, which had a significant effect on the ethnic composition of the country. The Court emphasized that in the early 1990s when Latvia gained its independence, many graduates faced difficulties finding jobs due to their insufficient knowledge of Latvian, as they had been taught in Russian during their schooling. In other words, the Court characterized the implementation of the programmes for national minorities, which increased the number of school subjects taught in Latvian, as an interim measure towards integrating the country's minorities. Thus, the challenged amendment of the Law can be viewed as part of the implementation of the unified educational system in Latvia and the fully-fledged integration of minority schools therein.

According to Article 1 of the Constitution, the Court stressed, Latvia is an independent democratic republic and the principle of rule of law requires a balance between different objectives and interests within society. In this context, the Court emphasized that minority representatives and Members of Parliament had had the opportunity to voice their concerns during the legislative amendment's preparations and that their proposals had been duly considered.

As for the principle of equality before the law, as established by Article 91 of the Constitution, the Court set out three criteria to assess whether discrimination against national minorities had occurred:

- Which persons found themselves in equal or different conditions?
- Whether the disputed provision of the amended law prescribed equal or different treatment of the persons involved.
- If the different treatment was based on an objective and reasonable ground and was in conformity with the principle of proportionality and had a legitimate aim.

The Court stressed that equal treatment applies only to people in equal or comparable conditions while persons in different conditions are subject to varying treatment. The Court concluded that ethnic Latvians and representatives of the country's minorities were faced with different situations. On the one hand, the Law on Education envisages special treatment of national minorities by providing them with special educational programmes to accommodate their needs. On the other hand, the increase in the number of subjects taught in Latvian affects these two groups of people differently. Hence, the Court found that the challenged provision only had partially different effects on individuals in different situations. However, the Court held that the restrictions on equality were justified by two legitimate aims of the Latvian state.

The first one is the protection of the Latvian language. With the reference to the Soviet period of Latvia's history and its two previous judgments (cases nos. 2001-04-0103 and 2003-02-0106), the Court emphasized that the restriction of the use of the Latvian language "is inadmissible within the territory of the State and it can be regarded as threatening to the State democratic system" (para. 16). The second legitimate aim is to uphold the rights of individuals belonging to minority communities to acquire proficiency in the official language to use it practically in various spheres and thereby to accommodate themselves into Latvian society.

The Court concluded that the use of the Latvian language in the educational process and the maintenance of the proportion of the language use serve as adequate tools for achieving legitimate aims. Moreover, there are no other flexible measures to achieve legitimate aims.

The Court established that the language proportions in the educational process do not impede Latvia's national minorities from maintaining and developing their linguistic, ethnic, or cultural distinctiveness. The proportions, therefore, complied with Article 114 of the Constitution.

As for adequacy and proportionality of the challenged law on education, the Court concluded that at the moment of delivering the judgment, it was not possible to assess the impact of the implementation of the contested norm in the educational

process and on the contested norm's implementation on the quality of education. The Court called for an optimal solution to ensure that the transitional process is as benignant as possible, to safeguard the interests of the pupils affected by it. Consequently, the Court ruled for a three-year transition period, expiring on 1 September 2007, before the contested norm could take effect.

This judgment was final and non-appealable.

Main quotations on cultural or religious diversity:

The Constitutional Court ruled that the challenged norm of the Education Law is consistent with both Latvia's Constitution and the international legal instruments to which Latvia is a signatory.

The Constitutional Court began its concluding remarks by providing a historical evaluation of the Soviet period in Latvia, which had a significant effect on the ethnic composition of the country. The Court emphasized that in the early 1990s when Latvia gained its independence, many graduates faced difficulties finding jobs due to their insufficient knowledge of Latvian, as they had been taught in Russian during their schooling. In other words, the Court characterized the implementation of the programmes for national minorities, which increased the number of school subjects taught in Latvian, as an interim measure towards integrating the country's minorities. Thus, the challenged amendment of the Law can be viewed as part of the implementation of the unified educational system in Latvia and the fully-fledged integration of minority schools therein.

