

THE BEST INTERESTS OF THE CHILD: THE RIGHT TO EDUCATION VERSUS MINORITY RIGHTS

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Abstract. This article analyses the genesis and apparent contradiction between different human rights, specifically, the right to education and national minority rights, through the lens of the best interests of the child. The innovative concept of the protection of the best interests of the child allows for a different approach and a fair balance to be struck between values such as the equality of the individual in society and the need to preserve national identity on one hand and, on the other hand, the extent to which the quality of the right to education affects the balance between these values. The article's objective is to examine the thesis that the legal framework of the right to education does not include a child's integral right to basic education in their native language if it is not the official state language. The rights to education in one's native language in Latvia and Lithuania are not identical concepts, emphasising the role of children's education in building civic society and ensuring democratic processes. In this article, we distinguish and identify the 'traditional' or 'autochthonous' national minorities and their rights and legal expectations, at the same time illustrating the legally nuanced collisions regarding the correct use of the term 'national minority' and its applicability to a state's obligations to protect the rights of national minorities.

Keywords: The Best Interests of the Child, Human Rights, Right to Education, Minority Rights, National Identity, Equal Opportunities, Baltic States.

Introduction

The protection of a child's rights and the protection of national minority rights are relatively recent developments in international human rights law. It cannot be said that either the rights of the child or the rights of national minorities have been unknown in constitutional law, but it must be admitted that extensive constitutional jurisprudence is seriously lacking in its interpretation of the content of these human rights.

A modern democratic state must be based on respect for fundamental human rights, which also includes linguistic aspects (De Varennes, 2017). Latvia and Lithuania are two European Union (EU) member states that have established a strong institutional and legal basis focusing on defending children's rights. However, considering the different national composition in each country, their cultural, political and legal aspects with regards to the status of national minorities, their rights and the level of state interference, this has resulted in quite different contexts since they regained their independence in the

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1990s. Latvia was the Baltic country that was the least protected from the immigration of large numbers of people from the other Soviet republics. Thus, the 'Soviet heritage' in the form of the Russian-speaking population is a major factor in Latvia, which has also manifested itself in the formation of significant judicial practice. The Constitutional Courts of Latvia and Lithuania, as well as the European Court of Human Rights (ECtHR), have typically addressed the conceptual issues of national minority rights from the perspective of the right to education, or more precisely, the right to receive education in their native language (with regards to Latvia, this article concerns the national minorities whose native language is Russian).

Education is both a human right in itself and an indispensable means of realising other human rights (General Comment 13, 1999). It is also a responsibility (Zendeli, 2017), as education provides the opportunity for a person to develop, establish a life full of self-respect and to become a full member of society, including taking part in the conduct of public affairs. Therefore, education has become an important function of the state (Beiter, 2006). In the context of the International Covenant on Economic, Social and Cultural Rights (1966), Art 13, education is the means to develop and strengthen the knowledge necessary for civic participation. It is understood that there is a close interplay between education and statehood, as has been established in constitutional jurisprudence. This emphasises the role of education in a state language in a contemporary democratic state (Vizi, 2013).

1. Genesis of the concept of education for national minorities

Historically, the first attempt to create a unified, linguistically and culturally homogeneous state started with the French Revolution in 1789. The model, 'one state, one nation, one language', was clearly based on national unity and was followed by the newly created states in the 19th and 20th centuries (Vizi, 2013). After the First World War and the subsequent collapse of four European empires, the issue of national minorities became relevant in the context of self-determination of the Latvian, Lithuanian and Estonian people.

1.1. The newly independent Baltic states and the role of the League of Nations

After the First World War, the League of Nations sought to reduce ethnic strife by addressing its causes. It imposed binding requirements on individual states regarding the protection of minority rights. As a condition for recognition of independence, the League of Nations required newly independent states (including Latvia, Lithuania and Estonia) to unilaterally declare respect for the rights of national minorities. Before being admitted to the League of Nations on 22 September 1921, Latvia, Lithuania and Estonia were required to sign identical declarations expressly agreeing to respect the rights of national minorities (see, for example, the Declaration Concerning the Protection of Minorities in Lithuania, 1922).

In the period between the two World Wars, certain laws were adopted in the Baltic states to ensure the existence and development of national minorities (including in educational institutions). The treaties included the right to equal treatment, the right to citizenship and the right to establish and govern their own institutions, but also obliged states to provide fair financial support to schools where instruction at the primary level would be conducted in a minority language, if there was a sufficient number of minority representatives (Kalniņa, 2016).

The Baltic states developed internal systems of national minority rights, reinforced by the guarantees of the League of Nations at the international level, but in other countries, such as Germany and Denmark, national minority rights were an internal affair of the state (Trumper, 1927). In practice, minorities were active in establishing national schools, organisations, cultural institutions and a press in their native language. Latvia and Estonia were the only European countries to finance education, at public expense, in the native language for national minorities (Bleiere et al., 2005). During the interwar period, Lithuania allowed national minorities to choose where to educate their children – in state schools, where mostly Lithuanian children were educated, or in private minority schools (Polish, German, Hebrew and

Yiddish). The number of national minority schools was constantly changing, as were the regulations governing their operation and the content of their education (National Education Agency, 2022).

