JEMIE
Journal on Ethnopolitics and Minority Issues in Europe

Journal on Ethnopolitics and
Minority Issues in Europe
VOL.24, NO.2, 2025

ARTICLE OPEN ACCESS

Interpretation of Effective Public Participation at the ECtHR: Lessons from Recent Jurisprudence on Minority Language Education

Lilija Alijeva

The City Law School, City St George's (University of London), United Kingdom

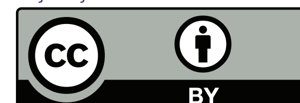
Abstract

This contribution focuses on the recent jurisprudence of the European Court of Human Rights on minority language education and the link established by the Court with the effective public participation of minorities. The interpretation in the latest cases of *Valiullina and Others v. Latvia* (2024) and *Džibuti and Others v. Latvia* (2024) indicates that the Court accepts significant limitations to minority language education. However, the novelty of the latest jurisprudence is that the limitations are seen as necessary means for ensuring the effective participation of minorities in the public life of the country. Therefore, this reasoning from the Court seems to contradict the thoroughly developed understanding of measures contributing to effective public participation of minorities, the interpretation of which has been shaped by an array of organisations, including branches of the Council of Europe, of which the Court is part. The article argues that the Court's judgments on the two cases demonstrate the limited development of the right to education despite the 'living' nature of the European Convention on Human Rights. Furthermore, the latest interpretation seems to overlook how the minority right to effective public participation contributes to the realisation of the right to education.

Keywords: ECtHR; human rights; minority rights; effective public participation; education; language

Journal on Ethnopolitics and Minority Issues in Europe
Vol.24, No.2, 2025
pp.58–87
DOI:
https://doi.org/10.53779/LIAL2006

AUTHORS:
Lilija Alijeva, City St George's (University of London), United Kingdom
Lilija.Alijeva@citystgeorges.ac.uk

LICENCE:
Copyright (c) 2025
Lilija Alijeva

This work is licensed under a creative commons attribution 4.0 international LIcense.

Introduction

It is often claimed that the European Court of Human Rights (ECtHR, or 'the Court'), which oversees the implementation of the provisions set out in the European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms or ECHR), is "the most advanced supranational system for the protection of human rights worldwide" (O'Loughlin, 2023, p. 8). Furthermore, the work of the ECtHR often serves as a source of inspiration for other judicial institutions at national and international levels outside of the European region (see Henrard, 2020, p. 56).

However, while previous scholarly contributions identified positive effects of the Court's reasoning on the enhancement of minority rights protection in Europe (Dzehtsiarou, 2015, p. 120), the more recent jurisprudence of the ECtHR in cases linked to the protection of persons belonging to ethnic, religious, linguistic, national, and other minorities has been described as "disconcerting" (Henrard, 2020). Moreover, the reasoning of the ECtHR in regard to religious minorities and traveller communities was found to be operating potentially in conflict with the work performed by other monitoring bodies that oversee the implementation of the rights of individuals belonging to minorities (Berry, 2016, p. 4). Similar trends are identified in recent scholarly contributions that analyse cases concerning religious minorities with a migrant background where the latest reasoning from the ECtHR "drifts away from the counter-majoritarian core of human rights protection, turning several of its steady lines of jurisprudence favourable to (the effective protection of) minorities' fundamental rights on their head" (Henrard, 2020).

This contribution builds on the scholarship that analyses the work of the ECtHR and the Court's role in minority rights protection. The contribution of this paper lies in the examination of the recent cases of *Valiullina and Others v. Latvia* (2024) and *Džibuti and Others v. Latvia* (2024), where the ECtHR did not find a violation of the prohibition of discrimination (Article 14 ECHR) taken together with the right to education (Article 2 of Protocol No.1 ECHR). In these two cases, the ECtHR further found that the measures taken by the state party to increase teaching in the official state language (Latvian) at the expense of teaching in the minority language (Russian) in both private and public schools had not been disproportionate. The changes to the education system addressed in the two cases were introduced under the 2018 education reforms that aimed to unify and regulate the overall education system in the state party.

The 2018 reforms replaced the earlier education model that was introduced in 2004. The 2004 model required all public secondary schools implementing educational programmes for minorities to provide no less than 60 per cent of all teaching hours in the official state language from grades 10 to 12 (with the exception of the subjects linked to minority language, identity and culture); thus, leaving up to 40 per cent of the teaching hours to be conducted in the minority language across the three grades. The 2018 iteration of the reforms, however, introduced a new model of curriculum delivery applicable to public educational establishments

and private ones. The 2018 reforms required teaching hours to be conducted in the official state language in the following proportions: 1) at least 50 per cent from grades 1 to 6; 2) 80 per cent from grades 7 to 9; and 3) 100 per cent in grades 10 to 12. Only subjects linked to minority language, culture and identity were excluded from this requirement.

