

Mandates of the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on minority issues

REFERENCE:
OL LVA 1/2018

26 January 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 26/17, 34/18 and 34/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the proposed amendments by the Government to the Law on Education with regard to the medium of instruction in basic and secondary education, as well as the recent judgment by the Constitutional Court that accepted the constitutionality of the "loyalty" clause for teachers and schools administrators introduced in the Law on Education in 2015 and 2016.**

According to the information received:

On 6 October 2017, the Minister of Education and Science, Mr. Kārlis Šadurskis, announced his intention to switch instruction in public secondary level education institutions (grades 10-12) to Latvian language only, except for the lessons of minority languages and of subjects related to minority culture and tradition. The intended timing for the implementation of such an initiative was placed in the beginning of the academic year 2020/21. Until today, the transitional provisions of Section 9 of the Law on Education provide for a secondary level general and professional education in the Latvian language "for not less than three-fifths of the total teaching load in the academic year".

On 9 October 2017, the ruling coalition expressed support for Mr. Šadurskis statement, despite the fact that the Prime Minister had already in September allegedly claimed that on the issue of languages of instruction the Government would adopt a gradual approach with regards only to the national exams, and that other language issues in the national curriculum were not in the agenda of the Cabinet of Ministers.

On 10 November 2017, during a press conference, the Minister of Education and Science, presented a report "On strengthening the Latvian language in general education". In this report, Mr. Šadurskis, presented the main elements of his proposal for the amendments to the Latvian Law on Education, which went beyond the initial plan for the use of the Latvian language as the sole medium of

instruction only in public high schools (grades 10-12) and proposing significant amendments mainly to Sections 9 and 41 of the Law on Education.

The proposed amendments to Sections 9 and 41 of the Law on Education provide for education only in the official language in both the public and private educational institutions, of general and professional education, covering the grades from 10 to 12 of the secondary educational level. In addition, and contrary to the current provisions of the Law with regard to the possibility of having another language as medium of instruction in private educational institutions, as well as in state and local government educational institutions in which educational programmes for ethnic minorities are implemented, the newly proposed amendments provide that education in “another language” may be acquired only in:

- a) educational institutions offering educational programmes in accordance with bilateral or multilateral international treaties of the Republic of Latvia;
- b) pre-school and basic education levels in educational institutions implementing educational programmes for ethnic minorities, with the exception of grades 7 to 9 of basic education, in which at least 80% of the teaching is to be done in the official Latvian language. The currently implemented Cabinet Regulation No. 468 of 12 August 2014 on the standards and models of state basic education provides for more advantageous framework for the teaching in minority languages for grades 7 to 9 of basic education. Teaching in minority language may constitute up to 40% of the total teaching load in the academic year (article 10.2);
- c) educational institutions offering lessons in official languages of the European Union, thus excluding minority languages that are not EU official languages.

The report of the Minister of Education and Science makes also reference to the Ministry's intention to submit to the Cabinet of Ministers, in April 2018, a proposal for the introduction of a system of bilingual education (Latvian language and mother tongue) at the pre-school level and to begin revising the educational programmes for ethnic minorities in order to bring them in conformity with the amendments to the Cabinet of Ministers regulations No. 1510 and No. 335, which were adopted by the Cabinet of Ministers on 8 August 2017, and which provide for the exclusive use of the national language in the state examinations for grade 9, starting from the school year 2019/20, and in centralized examinations for grade 12 of the general secondary education starting from the schools year 2017/18.

On 5 December, the Ministerial Cabinet approved the report by Mr. Šadurskis and on 7 December the draft amendments to the Law on Education were submitted to the Cabinet for consideration and adoption before transmission to the Parliament.

On 23 January 2018, the Cabinet of Ministers adopted the amendments. To date, there has been allegedly no consultation with the minorities in Latvia on the proposed amendments to the Law on Education.

At the same time, on 21 December 2017 the Constitutional Court issued a judgment on the constitutionality of the amendments to the Law on Education, which were adopted in 2015 and in 2016 by the Parliament and which introduced the notion of “loyalty to the Republic of Latvia and its Constitution” as a requirement for a person to work as a teacher or school administrator under Sections 30, 48 and 50 of the Law on Education.

The Court found that “loyalty” clause did not contravene articles 100 and 106 of the Constitution of the Republic of Latvia (*Satversme*) on freedom of expression and on the person’s freedom to choose their employment and workplace. The Court also argued that the general reference to “loyalty” offers the appropriate flexibility to this notion, which is acceptable as it renders the notion more adaptable to “changing societal conditions”. In paragraph 16.2 of the judgment the Court quoted also the position of the Parliament, which considers the recognition of the Latvian language being the only state language as an example of loyalty. According to information received, the Constitutional Court’s ruling is final and not subject to appeal.