1.2. Post-Soviet transformation of the concept of national minorities: the influence of international law

In the 1990s, following the collapse of the Soviet empire, a number of Central and Eastern European countries (CEE countries) took the democratic path and chose to create ethnically homogeneous nation-states, emphasising the overlap of the territorial boundaries of the state and the nation at the level of the Constitution, but in reality uniting ethnically mixed populations with multilayered collective identities (Dalle Mulle, Prott and Ambrosino, 2024), prioritising the civic nation, the official language as an integrating factor, the common values of the state and the protection of the rights of individuals. However, the historical circumstances of the Baltic states are different from those of other CEE countries, as they have had to liberate themselves from occupation and re-establish an independent state. It should be noted that the occupation also had a significant impact on the national composition of these states. At the time of the restoration of independence, the Lithuanian parliament chose the softest approach to the status of national minorities, especially to post-Second World War migrants, mostly the Russian diaspora, with no major obstacles to grant citizenship to the residents of Lithuania. Meanwhile, Latvia and Estonia adopted more restrictive laws on citizenship, introducing requirements for naturalisation.

In the Constitutions of all three Baltic countries, their respective national languages were adopted as the state language, while Russian was abolished as the official language. At that time, this constitutional principle greatly complicated the situation for the Russian-speaking national minorities, as some of them, especially those who had moved during the period of occupation, did not speak the state language, educated their children only in Russian, and effectively lived in parallel societies.

Latvia has the highest proportion of minorities of any European country. The *Law on Education*, adopted in 1991, ensured that representatives of other nationalities living in the country also had the right to education in their native language, in accordance with the *Law on Languages* and relevant guarantees. The state created the conditions for the realisation of these rights, as the purpose of the law was to ensure that every resident of Latvia had the opportunity to become a member of the democratic Latvian state and society (Izglītības likums, 1991).

In 1998, the Satversme (Constitution of Latvia) was amended by adding a new Chapter: 'Fundamental Human Rights'. Article 114 provides that persons belonging to national minorities have the right to preserve and develop their language, ethnic and cultural distinctiveness. According to Ineta Ziemeļe, professor of international and EU law, the Constitution requires that a model of cultural autonomy for national minorities be established in the country, as Article 114 of the Satversme specifically recognises the collective right of persons belonging to national minorities to preserve their group-specific cultural identity, and therefore a model of cultural autonomy that corresponds to the Latvian reality should be established in the country to preserve and strengthen the identity of national minorities. This includes the need for the state to allow the existence of minority schools and to support them as much as possible, as in most cases, such schools are private initiatives (Ziemeļe, 2011).

The Constitution of the Republic of Lithuania, in addition to a broad catalogue of human rights, has several provisions exclusively for national communities. Article 37 enshrines the right of citizens belonging to national communities to preserve their language, culture and customs, and Article 45 laconically empowers national communities themselves to manage their own national culture, education, charity and mutual assistance; it also establishes the obligation of the state to provide assistance to national communities. It is clear that the Constitution seeks to emphasise the importance of a civil nation, without distinction with regards to nationality, religion or any other characteristic, and the obligation of the state, i.e. its institutions, to provide support and facilities and not to hinder national communities in their autonomous pursuit of their own language, culture and customs. In these laconic provisions, it is possible to recognise the so-called French model, in which national, racial or religious 'minorities' exist *de facto*. It should be recalled that the previous *Law on National Minorities*, adopted in 1989, expired

in 2010, and since then, Lithuania has lived without a law on national minorities. It was only after extensive debates, in 2024, that the parliament adopted the *Law on National Minorities*, which establishes the basic principles for the protection of the rights and freedoms of persons belonging to national minorities.

It is evident that international human rights treaties have had a major influence on constitutional norms and the interpretation of constitutional norms. Political documents for peace and stability were transformed into a legally binding international treaty, i.e. the 1995 Council of Europe Framework Convention for the Protection of the Rights of National Minorities (FCNM). The preamble of the FCNM illustrates this as follows: ‘the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent’. The FCNM, the key international human rights treaty in this area, is very flexible in its application, as the absence of a definition of ‘national minority’ allows the treaty to be tailored to the specific historical, socio-economic and demographic circumstances of each state. Some scholars argue that the definition should be sufficiently precise and, at the same time, sufficiently flexible to prevent states from avoiding their obligations and excluding some individuals from minority status (Uddin Khan & Rahman, 2012).

A definition of national minority may be found in Article 2(a)(i) of the European Charter for Regional or Minority Languages: ‘nationals of that State who form a group numerically smaller than the rest of the State’s population’. It should be noted that none of the Baltic states are among the 25 states that have ratified this international treaty. The reasons for not ratifying this treaty might be explained by Latvia’s experience in ratifying and implementing the provisions of the FCNM.

In compliance with the Council of Europe’s request, Latvia signed the Convention in 1995, but its ratification took 10 years due to the severe consequences of ‘Russification’. The main disagreements were not with Latvia’s historical national minorities, but with the country’s relations with those who had recently arrived in Latvia and had merged into the Russian-speaking linguistic minority, which has its own political leaders (Dribins, 2004). The ratification took place just a few days after the Constitutional Court’s decision in the minority schools case (*Satversmes tiesa*, 2005).

