

Education, Language and the Human Rights of Minorities
Twelfth Session of the Forum on Minority Issues
28-29 November 2019

Topic 2. Human rights and minority language education (28 November 2019)

*Speech by Vadim Poleshchuk, Legal Information Centre for Human Rights,
Tallinn, Estonia*

Dear Chair! Dear participants!

In many countries of the world, racial, ethnic and linguistic minorities are fighting for education in their native language and for the creation of appropriate institutions. Unfortunately, in a number of countries, especially in Eastern Europe, there is a reverse trend: minority school reforms currently lead to complete or partial curtailment of teaching in the mother tongue of non-dominant groups.

For instance, in my native country, Estonia, Russian-language upper secondary schools appeared in the 19th century and quite recently they were transferred to training mostly in Estonian. The government was able to ignore concerns raised by a considerable part of the local Russophone population which made up slightly less than 30% of all Estonians.

Unfortunately, the right to education in minority languages is poorly articulated in the UN human rights instruments. This right may be presented in two ways: 1) as a specific right of persons belonging to a racial, ethnic, linguistic etc. minority group; 2) as a realisation of the right of non-discrimination by persons belonging to such groups.

As for specific minority rights, Art. 27 of the UN International Covenant on Civil and Political Rights provides persons belonging to ethnic, religious or linguistic minorities with the right to enjoy their own culture or to use their own language. The Human Rights Committee recognised that positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language. However, it provided no general guidelines in the field of education (General comment No. 23(50) (Art. 27)).

Regarding non-discrimination, Art. 13 of the International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to education. However, it says nothing about the language of training. Nevertheless, Art. 2 (2) of the same Convention guarantees that these rights shall be exercised without discrimination, *inter alia*, on the grounds of race, language, national or social origin. Similar approach is envisaged in the International Convention on the Elimination of All Forms of Racial Discrimination (Art. 5 (e) v).

The UNESCO Convention against Discrimination in Education does not provide for the right of minority-language education as such. However, Art. 2 makes it clear that minority schools – establishment or maintenance of separate educational systems for religious or linguistic reasons – shall not constitute discrimination.

Next document I would like to quote is the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 18 December 1992. Article 4 (3) of this instrument reads as follows: “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”. This provision is worded surprisingly vague considering non-binding character of the document.

Regional instruments may provide more details on minority language education. For instance, the CoE Framework Convention for the Protection of National Minorities (FCNM) recognises the right of minority members to set up and to manage their own private educational establishments (Art. 13 (1)). As for public education systems, the State Parties, “if there is sufficient demand,” shall “endeavour to ensure, as far as possible,” adequate opportunities for being taught the minority language *or* for receiving instruction in this language” (Art. 14(2), italics added). “The text deliberately refrains from defining “sufficient demand”, a flexible form of wording which allows Parties to take account of their countries’ own particular circumstances” (FCNM Explanatory report).

Of course, I can also quote some soft law, especially documents adopted in the framework of OSCE. However, it will be somehow misleading because these documents include political commitments rather than enforceable rights.

I just put all these main provisions together to make it clear that the right to education in minority languages can hardly be regarded as a well-established and well-articulated right in international human rights instruments.

The reason for this failure is obvious: State parties are lacking political will to address these sensitive issues in legally binding instruments. Without a doubt, national authorities are always more competent to build up national educational systems in the most appropriate way. However, national authorities are not always minority friendly. Furthermore, quite a few societies in the world face a problem of institutionalised racism and racial discrimination, also in the field of education.

Even if adoption of new international legally binding instruments is hardly possible in the foreseeable future, persons belonging to racial, ethnic or linguistic minority groups may benefit from authoritative comments on behalf of UN bodies.

Let me cursively enlist some points that need very urgent clarification. There is a list of popular misconceptions that often lead to closure of minority schools. The list is mostly based on Estonian and Eastern European experience, but it is clearly applicable to other regions of the world.

First, attacks against minority schools with voluntary attendance are often misrepresented as fight against segregation in the field of education. Thus, education in minority language is not recognised as a specific minority right. Such education is not seen as an important tool for development of minority cultures and languages. As a result, specific educational interests of the members of minority groups to support their identity are ignored.

Second, national authorities may juggle with equality argumentation claiming their deep concern about equal life-chances for minority members. They often fail to judge the situation in terms of *equality in fact* rather than *equality in law*. In other words, they treat *unequals* equally which constitutes discrimination. As a result, in some countries notorious minority school reforms are wrongfully presented as an achievement of “real” equality of children of majority and minority origin. Furthermore, such educational reforms normally ignore academic findings regarding the crucial role of the mother tongue in achieving success in education, especially at the initial stages.

Third, in national context it is almost impossible to stop controversial reforms of minority schools with references to the principles of non-discrimination. The prohibition of discrimination in the area of education is rarely absolute in national constitutional law. In relatively young states, courts often favour special conditions and privileges for the majority, not minorities. Such maltreatment of minorities

may be explained by the need to restore historical justice, by the vulnerability of the cultural and linguistic dominance of the majority, by security considerations, especially in case of bad relations with kinstates of minority groups, etc. Needless to say, such explanations have little in common with the philosophy of human and minority rights. Similarly, a decline in the level of protection of human and minority rights for the reasons of society integration and cohesion should not be tolerated.

Again, clarifications sanctified by the authority of the UN are badly needed to address all these misconceptions.

Thank you for attention.