While we do not wish to prejudge the accuracy of the information made available to us, we would like to express our serious concerns at the above-mentioned proposed amendments to the Latvian Law on Education, which if approved by the Parliament, will have a negative impact on the protection and promotion of the rights of minorities in Latvia, and particularly on the right to education without discrimination of minority students in relation to the use of their mother tongue, and their right to take part in cultural life. We are concerned that the proposed amendments intend to remove the teaching in minority languages at the general and professional secondary level education in both public and private educational institutions, whereas at the same time they reduce the portion of minority language education in the last three grades of basic education (grade 7 to 9) in those educational institutions that implement minority educational programmes. Furthermore, we note with concern that these proposed amendments have been put forward without prior consultation with the minorities in Latvia, and that there are additional plans for the exclusive use of the official state language in the state, centralized and other national examinations as per the amendments to the Cabinet of Ministers Regulations No. 335 and 1510, adopted by the Cabinet of Ministers in August 2017.

We express additional concern that the restrictions against the use of minority languages in education likewise represent unnecessary and disproportionate restrictions to

the right to freedom of expression as access to language is a necessary component for the ability to receive and impart information.

Finally, we express serious concerns at the recent validation by the Constitutional Court of Latvia of the “loyalty” clause introduced in the Law on Education in 2015, and which is to be applied as a requirement for all those working as school teachers and school administrators. Such a clause, coupled with the specific reference, in Section 51 of the Law on Education, to the responsibilities of the teachers to, among other things, educate “respectable, honest, responsible people, who are patriots of Latvia, and to strengthen their attachment with the Republic of Latvia”, may lead to discriminatory practices against minorities in the area of education, including with regard to their right to freedom of opinion and expression and their right to take part in cultural life within the educational system. It may also lead to discriminatory or arbitrary actions against minority teachers and other educational personnel, and to their exclusion from employment or participation in the educational system altogether. Finally, it raises serious matters in relation to the use of their language between members of a linguistic minority.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the next steps with regard to the legislative process and reform of the national education system in case these amendments are adopted and implemented.
3. Please indicate how the recent amendments to the Law on Education proposed by the Ministry of Education and Science and those adopted by the Parliament in 2015 and in 2016, which include the “loyalty” clause for teachers and school administrators, conform with Latvia’s international and regional commitments with regard to the protection and promotion of the rights minorities, including their cultural and linguistic rights. In particular please indicate whether these amendments are in line with the relevant provisions of the United Nations treaties, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the Framework Convention for the Protection of National Minorities of the Council of Europe, and key documents on minority rights such as The Oslo Recommendations regarding the Linguistic Rights of National Minorities, The Hague Recommendations Regarding the Education Rights of National Minorities,

and the Document of the Copenhagen Meeting of the CSCE Conference on the Human Dimension.

4. Please provide information on the current state of affairs with regard to the use of minority languages in state, national, centralized and non-centralized examinations of the basic and secondary educational levels and indicate relevant legal provisions and implemented policies and initiatives.
5. Please provide detailed information on the measures undertaken by the Government of the Republic of Latvia to ensure promotion and protection of minority linguistic rights and access to quality education by minorities, including to education with minority language as medium of instruction at all levels.
6. Please indicate the steps undertaken to ensure that minority language teachers and other educational personnel are not discriminated against and intimidated or harrassed on the presumption of their “disloyalty” to the Republic of Latvia or their methods of work and teaching which are not deemed “conforming” with the purpose of educating “respectable, honest, responsible people, who are patriots of Latvia”.
7. Please indicate the steps undertaken to impartially, promptly and thoroughly investigate cases of re-assignment, dismissal, harrassment or intimidation of any school teacher, school administrator or other educational personnel on the basis of the “loyalty” clause of the Law on Education and harassment or intimidation in school of students who are members of minorities, and provide information of the outcome of these investigations. If no such inquiry has taken place, please explain the reasons why.
8. Please provide information on concrete policies and initiatives undertaken by the Government, including in collaboration with civil society organizations, which aim to protect and promote cultural diversity in educational institutions in pre-school, basic, secondary and tertiary, general and professional, education levels.
9. Please provide data on the number and location of schools affected or likely to be affected by the requirements on the increase of use of the official state language as medium of instruction, and the minority language affected, as well as the actual or potential numbers of students affected.
10. Please also provide data on number and location of schools which will not be affected by the requirements on the increase of use of the official language as medium of instruction in the case of the use of a European Union language or because of a bilateral or multilateral treaty, the language of instruction in these schools, and the number of students

involved who can still benefit from an instruction in a language other than the Latvian.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Finally, we would like to inform your Excellency's Government that this communication, as a comment on pending or recently adopted legislation, regulations or policies, will be made available to the public and posted on the website page for the mandate of the Special Rapporteur on the right to freedom of expression: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>.

Please accept, Excellency, the assurances of our highest consideration.

