

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 3/2018

8 November 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 **adoption of amendments to the Law on Institutions of Higher Education, which appear to impose restrictions on the educational and linguistic rights of minorities in Latvia.**

Concerns about restrictions to the educational and linguistic rights of minorities in Latvia have been previously raised with your Excellency's Government through a joint other letter (OL LVA 1/2018) sent on 26 January 2018, which, inter alia, raised concerns over the adoption by the Cabinet of Ministers of amendments to the Law on Education, which would significantly reduce the use of minority languages in the basic and secondary (general and professional) education institutions. We welcome the response by the Government of Latvia, dated 28 March 2018, and the Government's expressed commitment to continue supporting minority language education and ensuring the promotion and protection of the linguistic and cultural rights of minorities in the country. Despite the detailed information provided through this response, we have noted with concern the development of a legislative framework that progressively restricts the use of minority languages in primary and secondary level education, including through the holding of national school exams only in the official Latvian language. Furthermore, we have not received sufficient information with regard to the impact of these amendments on the curricula and working methods of the 109 education institutions that implement minority education programmes in Latvia.

According to the new information received:

On 21 June 2018, the Saeima (Parliament) of Latvia adopted amendments to Article 56 (Regulation of Studies) of the Law on Institutions of Higher Education of 1997 (No. 998/Lp12). The amendment expands the application of paragraph three of article 56, which dictates that study programmes of higher education institutions shall be implemented in the official language in State colleges and universities, to private institutions.

The initial wording of paragraph 3 of Section 56 was as follows:

“The study programmes of State-founded institutions of higher education shall be implemented in the official language.”

The amendment to the Section 56 takes out the expression “State-founded” so as to read as follows:

“The study programmes of institutions of higher education shall be implemented in the official language.”

The amendment is expected to come into force in January 2019 and the current students of private colleges and universities will have a transition period with the opportunity to study under the former language regime until 2022, whereas the newly enrolled students will be submitted to the new language regulations as per the new amendment.

It is reported that more than one third of all students studying in Latvian private universities currently use Russian as their language of instruction. The amendment to article 56 will prevent, inter alia, members of minorities in Latvia from obtaining higher education in their native language since their respective minority languages are not considered official languages in Latvia.

We wish to express our concern that the new amendment, if adopted, would curtail the rights of minorities in Latvia to receive education at the tertiary level in their mother tongue. The adoption of these amendments will have a negative impact on the protection and promotion of the rights of minorities in Latvia, and in particular with regard to the right to education without discrimination of minority students in relation to the use of their mother tongue. We are concerned that the proposed amendments, by extending the requirement of instruction in the official language to private institutions for higher education would lead to undue interference with the right to freedom of expression, which includes the right to seek, receive and impart information of all kinds, regardless of the language used. Such a requirement would interfere with the autonomy of private institutions for higher education, and may also limit the accessibility of higher education for minority students.

In addition, we are concerned that the adoption of the amendments to the Law on Institutions of Higher Education has followed the adoption in March 2018 of amendments to the Law on Education. They have led to the removal of teaching in minority languages at the general and professional secondary level education, in both public and private educational institutions, and to the reduction of 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.

The proposed amendments would, if adopted, contravene the international human rights obligations of Latvia, in particular the International Covenant on Civil and Political Rights (ICCPR) to which Latvia is a party since 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 practice their own religion, or to use their own language”.

Moreover, Article 19(1) of the ICCPR establishes “the right to hold opinions without interference”. The right to hold opinions is so fundamental that it is “a right to which the Covenant permits no exception or restriction” (CCPR/C/GC/34).

Article 19(2) establishes States Parties’ obligations to respect and ensure the right “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”.

Under article 19(3) of the ICCPR, restrictions on the right to freedom of expression must be “provided by law”, and necessary for “the rights or reputations of others” or “for the protection of national security or of public order (ordre public), or of public health and morals”. Permissible restrictions on the internet are the same as those offline (A/HRC/17/27).

Since article 19(2) “promotes so clearly a right to information of all kinds,” this indicates that “States bear the burden of justifying any withholding of information as an exception to that right” (A/70/361). I am especially concerned that the restrictions and obligations that will be imposed on private higher education institutions by the proposed amendments may contradict fundamental principles of academic freedom that are embodied and guaranteed by article 19. The restrictions imposed by the law would significantly restrict academic freedom, and would restrict the right to seek, receive, and impart information of students and faculty, as well as the citizens of Latvia who benefit from scholarly research of such higher education institutions. It is unclear how the official language requirement under the proposed amendments are necessary and proportionate to achieve this aim. I am therefore concerned that the restrictions imposed by the amendments would not meet some of the requirements of article 19(3).

The International Convention on the Elimination of all Forms of Racial Discrimination to which Latvia is also a party since 14 April 1992, stipulates under article 5 that: “in compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties 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 following right: (e) (v) 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.”

Article 13 of the Covenant on Economic, Social and Cultural Rights, to which Latvia is a party since 14 April 1992, recognizes the right of everyone to education that shall be directed to the full development of the human personality and the sense of its

dignity, shall strengthen the respect for human rights and fundamental freedoms and shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious 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 the persons belonging to these minorities should be treated equally and enjoy human rights and fundamental freedoms without discrimination of any kind.

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 of the Declaration 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 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.

Moreover, the Committee on the Elimination of Racial Discrimination has recently recommended in its Concluding Observations (CERD/C/LVA/CO/6-12) that

“the State party take measures to ensure that its language policy and laws do not create direct or indirect discrimination or restrict the rights of ethnic minorities to access education, employment, and basic services”. It calls in particular to “ensure that there are no undue restrictions on access to education in minority languages [and to] reconsider the necessity of amendments to the Law on Education which create further restrictions on the number of lessons minority language in public and private schools”.

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 feedback on the following:

1. Please provide any additional information and/or comments you may have about the above-mentioned concerns.
2. Please provide all relevant information regarding the implementation of the 21 June amendments to the Law on Institutions of Higher Education - and in particular what measures are being put in place to ensure the protection of the rights of minorities to learn in their mother tongue.
3. 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.
4. Please provide information on any exceptions to the general legislative measures that would allow the use of languages other than Latvian as medium of instruction (English, “EU languages”, or any others) in primary, secondary or tertiary levels.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s Government will be made public via the communications reporting website within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

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