According to Article 1 of the Constitution, the Court stressed, Latvia is an independent democratic republic and the principle of rule of law requires a balance between different objectives and interests within society. In this context, the Court emphasized that minority representatives and Members of Parliament had had the opportunity to voice their concerns during the legislative amendment's preparations and that their proposals had been duly considered.

As for the principle of equality before the law, as established by Article 91 of the Constitution, the Court set out three criteria to assess whether discrimination

against national minorities had occurred:

- Which persons found themselves in equal or different conditions?
- Whether the disputed provision of the amended law prescribed equal or different treatment of the persons involved.
- If the different treatment was based on an objective and reasonable ground and was in conformity with the principle of proportionality and had a legitimate aim.

The Court stressed that equal treatment applies only to people in equal or comparable conditions while persons in different conditions are subject to varying treatment. The Court concluded that ethnic Latvians and representatives of the country's minorities were faced with different situations. On the one hand, the Law on Education envisages special treatment of national minorities by providing them with special educational programmes to accommodate their needs. On the other hand, the increase in the number of subjects taught in Latvian affects these two groups of people differently. Hence, the Court found that the challenged provision only had partially different effects on individuals in different situations. However, the Court held that the restrictions on equality were justified by two legitimate aims of the Latvian state.

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As for adequacy and proportionality of the challenged law on education, the Court concluded that at the moment of delivering the judgment, it was not possible to assess the impact of the implementation of the contested norm in the educational process and on the contested norm's implementation on the quality of education. The Court called for an optimal solution to ensure that the transitional process is as benignant as possible, to safeguard the interests of the pupils affected by it. Consequently, the Court ruled for a three-year transition period, expiring on 1 September 2007, before the contested norm could take effect.

This judgment was final and non-appealable.

Main legal texts quoted in the decision:

International agreements:

- International Covenant on Civil and Political Rights (ICCPR), arts 26 and 27
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), art 5
- Convention on the Rights of the Child (CRC), arts 2 and 30
- Vienna Convention on the Law of Treaties, art 18
- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), art 14 and art 2 of Protocol 1
- Framework Convention for the Protection of National Minorities

Latvian legislation and bylaws:

- Constitution (*Satversme*) of the Republic of Latvia (Articles 1, 91 and 114)
- Latvian SSR Supreme Council Declaration of 4 May 1990 on the Restoration of Independence of Latvia

- Law of the Republic of Latvia on Education
- Law of the Republic of Latvia on General Education
- Law of the Republic of Latvia on Institutions of Higher Education
- Official Language Law of the Republic of Latvia
- Administrative Procedure Law of the Republic of Latvia
- Law of the Latvian SSR on Languages
- Declaration of the Saeima (Parliament) of the Republic of Latvia of 22 August 1996 on the Occupation of Latvia
- Regulations of the Cabinet of Ministers of the Republic of Latvia of 5 December 2000 No. 462 “On the Standard of the State Primary Education”
- Regulations of the Cabinet of Ministers of the Republic of Latvia of 5 December 2000 No. 463 “On the Standard of the State General Education”

International Statements, Guidelines and Recommendations:

- Statement by Rolf Ekéus, OSCE High Commissioner on National Minorities, to the 530th Plenary Meeting of the OSCE Permanent Council, 28 October 2004, HCNM.GAL/4/04
- The Lund Recommendations on the Effective Participation of National Minorities in Public Life, 1 September 1999.
- The Hague Recommendations regarding the Education Rights of National Minorities, 1 October 1996.

Cases cited in the decision:

European Court of Human Rights:

- *Cyprus v Turkey* App no 25781/94, 10 May 2001.
- *Gorzelik and Others v Poland* App no 44158/98, 17 February 2004
- *Kjeldsen, Busk Madsen and Pedersen v Denmark* (5095/71, 5920/72; 5926/72, 7 December 1976)
- *“Relating to certain aspects of the laws on the use of languages in education in Belgium” v Belgium (Merits)* (1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64, 23 July 1968)

- *Thlimmenos v Greece* App no 34369/97, 6 April 2000.