In Ziemele’s view, in the 1990s the international community did not consider the situation in the Baltic states under Article 49 of the 1949 Geneva Convention relative to the Treatment of Prisoners of War, which prohibits an occupying power from transferring populations to achieve the objectives of the occupation policy, and thus ‘Latvia lacked the strength of reasoning after the restoration of independence’, and ‘against a complex foreign and domestic political background, the international legal opinion that Soviet-era immigrants had the right to remain in Latvia emerged, and Latvia had to accept this opinion’ (Ziemele, 2011).

2. Education for national minorities: language as a bone of contention

In the Baltic states, three branches of state policy (policies) can be distinguished, which are directly aimed at regulating the conditions of ethnic/linguistic minorities and limit their social and political opportunities: citizenship policy, language policy and education reform. However, neither the legislators’ solutions nor the path to strengthening the concept and rights of national minorities have been similar. This was directly influenced by the sharp difference in ethnic proportions, so the ‘starting point’ for recognising the rights of national minorities had to go through the concept of strengthening the rights of the core nation – Latvian and Lithuanian.

In terms of demography, Lithuania is a relatively homogeneous country. According to the Population and Housing Census of the Department of Statistics, approximately 84% of the Lithuanian population declares themselves to be Lithuanian (this proportion has not changed since 2001). The new *Law on National Minorities* (2024) sets the criteria for what constitutes a national minority, requiring citizenship and ‘long-term, strong and permanent ties’ with the state for members to qualify as a national minority. Approximately 15% of the Lithuanian population could be considered as belonging to a national minority. However, the great diversity of national minorities and their dispersion throughout the country

make it difficult to overcome the challenges to the realisation of their rights, in particular the right to education.

The Constitutional Court has noted that citizenship expresses the legal membership of a person in the state and reflects the fact that a person legally belongs to the civil nation – the national community. The Lithuanian civil nation – the national community – unites the citizens of the state (irrespective of their ethnic origin); the citizens, as a whole, comprise the Lithuanian civil nation. All citizens of the Republic of Lithuania belong to the Lithuanian civil nation, regardless of whether the said citizens belong to the titular nation (i.e. they are Lithuanians) or to national minorities (Ruling of 10 May 2006). All citizens of the Republic of Lithuania, irrespective of their ethnic origin, are considered equal under the Constitution; they may not be discriminated against or granted any privileges on the grounds of their ethnic origin or nationality. On the other hand, the Constitutional Court has held that integration into the society of Lithuania, as well as becoming a fully fledged member of the national community – the civil nation – is related, *inter alia*, to making an effort to learn the state language, i.e. Lithuanian (Rulings of 30 December 2003 and 10 May 2006).

In a non-scientific context, the Russian-speaking minority in Latvia refers to permanent residents of Latvia who are native speakers of Russian or use it as their main language of communication in everyday life and in their family. In 2000, this minority made up 40% of Latvia's population.³ The term 'Russian-speaking' in the Latvian context implies a linguistic minority, while emphasising that language is an important part of Slavic ethnic identity (Apine & Volkovs, 2007). A study of the language situation found there has been an increase in the number of speakers of the Latvian language in various non-native population groups: in 1989, only approximately 23% of minority representatives knew Latvian; this number had increased to approximately 90% in 2019 and has remained fairly since (Latvian Language Agency, 2021).

2.1. Development of a concept of education for national minorities in Lithuania

Following the restoration of Lithuanian statehood at the end of the 20th century, not only Lithuanians but also other national communities of Lithuania were eager to establish national schools and to reorganise the content of education in existing schools. The most striking example of this was the increase in the number of Polish children who switched to Polish language schools (National Education Agency, 2022). At the end of the 20th century, Lithuania had separate schools in Lithuanian, Russian, Polish, Jewish and Belarusian.

It should be noted that for many decades (if we consider data from 1928 onwards), Lithuania was dominated by a model in which the language of the national minority was the only language taught in national minority schools, and Lithuanian was taught either as a separate subject or as a second foreign language. Later, a decision was made to teach the subjects of history, geography, and civic education and knowledge of the world in the official language in these schools. Bilingual education in Polish or Russian with Lithuanian or combining minority languages (Russian, Polish) as well as trilingual education (Lithuanian, Russian, Polish) are also offered in some schools (Advisory Committee, Opinion, 2025, para 29). It is only since 2020 that at least 5 hours per week have been devoted to learning Lithuanian in national minority pre-school and pre-primary education institutions that use national minority languages.

The *Law on Education* stipulates that in areas with a traditionally large national minority population, the municipality shall, at the request of the community, guarantee education taught in the language of the national minority or be taught the language of the national minority. The legislator also uses the same wording as in the *Law on Education*, 'traditionally inhabited by a large national minority'. Thus, in south-eastern Lithuania, where the Russian and Polish minority groups are most numerous, the network of pre-school and general education schools in the language of the national minority remains the densest.

³ In addition to Russians, the majority of Jews (79.1%), Belarusians (72.8%), Ukrainians (67.8%) and Poles (57.7%) living in Latvia consider Russian to be their native language.