Since the introduction of the 2018 reforms to the state party's education system, a further reform was introduced in 2022 that set a September 2025 deadline by which all preschool and school institutions across all years (including institutions operating in minority languages) are required to transition gradually to full instruction in the official state language ('Latvia: UN experts concerned about severe curtailment of minority language education', 2023). These transition measures were first applicable to grades 1, 4, and 7 in minority schools' education programmes; then to grades 2, 5, and 8 from 1 September 2024; and from 1 September 2025, the reform measures will be implemented for grades 3, 6, and 9. Therefore, the 2022 reforms will fully transition the teaching of the school curriculum to delivery in the official state language. The subjects that are exempt from these requirements are those that are relevant to ethnic culture and minority integration, as well as extracurricular educational programmes for pupils belonging to minorities from grades 1 to 9 (Education Law, 1998).

The judgments of the Court in the cases of *Valiullina and Others* and *Džibuti and Others* were analysed by Ganty and Kochenov (2023) in an informative way that highlighted many important findings that inform the Court's perception of constitutional identity, proportionality, segregation, and democratic order of the state: the contribution of the analysis that is provided in this paper aims to add to Ganty and Kochenov's assessment by approaching the cases through the prism of the right to effective public participation of persons belonging to minorities. This paper highlights the peculiar finding that the ECtHR's reasoning in the two cases sides with the necessity to ensure, among other elements, a sufficient level of the state language for residents to "participate effectively in public life" ('Judgment Concerning Latvia', 2023). This logic is particularly concerning as special effective public participation measures have long been recognised as crucial elements for the fulfilment of the rights of ethnic, religious, linguistic, national, and other minorities, because of the measures' ability to address the various shortcomings of democratic regimes that tend to favour the national majorities in states. Instead, these measures offer elements of political equality and countermeasures to the structural barriers experienced by people belonging to minorities when they attempt to access participation in the democratic life of the state (Beetham, 1999, p. 28).

As this article will demonstrate, in the cases above the ECtHR seems to show a lack of engagement with what effective participation in public life entails in relation to individuals belonging to minorities. Furthermore, the judgments in the two cases seem to overlook the important links that the effective public participation of minorities has with education policy development, specifically through meaningful consultation measures and self-governance arrangements. The analysis in this article raises potential concerns regarding the lack of development of the Court's understanding of education rights when the matter concerns (linguistic) minorities. The latest move by the ECtHR potentially permits the ECHR

state parties to use arguments of effective participation in public life to reduce teaching in minority languages in public and private educational institutions.

As previously mentioned, because effective public participation rights of persons belonging to minorities set out to address the inefficiencies of democracies when the matter concerns inclusion, accessibility, and influence of minorities in the democratic life of the state, this article begins with an overview of the democratic principles and the need for measures encouraging effective participation of persons belonging to minorities in public life. Then, the next section establishes the normative framework of the right to effective participation of minorities in public life. In addition, the section links the key concepts from the developed framework to education rights.

Then, the paper introduces the fragmented nature of minority rights protection in Europe, specifically emphasising the implications of the polarising relationship between the different monitoring mechanisms of the Council of Europe that are responsible for the implementation of legally-binding agreements, namely the ECHR and Framework Convention for the Protection of National Minorities (FCNM) of 1995. Afterwards, the analysis turns to the reasoning employed by the ECtHR in the cases of *Valiullina and Others v. Latvia* (2024) and *Džibuti and Others v. Latvia* (2024). The analysis highlights the ECtHR's potential lack of engagement with the concept of effective public participation of minorities and the possible lack of use of all the key relevant materials issued by international organisations applicable to the situation described in the two cases. The conclusion takes stock of the analysis performed in this contribution as it reflects on the latest developments at the Court by highlighting the potential implications of the latest jurisprudence on the wider minority rights protection framework in Europe.

Revisiting the Need for Effective Public Participation of Minorities in Democratic Societies and the Right to Education

Here, the paper starts with some of the potentially problematic features of democracies and their capacity to accommodate the participation of persons belonging to minorities. A large body of scholarship highlights the problem of 'minority rights' in democratic systems by examining of the democratic theory and its origins (see summary in Lederman, 2022). Over time, the concept of democracy became associated with certain problematic notions justifying exclusion and securitisation of the participation of diverse populations in the democratic processes where one group positions itself against another (Lederman, 2022). To address these and other shortcomings, some scholarly contributions highlight the importance of constitutional arrangements that should, in principle, serve the function of protecting 'minorities', because, in the constitutional legal setting, the perceived minority must possess the right to oppose the dominating views of the majority (Sartori, 1987 cited in Blaug and Schwarzmantel, 2016).