European Commission of Human Rights:

- *X v United Kingdom* (8844/80, 9 December 1980)
- *15 Foreign Students v United Kingdom* (7671/76 7711/76 7722/76 7724/76 7725/76 7727/76 7728/76 7739/76 7749/76 7756/77 7785/77 7787/77 7864/77 7813/77 7814/77, 19 May 1977)
- *X v United Kingdom* (5962/72, 13 March 1975)

Permanent Court of Justice:

- *Minority Schools in Albania* (A/B64, 6 April 1935)

Latvian Constitutional Court:

- Judgment in case No. 2003-16-05, 9 March 2004 “On Compliance of the Minister for Regional Development and Local Governments of 9 May 2003 Decree No.2-02/57 on Suspending the Enforcement of the Jūrmala City Council 24 October 2001 Binding Regulations No.17 "On the Jūrmala Detailed Land Use Plan for the Territory between the Bulduri Prospect, Rotas Street and 23–25 Avenues"; the Minister for Regional Development and Local Governments 2 June 2003 Decree No.2-02/60 on Suspending the Enforcement of the Jūrmala City Council 9 October 2002 Binding Regulations No.10 "On the Confirmation of the Detailed Land Use Plan for the Community Centre "Vaivari" as well as the Minister for Regional Development and Local Governments Decree No.2-02/62 on Suspending the Enforcement of the Jūrmala City Dome 7 November 2001 Binding Regulations No.18 "On the Confirmation of the Detailed Land Use Plan for the Plot Bulduri 1001, Jūrmala" with Article 1 of the Satversme of the Republic of Latvia”.
- Judgment in case No. 2003-04-01, 27 June 2003 “On Compliance of Section 82 (5) and Section 453 (2) of Civil Procedure Law with Articles 91 and 92 of the Satversme of the Republic of Latvia”.

- Judgment in case No. 2003-02-0106, 5 June 2003 “On Compliance of Section 19 (5) of the Radio and Television Law with Articles 89, 91, 100 and 114 of the Satversme of the Republic of Latvia as well as with Articles 10 and 14 (in Interconnection with Article 10) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Articles 19 and 27 of the International Covenant on Civil and Political Rights”.
- Judgment in case No. 2002-14-04, 4 February 2003 “On Compliance of the Cabinet of Ministers Decree of August 8, 2001 No.401 ‘On the Location of the Hazardous Waste Incineration Facility in Olaine’ with Articles 111 and 115 of the Satversme, Section 5 and Para 1-3 of Section 6 of the Waste Management Law, Section 3 and Section11 of Law on the Environmental Impact Assessment, Section 14 and Section 17 (1) of Law on Pollution, as well as Section 11 of Law on Environmental Protection”.
- Judgment in case No. 2001-06-03, 22 February 2002 “On Compliance of Para 4, 5, 6, 7, 8 and the First Sentence of Para 9 of the Saeima Presidium Regulations of February 28, 2000 "On the Procedure of Compensating Expenses Incurred by the Deputies while Exercising their Authority" with Article 91 of the Republic of Latvia Satversme”.
- Judgment in case No. 2001-08-01, 17 January 2002 “On Compliance of Section 348 (7) of Civil Proceedings Law with Article 92 of the Satversme of the Republic of Latvia”.
- Judgment in case No. 2000-07-0409, 3 April 2001 “On Compliance of Para1.1 of the 6 July 1999 Cabinet of Ministers Regulations No.249 ‘Amendments to 6 October 1998 Regulations No.388 on the Procedure of Trade in Markets, Fairs, Street Markets and Travelling Shops’ with Section 4(2) and Para 1 of Section 32(1) of Law ‘On Entrepreneur Activity’, as well as with Article 91 of the Satversme of the Republic of Latvia, Paragraph 4 of ‘General Agreement on Tariffs and Trade’ (GATT, 1947), Section 14 of the Law ‘The Structure of the Cabinet of Ministers’ and the Section 3(2) of the Law ‘On the Free Trade Agreement among the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania on Trade with Agricultural Products’”.