The *Law on Education* also stipulates that general education and non-formal education schools shall enable pupils belonging to national minorities to foster their national, ethnic and linguistic identity and to learn their native language, history and culture. In a general education and non-formal education school whose regulations, in accordance with the wishes of parents (guardians, custodians) and pupils, provide for the teaching of a national minority language or teaching in the language of a national minority, the educational process may be conducted or some subjects may be taught in the language of a national minority. In these schools, the Lithuanian language as a subject is an integral part of the curriculum and is taught at least as often as the native language. According to the National Agency for Education, there are 64 schools in Lithuania where Polish is taught, 26 where Russian is taught and, since 1994, there has been an educational institution where Belarusian is taught. In 2013, a unified curriculum for teaching Lithuanian in national minority schools was launched. Thus, in summary, both the specific provisions of the law aimed specifically at national minorities and the general provisions create the preconditions for ensuring an education system that guarantees the rights of national minorities.

It is clear that linguistic rights are therefore particularly significant to minorities, with language part of their distinct cultural identities. Language is not just a tool for communication. The knowledge and the possibility of employing minority languages in everyday life is crucial to prevent language loss. At the same time, Art. 14 of the FCNM requires that such education is to be set up in 'areas inhabited by persons belonging to national minorities traditionally' or where they live 'in substantial numbers'; on the other hand, there should also be 'sufficient demand' for such education. For numerically small minorities, it is very important to keep this 'substantial number' and also be sure that members of a minority express a demand for such language education. The Advisory Committee states that if persons belonging to the smaller national minorities do not traditionally inhabit particular areas of Lithuania or in substantial numbers, as required by Article 14(2), they nevertheless may learn their language at higher education or non-formal education institutions (e.g. Saturday/Sunday schools) (Advisory Committee, Opinion, 2025, para 170). There are 46 Saturday/Sunday schools in Lithuania: four Armenian, three Belarusian, one Estonian, one Greek, one Karaite, two Latvian, 14 Polish, one Romanian, four Russian, five Tatar, four Ukrainian, one Uzbek, four German and three Jewish. These schools have up to 900 pupils. The pupils learn their native language, the history of their nation, religion, literature, music and other ethnic cultural subjects. This Saturday/Sunday school programme encourages the transmission of the basics of national culture and the promotion and preservation of national identity (National Education Agency, 2022).

The ECtHR has noted in its jurisprudence that in a democratic society, the right to education is indispensable to the furtherance of human rights and plays a fundamental role (*Velyo Veleve v. Bulgaria*, para 33) and that education is one of the most important public services in a modern state. However, it also acknowledges that education is an activity that is complex to organise and expensive to run, whereas the resources that authorities can devote to it are necessarily finite. It is also true that in deciding how to regulate access to education, a state must strike a balance between the educational needs of those under its jurisdiction on the one hand, and, on the other hand, its limited capacity to accommodate them. However, the ECtHR notes that education is a right that enjoys direct protection under the Convention (*G.L. v. Italy*, para. 49). One of the most pressing issues for national minority schools is the provision of teaching materials, especially materials for teaching the native language. National minority schools in Lithuania are allocated a higher amount of teaching funds, of between 20% and 24%, depending on the grade level, and 20% more funds are allocated for textbooks and other teaching materials. Despite this increased funding, some schools lack textbooks and other teaching aids published in their native language for both the native language itself and other subjects in the native language.

The new *Law on National Minorities* emphasises the uniqueness of the language of instruction of national minorities, which is an official language of the EU. From 2019, schools have also been allowed to use textbooks in the native languages of the national minorities taught in Lithuanian schools, developed and published in EU countries (National Education Agency, 2022). Of course, in this case, this only applies to schools with Polish as the language of instruction.

As mentioned above, the most controversial issue is the level of proficiency in the official language of pupils in national minority schools. According to the Constitutional Court, knowledge of the state language is a prerequisite and a necessary condition for the full participation of citizens in the governance of the state, because according to the Constitution, the Lithuanian language, as the state language, is the means of public expression and communication between state and municipal institutions and bodies and with members of society. It is an important element of statehood, a factor that unites all citizens of the Republic of Lithuania, and a factor that integrates the state community, i.e. the civic nation, as it ensures that all citizens of the state have equal opportunities to take part in the governance of their country, to take decisions of national importance and to enter public service on equal terms (Ruling of 10 May 2006). Thus, knowledge of the national language is essential for the successful exercising of the rights of every citizen. The ECtHR and the Latvian Constitutional Court have made very similar rulings in a number of Latvian cases (*Djibouti and others v. Latvia, Valiullina and others v. Latvia*): ‘the measures taken by the Latvian government to increase the use of the official language in schools were proportionate and necessary, in particular to ensure the unity of the education system and a sufficient level of Latvian for the population to be able to participate effectively in public life.’