While in most of the contributions noted above the term 'minority' is primarily interpreted to mean a *political* minority, by extension it can be stated that diverse populations

that possess ethnic, religious, linguistic, and other minority communities should protect the said communities from the majoritarian conceptions of democracy and their effects. Scholarly contributions propose that this protection can be facilitated through constitutional and other arrangements that stress the importance of consensual decision-making, proportionality, and protection of minority rights (see Lijphart, 1977). In the post-Cold War era, the aforementioned third important element of minority rights protection is perceived to be a permanent attribute of political membership in democratic societies (Preece, 2008). Furthermore, the protection of minority rights against the potential majority rule coupled with the general requirement of justice to protect individual human rights are considered necessary constraints of democratic decision-making (Gould, 2004, p. 14).

In this setting, the right to effective public participation differs from the construct of general human rights to participation in public affairs. The main difference is that general human rights encompass familiar notions of 'political rights' and 'political liberties' that apply to all individuals, while the right to effective public participation addresses any potential dangers of exclusion and disadvantages that minorities may face in their states due to their numerical factor. Some contributions claim that the added adjective of 'effective' in this right refers to the fact that the mere presence of minorities in public institutions is not enough unless this presence is translated into meaningful influence on policy outcomes (Verstichel, 2010, p. 75). Furthermore, other contributions stress that allowing minorities to participate in full and effective ways in 'societal power structures' is the solution to achieving non-discrimination and genuine equality, which these communities seek (Toivanen, 2010).

In addition, it must be noted that participation in public life is a challenging activity for minorities as the structures of power often propel dominant values and characteristics. Those values and characteristics may also be accompanied by majority traits such as religion, language, etc. This can potentially make public life a hegemonic space where structural and institutional constraints and costs associated with public participation, hamper the effectiveness of minority participation (Toivanen, 2010). Consequently, it can be observed that public life and participation in it can potentially face threats of majoritarianism, which, in turn, can affect the realisation of the principles of a democratic order/democratic society, as well as influence the level of inclusion of marginalised voices in the processes that are fundamental to this system.

Hence, specific arrangements and measures for effective public participation of persons belonging to minorities attempt to tackle these threats, through measures such as the establishment of consultative bodies for minorities, affirmative action programmes, lower electoral thresholds for minority parties, decentralisation of control over certain areas, allocation of those areas to minorities, and many more. After identifying the shortcomings of democratic systems that can potentially influence the level of inclusion of persons belonging to minorities and specifying the need for minority-specific arrangements and policies, it is important to revisit and understand how the right to effective public participation of individuals belonging to minorities can accommodate better inclusion of minorities in the

democratic processes of the state. The next sub-section explores the key components of this right and examines the measures that can facilitate the effective participation of minorities in public life.

The normative framework for the right to effective public participation for minorities

Many regional and international organisations express respect for the right to effective public participation of minorities. The Document of the Copenhagen Meeting of the Conference of the Human Dimensions of the Conference on Security and Cooperation in Europe (CSCE) (1990), the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the legally-binding Council of Europe's FCNM (1995), the Organization for Security and Co-operation in Europe (OSCE) Lund Recommendations on Effective Participation of National Minorities in Public Life (Lund Recommendations) (1999) form the basis of an extensive list of normative developments that contribute to the understanding of the right to effective public participation of minorities. The common interpretation from these (mostly European) documents describes the right in three parts: participation in decision-making, self-governance arrangements, and guarantees.

The area of decision-making concerns the representation of minorities and the development of minority-accommodating measures at central and local levels of participation, such as: veto rights; reserved number of seats in the legislative body of the state; permissibility of minority parties; special numerical thresholds for minority parties during elections; measures for participation in coalition governments; the provision of public services communication in the language of the minority (see Article 10(2) FCNM); as well as the participation in consultation mechanisms through specific advisory bodies and dialogue platforms (Lund Recommendations, 1999, Recs. 12 and 13).