- Judgment in case No. 2000-03-01, 30 August 2000 “On Compliance of Para 5 and Para 6 of Section 5 of The Saeima Election Law and Para 5 and Para 6 of Section 9 of the Law on Electing City Council and County Council with Articles 89 and 101 of the Satversme of the Republic of Latvia, Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 25 of the International Covenant on Civil and Political Rights”.

German Federal Constitutional Court:

- Order of the Second Senate of the Federal Constitutional Court of Germany, 14 October 2004, 2 BvR 1481/04
- Order of the First Senate of the Federal Constitutional Court of Germany, 1 July 1998, 1 BvR 1640/97.

Commentary

Minority Education Reform in Latvia: Towards Historicization of Human Rights

This landmark judgment of the Constitutional Court of Latvia resulted from the revision of Section 3 Article 9 of the Law on Education, which regulates the language of education. The educational reform was the subject of heated political debates both within Latvia and abroad.

This decision of the Constitutional Court can be assessed not only from a purely legal perspective but also from a political one. On the one hand, the judgment reinforced the *status quo* in minority education, which subsequently served as the basis for the 2018 amendments to the laws on education that further restricted the usage of minority languages in education. On the other hand, despite its content, the judgment could not ensure a fair balance of interests among the different segments of Latvian society.

There are important issues that have to be addressed about this Constitutional Court decision:

1. In Sections 1 and 2 of the judgment's concluding part, the Court established a causal link between the questioned norm and the situation "which was created by the Soviet occupation". In other words, the current "complicated ethno-demographic situation" in Latvia was caused by the Soviet nationalities policies and this factor should be considered crucial when assessing the compliance of the questioned norm with the country's Constitution and obligations under international law.

   Thus, the post-war inter-Soviet labour migration to Latvia is viewed differently than that in Western Europe. According to the Court, the Western European states could themselves decide on the contents of this migration and develop policies to integrate migrants into their societies. But in Latvia, the inter-Soviet immigrants were not integrated into the receiving society.

   Another important issue is the Court's assessment of the linguistic policies of the Soviet authorities in Latvia. The increasing role of the Russian language in all spheres of public life in Soviet Latvia is referred to by the Court as the "Russification policy". The Court also underlines that the "Russian-speaking inhabitants" are an artificial product of these policies which "forced" some ethnic groups, including Belarusians, Jews, and Ukrainians to become part of it. This was a result of a dual-track education system in Soviet Latvia, where students could study in either Latvian or Russian. According to the Court, in 1970s Soviet Latvia, 85 percent of non-Latvians and non-Russians were taught in Russian at school while only 15 percent opted for schooling in Latvian.

   The Court interpreted the changes in education in independent Latvia as "a natural step" towards creating a new educational system that ensures "versatility". The system mandates the acquisition of competencies in the Latvian language in all educational institutions and ensures the right to education in the native languages of non-Latvian ethnic groups determined by law. The latter, however, strives to protect and promote Latvian as the state language and its effective use as the main language in all spheres of

public life.

The position of the Constitutional Court demonstrates that Latvia's negative historical experiences during the communist period are central to the design of the country's current policies on ethnolinguistic diversity, including in the educational domain.

2. An important element in the analysis is the compliance of the contested norm with Article 18 of the Vienna Convention on the Law of Treaties. The assessment of this norm – Sections 5 to 8 of the concluding part of the judgment – was made in conjunction with the Framework Convention for the Protection of National Minorities (FCNM). Latvia signed this legally-binding international instrument on 11 May 1995 and ratified it on 6 June 2005. Thus, the adoption of the contested norm and the delivery of the judgment by the Constitutional Court took place when the Convention was signed but not ratified by Latvia.

   The Court emphasized that the interpretation of the constitutional provisions and Latvia's obligations under international treaties should be based on an approach that ensures harmony and not confrontation (Section 5 of the concluding part). The Court also stressed that the level of protection ensured by the Constitution shall not be lower than that provided by an international treaty.