2.2. Step by step: educational reforms in Latvia

Paradoxically, minority rights, which made the most valuable contribution to the building of Latvia as a democratic state and as a unified society, including the expansion of the proportion of Latvian as a national language in the education, turned out to be an easy target for manipulation and the ignorance, protest and negativity of many Russian-speakers (representatives/descendants of Soviet-era immigrants) against the decisions of the parliament. The Russian-speaking minority did not actively protest political decisions that directly affected their self-realisation opportunities (against citizenship and language policy), but created a protest movement against the policy that was officially aimed at improving the situation of this minority (education policy). Also, the language policy, compared to the previous situation during the Soviet era, when Russian was widely used as the official language, meant additional requirements were necessary. These included the need to take language certification exams in order to keep or find a job, and unexpected second language tests with the imposition of a penalty if the applicant did not pass. In the case of citizenship and language policy, representatives of the state authorities emphasised that these decisions were aimed at strengthening the position of Latvians as an ethnic group compared with the position of non-Latvians. On the other hand, the official goal of the education reform was to increase the competitiveness of non-Latvian children by helping them to pursue higher education and then enter the labour market. However, these education reforms gave rise to the largest and the most intense protests in the history of independent Latvia.

The Saeima (the Latvian parliament) adopted amendments to the *Law on Education*, which stipulated that minority comprehensive schools, where the language of schooling was not Latvian, should gradually introduce the Latvian language.⁴ As of September 1, 2004, secondary education in state and local government educational institutions can only be offered in Latvian according to the standard: at least 60% (in Latvian) and up to 40% (in minority languages) (Boguševiča, 2009). The last phase of the reform was undertaken in 2022, when the Saeima adopted amendments to the Education Law and the General Education Law, which stipulate a transition to teaching exclusively in Latvian within a 3-year timeframe. Concurrently, minority students at the pre-school and primary education levels have the opportunity to learn the language and cultural history of minority groups within the context of the education programme.

⁴ In grades 1 to 9, in at least two, and in grades 10 to 12, in at least three humanities or science subjects, teaching must be conducted primarily in the official state language (Latvian language); this started from the 1996/97 school year. Since 1999, higher education in state and municipal higher education institutions has only been conducted in the Latvian language. Knowledge of the Latvian language is therefore a prerequisite for higher education institutions in Latvia.

3. Fair balance between the right to education and minority rights

This analysis shows that it is not straightforward to strike a fair balance between the right to education and the interests of national minorities in terms of the best interests of the child. In implementing policies for minorities, it is essential to bear in mind the importance of education and the principle of the best interests of the child, to provide the next generation with a balanced set of competences that will enable them to participate fully in society, while preserving their distinct identity, native language and traditions. *Prima facie*, it may seem natural that children from minority communities should have the opportunity or even the right to be educated in both languages, the language of their national minority and the official language. The education system thus faces a dilemma: if it accepts separation, the unity of the state may be threatened. On the other hand, while the objective of equal opportunities seems to be best served by promoting identical and integrated education for all children, this entails the risk of eroding minorities' specificities and furthering assimilation (Ringelheim, 2013).

According to the provisions of the Constitutions and the Convention on the Rights of the Child (CRC), parents have the primary responsibility for the upbringing and development of their children, while it is also a positive obligation of the state to respect the rights of parents to ensure that teaching and education is in conformity with their religious and philosophical convictions (ECtHR, *Campbell and Cosans v. the United Kingdom*, para 37, *Folgerø and Others v. Norway*, para 100). According to ECtHR jurisprudence, the state must ensure that knowledge or information included in the curriculum is communicated impartially, critically and pluralistically. It is prohibited for the state to carry out indoctrination efforts that could be interpreted as disrespecting the religious and philosophical beliefs of parents (*Folgerø and Others v. Norway*, para 100).

It might be argued that educating children in separate schools, without giving them the opportunity to get to know another nationality's traditions and culture, and thus without the opportunity to create strong bonds of daily communication and friendship, hinders goodwill, consensus and understanding of diversity, and could eventually lead to social and cultural conflicts. ECtHR jurisprudence argues that international human rights law favours integrated over separate education, but at the same time, it increasingly calls for a transformation of the content and modalities of the instruction provided in common educational establishments (Ringelheim, 2012).

3.1. The search for balance in the court labyrinths in Latvia

Since the 1990s, education reform in Latvia regarding language, i.e. the proportion of usage of the state language in schools that implement minority programmes, has been slowly developing towards a more national state approach. Every amendment has been 'tested' in the Constitutional Court: in 10 years, the Constitutional Court has reviewed nine cases regarding the language of education. On several occasions, the ECtHR has also given its interpretation of the legality of the education reforms.

In 2005, in case No 2004-18-0106, the Constitutional Court particularly emphasised the process of transitioning school reform to bilingual education (it is unacceptable to worsen its methodology and quality). In 2005, in case No 2005-02-0106, the Constitutional Court indicated that neither Article 91 (Human rights shall be realised without discrimination of any kind) nor Article 112 (Everyone has the right to education) of the Satversme directly imposed an obligation on the state to participate in the financing of private educational institutions. The right of minorities to 'preserve and develop their language, ethnic and cultural identity' has a different purpose from education, which enables them to participate in society as full citizens of the state. This is why the implementation of the right of minorities to receive education in their native language is limited (Jarinovska, 2011).