Koumbou Boly Barry
Special Rapporteur on the right to education

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Fernand de Varennes
Special Rapporteur on minority issues

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to article 26 (2) of the Universal Declaration of Human Rights (UDHR), which stipulates that education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms and that it shall promote understanding, tolerance and friendship among all nations.

We would like to recall your Excellency's Government's obligations under international human rights law that your Excellency's Government has undertaken. In particular, we would like to refer to the International Covenant on Civil and Political Rights (ICCPR) ratified by Latvia on 14 April 1992. Article 27 of the Covenant states that: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". Article 26 of ICCPR also prohibits any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds, including race, language, religion, national or social origin, property, birth or other status.

We would equally like to refer to article 19 of the ICCPR, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". This right is protected also through article 19 of the UDHR and article 13 of the International Convention on the Rights of the Child (CRC), ratified by Latvia on 14 April 1992.

In this connection, we reiterate the principle enunciated in Human Rights Council Resolution 12/16 which calls on States to refrain from imposing restrictions on freedom of expression, including by persons belonging to minorities or vulnerable groups.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) to which Latvia has been a party since 14 April 1992, establishes in article 15 that States Parties recognize the right of everyone to take part in cultural life. As stressed by the Committee on Economic, Social and Cultural Rights, article 15, paragraph 1 (a), of "the Covenant also includes the right of minorities and of persons belonging to minorities to take part in the cultural life of society, and also to conserve, promote and develop their own culture. This right entails the obligation of States parties to recognize, respect and protect minority cultures as an essential component of the identity of the States themselves. Consequently, minorities have the right to their cultural diversity, traditions, customs, religion, forms of education, languages, communication media (press, radio, television, Internet) and other manifestations of their cultural identity and membership". (General Comment 21, para. 32).

In the same General Comment, the Committee on Economic, Social and Cultural Rights also recalled that the protection of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, and requires the full implementation of cultural rights, including the right to take part in cultural life (para. 40). Thus, States are reminded that in many instances, the obligations to respect and to protect freedoms, cultural heritage and diversity are interconnected (para. 50).

The International Convention on the Rights of the Child (CRC), ratified by Latvia on 14 April 1992, establishes under article 29 (c) that the education of the child shall be directed to: “The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.” Article 30 of the Convention requires that “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”

The International Convention on the Elimination of all Forms of Racial Discrimination (CERD) to which Latvia is also party stipulates under article 5 that States Parties should undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to education and training. Article 7 of the Convention requires that “States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups.”

We would also like to refer your Excellency's Government to the Durban Declaration and Programme of Action, and in particular to article 47, that “urges States to guarantee the rights of persons belonging to national or ethnic, religious and linguistic minorities, individually or in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference, and to participate effectively in the cultural, social, economic and political life of the country in which they live, in order to protect them from any form of racism, racial discrimination, xenophobia and related intolerance that they are or may be subjected to”. Paragraph 82 of the Outcome Document of the Durban Review Conference requires that “the existence and the national or ethnic, cultural, religious and linguistic identity of minorities shall be protected, and that the persons belonging to these minorities should be treated equally and enjoy human rights and fundamental freedoms without discrimination of any kind.”

We would also like to refer to the 2012 report by the Special Rapporteur on minority issues, which warned against state policies promoting a single national language as a means of reinforcing sovereignty, national unity and territorial integrity and called on states to ensure the legal recognition and legislative protection of minority languages and to make provisions and undertake policies to enable minorities to learn and be taught in their mother tongue (A/HRC/22/49, paragraphs 39, 41 and 83), as well as to the 2017 report of the Special Rapporteur entitled Language Rights of Linguistic Minorities: A Practical Guide for Implementation, which indicated that in relation to the use of a minority language in public schools where “there is a sufficiently high numerical demand, public education services must be provided in a minority language to the appropriate degree, broadly following a proportional approach. This includes all levels of public education from kindergarten to university. If demand, the concentration of speakers or other factors make this not feasible, state authorities should as far as practicable at least ensure availability of minority language teaching. In addition, all children must have an opportunity to learn the official language(s)” and in the case of private schools that the establishment and operation of private schools and educational services using minority languages as a medium of instruction should be allowed, recognized and even facilitated (HRC/NONE/2017/12, pages 16 and 21).

Furthermore, we draw the attention of your Excellency’s Government to the provisions of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1 requires that “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity”. Article 2 states that “Persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

In addition, article 4 (1) of the Declaration states that: “States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law”. Article 4 (2) requires that “States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.” Article 4 (3) establishes that “States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.” With respect to the rights of minorities to quality education and education in their mother-tongue languages, we draw attention to the recommendations of the first Forum on Minority Issues (A/HRC/10/11/Add.1) and urge your Excellency’s Government to consider implementation of relevant recommendations of the Forum.