   The Court had to decide if the ratified FCNM can be effectively used in Latvia based on Article 18 of the Vienna Convention on the Law of Treaties and, more importantly, whether the contested norm aimed at increasing the proportion of the Latvian language in the educational system of the country undermines the aims of the FCNM since the signatory state to Convention has to refrain from this kind of activities on the basis of Article 18 of the VCLT.

   The reasoning of the Constitutional Court of Latvia was based on the fact that the FCNM neither excludes the implementation of norms that define the

proportion of the languages used in minority education nor does it require state parties to ensure that their minorities have the right to receive education exclusively in a minority language. In other words, the Court underlined that the formation of language quotas is not the aim of the FCNM. The Court also stressed that the FCNM provisions do not contain any provisions that restrict the teaching of the official language or the acquisition of knowledge of this language. Specifically, bilingual education was mentioned as one of the options that ensure the rights of minorities to receive education in their mother tongue.

While agreeing with the petitioners that the contested norms restrict the opportunities for minorities to receive education in their native languages, the Court underlined that no provision of Latvian legislation required mandatory studies of any subject in the Latvian language. The contested norm did not impose such requirements either. Instead, it only introduced the proportions between the official language and a minority language in the educational system.

The Court also stressed that the lack of ratification means that the FCNM in general, and its specific articles in particular, were not binding on Latvia. Nor could it be binding by custom as the application of the FCNM norms varied significantly from one country to another. In the view of the Court, the limitations imposed by the contested norm did not undermine the aim of the FCNM as such. Therefore, the contested norm was consistent with Article 18 of the Vienna Convention on the Law of Treaties.

Following the ratification of the FCNM by Latvia, the education reform and this judgment of the Constitutional Court were addressed by the FCNM Advisory Committee in its First Opinion on Latvia.

First, the Advisory Committee “regret[ted] the fact that, since the reform of the Latvian education system in 2003, and despite strong opposition from the national minorities, more restrictive language conditions have been placed on the education provided for minorities”. Second, the Advisory

Committee stressed the fact that "in its judgment, the [Constitutional] Court argued that the past division within the education system had to be replaced by a more unified system, that the aim was social integration and intensified use of the state language, and that the quality of education for all pupils, whatever their ethnic origin, had to be guaranteed and monitored."

In 2017, the ministry of education announced its plans to further increase the use of the Latvian language in the country's education system. In March 2018, the new amendments were adopted by the Parliament. This sparked a series of highly politicized debates, leading to various statements and assessments by international bodies dealing with minority issues. In addition, several education-related cases were filed before the Constitutional Court, some of which are still pending.

In April 2019, the Constitutional Court delivered its judgment on case No. 2018-12-01 lodged by a group of MPs (CUREDI07LV007). In this ruling, the Court largely relied on the decision discussed above and further developed its reasoning. This indicates that the Court sought to balance the state's legitimate aim to support the official language with the rights of persons belonging to minority groups.

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

General legal literature on the topic:

- Dimitrov, Alexei, and Leonid Raihman (eds). 2007. NGO Report on Implementation of the Framework Convention for the Protection of National Minorities by the Republic of Latvia. *Latvian Human Rights Committee, Centre for Educational and Social Research "Baltic Insight"*, available at <https://www.cilevics.eu/minelres/coe/report/NGO_Report_FCNM_Latvia_2007.pdf> accessed 10 September 2022.
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- 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.

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General literature on the topic from other disciplines:

- Hogan-Brun, Gabrielle. 2006. "At the Interface of Language Ideology and Practice: The Public Discourse Surrounding the 2004 Education Reform in Latvia.". *Language Policy* 5 (3): 313–333.
- Ivlevs, Artjoms and Roswitha M. King. 2014. "2004 Minority Education Reform and Pupil Performance in Latvia". *Economics of Education Review* 38 (C): 151–166.

Disclaimer

Satversme is the official term for "Constitution" in the Latvian language which is also used in the English versions of the official publications by Latvian authorities. All quotations are taken from the English translation of the ruling available on the website of Latvia's Constitutional Court.

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