In 2005, the Saeima ratified the Convention by adding a reservation on the 'definition of a minority', setting two criteria (which are not cumulative): Latvian citizenship and traditional residence of the nationality in Latvia for generations (according to experts, a two-generation milestone). According to Article 21 of the Convention, its operation must not affect the rights of the majority, which in the case of Latvia was and is threatened. Therefore, when declaring reservations, the rights of national minorities

not to be segregated, as well as the interests of the Latvian people to exist, were respected at the same time. It is important to protect both the legitimate interests of the majority and to proportionately respect the rights of minority groups (Topidi, 2010).

In Latvia, the legal scholarship, although is dominated by the viewpoint which is in consistency with the argumentation of the Constitutional Court, is not monogenous. There are certain publications that express a viewpoint in *prima facie* ordinance with the Convention, therefore targeting the foreign audience which is not aware of the post-soviet microclimate in the society. In the period since 2018, the Latvian legislator has consistently made amendments to the regulatory acts to regulate the transition of education to the Latvian language.

The Constitutional Court (case No. 2018-22-01) examined the conformity of the Amendments to the Education Law (providing that in private institutions of education, general education and vocational education at the level of basic and secondary education shall be acquired in the official language) with the first sentence of Article 112 of the Constitution, agreeing that the contested norm restricted the fundamental rights of a person, but the restriction was regarded as proportionate and consistent with the Constitution. General education is not limited to the acquisition of certain knowledge and skills by a learner. The objectives of general education should be examined more broadly, as it must achieve several social objectives at the same time. Among other things, general education should ensure that a learner is able to freely use the official language (case No. 2018-22-01). The Constitutional Court noted that, presently, there were no grounds to conclude that the contested norm and the legal norms systemically linked to it would cause a diminishing in the quality of education, even more, the specialised course 'Language and Literature of the Ethnic Minority' as well as the specialised subjects supplemented to the obligatory programme ensures to the persons belonging to ethnic minorities the minimum rights for due acquisition of the minority language and preservation of identity.

Both the Council of Europe's Venice Commission (2020) and the Fourth Opinion on Latvia (Advisory Committee on the Framework Convention for the Protection of National Minorities 2023) provided their opinions on Latvian legislation pertaining to minority education. They include different arguments in relation to respect for the rights of national minorities from those provided by the ECtHR. The ECtHR developed its position on the protection of constitutional identity as a legitimate ground for differential treatment in two judgements against Latvia in 2023: *Valliulina and Others v. Latvia* and *Džibuti and Others v. Latvia*. Neither judgement found any violation of the Convention.

The facts of both the *Valliulina* and *Džibuti* cases concerned an educational reform implemented in Latvia in 2018, which provided for an increase in the proportion of Latvian as the language of instruction in educational institutions. The applicants claimed that the reform violated their rights as children of minority families to education in the minority language, i.e. Russian. In addition, the applicants claimed that the reform implemented in 2018 restricted the rights of the applicants' children to access education and discriminated against them on grounds of language, thereby violating the applicants' right to a private life, i.e. Article 8 of the Convention, Article 2 of Protocol 1 to the Convention – the right to education, as well as Article 2 of Protocol 1 in connection with the prohibition of discrimination, i.e. Article 14 of the Convention.

With regards to possible discrimination in the *Valliulina* judgement, the ECtHR recognised that it was necessary to take into account the fact that Latvia had chosen only one official language for the country and had constitutionally reinforced such a rule. In addition, it is necessary to take into account the history of the use of the Latvian language, which had been severely restricted for more than 50 years. Therefore, the need to protect and strengthen the Latvian language is a legitimate aim. The ECtHR also recognised as legitimate the aim of 'the principle of the unity of the educational system', to ensure equal access to the educational system for all and to prevent the consequences of the segregation created during the Soviet regime. In the analysis of the proportionality of the difference in treatment, particular emphasis is placed on the wider context of the case, namely the fact that Latvia is a victim of aggression by the former USSR (Union of Soviet Socialist Republics), as a result of which the ethnic composition of the Latvian population has changed significantly, both as a result of the USSR's migration policy and as a

result of mass deportations. In addition, a policy of Russification was implemented in educational institutions, resulting in the division of society. Consequently, the ECtHR concluded that 'Issues relating to the need to protect and strengthen the national language go to the heart of the country's constitutional identity', without finding discrimination.

In 2004, the Constitutional Court issued two rulings concerning the language of education. In case 2022-45-01, the Court found that the legal provision providing for the transition to the state language in private minority educational institutions restricts the rights of persons belonging to minorities, but it found this restriction to be proportionate: the transition to the state language did not reduce the quality of learning the curriculum. The court particularly emphasised the importance of the information space: if the information space is available only in Russian due to a lack of knowledge of the state language, children may be exposed to the influence of disinformation and the resulting self-segregation. In case no. 2023-15-01, the failure of the previous model of bilingual education was actually established: minority education programmes, according to which it was possible to acquire bilingual education in certain proportions, 'could not adequately ensure the acquisition of the state language'.

3.2. Fair balance between the right to education and minority rights in Lithuania

The Constitutional Court has noted in a number of cases that the values enshrined in the Constitution form not only a coherent system but also a balance between them, and that at the intersection of the protected values, solutions must be found to ensure that none of the constitutional values is denied or unjustifiably restricted by the law (Rulings of 16 March 1999, 23 October 2002, 29 September 2015 and others). On the other hand, it is essential for the legal system to maintain stability, a balance of values, respect for legitimate expectations and, of course, to avoid legal uncertainty. In 2024, the *Law on National Minorities* was adopted after a 14-year legal gap; it not only has legal but also symbolic significance, as the concepts of national identity, national minority and historical minority have been consolidated.

Analysing the international standards that guarantee the right to education for minority children, it is clear that, first of all, the national minority should be recognised by the state authorities, it should live traditionally in substantial numbers and it should demonstrate demand for education in the minority language. As Tomaševski states, the overarching requirements in implementing the right to education have been conceptualised as the '4As': education must be available, accessible, acceptable and adaptable (Tomaševski, 2001). To achieve these objectives, it is not sufficient to declare tolerance and mutual understanding; the state authorities must adopt a range of measures. The complexity of education concerning national minorities is given by the need for multiple approaches on different levels and with various depths of analysis that require interdisciplinary conceptual and methodological references (Brie, 2015). It also means that public authorities may have to provide the proportionate use of a minority language as the medium of instruction in public schools, as justified by the circumstances, especially in light of the number of individuals affected and the practicalities of the situation (De Varennes, 2004).

At the beginning of 2025, the Advisory Committee encouraged the Lithuanian authorities to take the necessary steps to ensure that individuals who belong to national minorities have access to pre-school education in their minority language as well as to primary, basic and secondary education with the minority language as the main medium of instruction (AC, 2025, para 175). In particular, this should involve cooperation with representatives of the Karaim and Roma minorities to ascertain whether there is demand for introducing the teaching of Karaim and Romani in general education (AC, 2025, para 176).

These recommendations of the Committee will need to be analysed, and ways to implement them will need to be found. However, the question arises as to whether, in the 21st century, it is really in a child's best interest to preserve her or his national identity, culture and traditions and the traditional way of life of her or his national community. Or is it in the best interests of the child to acquire a quality education, to participate competitively in the labour market and to make full and independent decisions in state and local elections?

Effective access to quality education determines the level of economic and social inclusion, as well as helping to prevent social conflicts. The FCNM guarantees the right of members of national minorities to learn their own language or to be educated in their own language, but equally important is a sufficient level of knowledge of the official language. As the Lithuanian Constitutional Court (2006, para 4) has stated, knowledge of the official language is ‘a prerequisite and a necessary condition for the fully-fledged participation of the citizens in the governance of the state’. Learning the official language for students who belong to national minorities contributes to the integration of society as a whole (AC, Thematic Commentary, 2024, para 11).

Research indicates that, in many areas, the average educational achievements of students who study in Polish are lower than the average achievements of students in the country as a whole (Urbanovič et al., 2023). Every 3 years, pupils in Lithuania take the international PISA test⁵. The PISA results can provide important insights into the educational system of a country and pupils’ skills, or lack thereof. Some important observations were made after analysing the PISA results: Polish and Russian schools underperformed in all three disciplines evaluated by PISA compared with schools where Lithuanian is the language of instruction, with this tendency being extremely prominent in rural areas. This means that in most cases, children from minority schools located in small towns and/or rural regions underperform compared to the average national result. (Dabašinskienė, Kubiliūtė, 2021). Officially, approximately 21% of graduates from schools for national minorities failed the Lithuanian language and literature state exam. This suggests that the decisions of state and municipal authorities and schools should be reviewed, not to lower the requirements of the official language exam, but to provide a higher quality of knowledge. It appears that the beginning of a potentially transformative phase is gaining momentum (Dabašinskienė, 2023), but it will require continuing efforts and open dialogue.

4. The concept of the best interests of the child

An innovative concept of the best interests of the child was introduced by the CRC. Initially, the best interests standard was defined by the goals of physical protection and psychological well-being of children (Alston, 1996), while in the Convention it was transformed to become the guiding principle for the protection of children’s rights. It derives from CRC Art. 3: ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’. In General Comment No. 14 (GC), the Committee on the Rights of the Child further elaborates on the elements that should be evaluated and balanced in light of each child’s specific circumstances in a ‘best interests of the child determination’. The elements consist of the individual characteristics of a child (i.e. the child’s characteristics, views, identity and vulnerability), and the social and cultural context in which children find themselves (i.e. family environment and relations; care, protection and safety; and the right to health and education). (Committee on the Rights of the Child, General Comment 14, 2013, paras 48–79). According to this description, the child’s best interests not only refer to an interpretative legal principle but also to a substantive right and a rule of procedure at the same time.

Neither the CRC nor GC No. 14 gives a precise description regarding what exactly comprises the best interests of the child in different situations. However, one cannot expect it to give a general description, as the social and economic situations of each state differ considerably; furthermore, the individual circumstances of each child must always be assessed (Takacs, 2022). The principle of the best interests of the child affects an incredibly wide range of areas of law. It also affects a large number of fields, such as education, medicine and consumer rights. It applies to the public sector as well as to certain private structures and private relationships. It is present in international law as well as in national regulation. It is understandable that this principle is dynamic and flexible. Unfortunately, flexible interpretations can also create problems or be misused to justify illegal acts. The CRC and its protocols are currently the strongest instrument regulating the social, political, economic and natural rights of the child (Malekian

⁵ PISA (the Programme for International Student Assessment) is an international assessment, administered by the Organisation for Economic Co-operation and Development (OECD) every 3 years; it is used to measure pupils’ reading, mathematics and science literacy.

and Nordlöf, 2012). Most of the principles contained in the CRC themselves serve to achieve the goal of satisfying the best interests of the child, indicating various elements that are in the best interests of the child, such as protection from violence, the right to education, the right to adequate living conditions, the right to play and rest, and protection against any form of exploitation (Freeman, 2007).

Article 1 (Obligation to respect human rights) of the European Convention on Human Rights is the basis for the case law of the ECtHR on the rights of the child. The best interests of the child appear to be a fundamental principle of interpretation of the law, which acts as a tool for the interpretation of a legal provision (Japharidze, 2023).

It is vital that courts and other institutions base their decisions on what is in the best interests of the child. It is also the responsibility of the legislator to ensure that any adopted or amended regulatory enactments protect the interests of the child in the best possible way. In its judgement, the Constitutional Court of Latvia included the following statement: 'The protection of human rights in every society begins with society guaranteeing the rights of children, ensuring they are able to develop their potential to the best of their ability, so that they are later ready to live a full adult life' (Constitutional Court of the Republic of Latvia, 2009).

In 2014, the Council of Europe Committee of Ministers found that, while education reform has increased the official language skills of minority pupils, the limited interaction among pupils from different language backgrounds does not sufficiently promote understanding and friendship between different nationalities. A significant number of minority schools reportedly lack both educational materials and adequately trained teachers, including for subjects that should be taught in the national language or bilingually. The Committee of Ministers stressed that Latvia must work closely with representatives of national minorities to achieve an integrated education system in line with the methodology of bilingual and multilingual education, combining the effective and high-quality teaching of national minority languages with the acquisition of national language skills, thus promoting social integration and interaction among pupils from different backgrounds (Resolution, 2014).

It is not enough to guarantee a child's right to attend a mainstream school, so that a child belonging to a national minority can have equal access to a mainstream school – the state has a positive obligation to provide effective access to education, which means assessing the special educational needs (linguistic as well as socio-economic) of each child and also ensuring that he or she has the opportunity to learn his or her own language, culture and religion. When it comes to ensuring the rights of children belonging to national minorities, including the right to education, it is important to start with the best interests of children. The legislator faces a very difficult task to not only find a fair balance between competing rights, in this case the right to education and the rights of national minorities, but also to assess how the chosen solution corresponds with the best interests of the child. Under various international treaties (especially CRC and FCNM), countries are obliged to create the conditions for children to enjoy the right to education, bearing in mind that in modern times, education holds special importance. It not only develops a child physically, intellectually and emotionally but may also open opportunities, transmit values between generations, and provide an essential basis for achieving the best possible quality of life. Education has often been considered a key element that guarantees human beings' success through the acquisition of knowledge and skills that enable them to seamlessly move through their lives (Baporikar, 2016).

Conclusions

In the Baltic states, three branches of state policy (policies) can be distinguished that were directly aimed at regulating the conditions of ethnic/linguistic minorities and limited their social and political opportunities: citizenship policy, language policy and education reform.

Thirty-five years after regaining their sovereignty, the Baltic states have become politically stable and economically prosperous members of the EU and various international and regional organisations. Accession to these organisations has had a significant impact, leading to changes for the protection of

human rights in general, but also for minority rights. Despite very positive political and economic results, these countries face various challenges to ensure every citizen feels empowered to create added economic and social wealth, while reducing the influence of the kin state, and to strengthen the link between national minorities and their country of origin.

In 2021, the EU Strategy on the Rights of the Child set out priorities for children's participation in political and democratic life, socio-economic inclusion, health and education, protection, and child-friendly justice, as well as for the digital and global domains. The aim is to raise awareness and knowledge of children's rights, including among professionals who work with children. The European Commission's 2021 strategy to strengthen children's education includes awareness-raising and training to promote citizenship, equality and participation in democratic processes. It aims to support schools in engaging pupils in daily life and decision-making (European Commission, 2021).

It is essential for public authorities, both legislative and executive, to assess whether any decisions taken are in the best interests of the child when formulating education strategy; when regulating the education system, including the admission of children to mainstream schools; and when determining the content of education and the language of instruction. The focus should not only be on costs, efficiency, the limits of resources and the quality of education. Public authorities must seek to fulfil the positive obligation of the state to provide minority children with the right to a quality education, which, under the CRC, is in their best interests and, on the other hand, under the FCNM, guarantees their right to education in their own language. Article 28 of the CRC provides that all children have the right to free compulsory education. According to Article 29 (1) (c), this right extends far beyond equality of access to education and includes provisions concerning the development of a child's cultural identity, language and values of the child's country of origin (FRA, 2017).

The challenge of ensuring the best interests of the child arises not only in individual family court disputes but also for legislators in regulating public legal relationships, how to determine and ensure that, in a given statutory relationship, it is weighed against the following: what is considered to be in the best interests of the child in that relationship.

From this study, it is evident that the two Baltic states discussed have developed different positions in relation to national minorities. Lithuania and Latvia show the challenges that states face in ensuring the best interests of a child who belongs to a national minority when considering their education.

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