The second area is self-governance (Lund Recommendations, 1999, Recs. 14 to 21; see also the Document of the Copenhagen Meeting of the Conference of the Human Dimensions of the CSCE, 1990, para. 35) which includes arrangements that provide some level of jurisdictional control to minority organisations/institutions over the affairs that matter to their communities. For example, these affairs may consist of important competencies in minority culture, language, religion, and education (Lund Recommendations, 1999, Recs. 17 to 21; Machnyikova and Hollo, 2010; Malloy, 2015). Self-governance arrangements may facilitate better opportunities for minorities to consent or dissent on issues relevant to their communities.

Usually, these arrangements take the form of decentralisation or devolved powers from the state that are realised in the form of territorial autonomy or/and non-territorial autonomy arrangements, also known as cultural autonomy or personal autonomy among minority rights scholars (see Palermo, 2015; Nootens, 2015, pp. 43-45). While the areas of defence, foreign affairs, immigration and customs, macroeconomic policy, and monetary affairs do not usually fall within the responsibility of either type of self-governance arrangements, non-territorial autonomy can be responsible for the areas of education, culture, use of minority languages, religion, and other matters crucial to the identity and the way of life of minorities dispersed

among the majority population (Lund Recommendations, 1999, Rec. 18). Territorial autonomy arrangements can cover areas within the remit of non-territorial arrangements as well as policies concerning the environment, local planning, economic development, local policing, and social services to ensure the protection of minorities within a specific territory (Lund Recommendations, 1999, Rec. 20; Henrard, 2005; Malloy, 2009).

The final guarantees component protects the arrangements contributing to effective public participation through constitutional and legal safeguards and remedies. For example, decision-making arrangements can be determined by ordinary legislation or other means. On the other hand, territorial and non-territorial self-governance arrangements are advised to be established by constitutional arrangements and not to be generally subject to change in the same way as ordinary legislation. Remedies provide opportunities for legal, political, and public accountability mechanisms that range from judicial review (which can be performed by constitutional courts), to non-judicial mechanisms and institutions such as national commissions, ombudspersons, and inter-ethnic or 'race' relations boards (Lund Recommendations, 1999).

From this overview, it is apparent that the right of individuals belonging to minorities to effective participation in public life consists of three elements that can potentially contribute to the influence of minorities and the protection of areas important to their communities. The paper proceeds in the next subsection with an analysis of the link between the effective public participation of minorities and the right to education.

Effective participation of minorities in public life and the right to education

After outlining the key areas of the minority right to effective public participation in the previous sub-section, this part of the paper highlights the main impacts that this right has on the education rights of minorities. The subsection does so by exploring two key links identified through a review of the normative framework of the right to education: meaningful consultation/dialogue, as well as the benefit of self-governance arrangements on the education rights of minorities.

The links highlighted above were identified in the development of continuous interpretation throughout the activities of international bodies overseeing the implementation of provisions set out in their instruments. Since the time of the League of Nations, states have been required to respect the rights of minorities to set up their schools that teach in minority languages (Preliminary Report of the Special Rapporteur on the Right to Education, 1999, para. 65). This precedent was set by Poland in 1919 and re-affirmed by the Permanent Court of International Justice in the case of *Minority Schools in Albania* (1935). The decision in the *Minority Schools in Albania* case ensured the safeguarding of minorities and their (private) educational institutions (Preliminary Report of the Special Rapporteur on the Right to Education, 1999, para. 65). In this case, Greece notified the League of Nations Secretariat that Albania intended to abolish the right to maintain and establish private schools in steps to promote the secularisation of education. The Albanian government challenged the claim

against it by stating that it did not have to fulfil any other obligations apart from granting its nationals belonging to racial, religious or linguistic minorities a right equal to that possessed by other Albanian nationals – therefore, the changes to the education system were claimed to be conducted with the intent of achieving equality.

When analysing subsequent developments within this field, the general understanding of the right to education saw further interpretation as it reached the ECHR's Protocol No.1 in 1952. Article 2 of Protocol No.1 ECHR specifies the right to education and the obligation of the state to respect parents' religious and philosophical convictions in education and teaching. In combination with Article 14 ECHR on non-discrimination, it could be considered that states should provide the right to education to accommodate some element of (religious) minority identity protection.

In 1960, Article 5.1 of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education recognised the right of members of national minorities to carry out their educational activities, including the maintenance of schools and – depending on the educational policy of each state – the use or teaching of their language, provided, however, "that this right is not exercised in a manner which prevents members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty" (Article 5(c)(i) UNESCO Convention against Discrimination in Education, 1960). The wording indicates that there are specific limitations in relation to the principle of integration into the larger society and the protection of the national order. Despite these limitations, it should not be overlooked that the wording acknowledges that minorities should have certain differing arrangements concerning their education.

In 1966, the legally binding International Covenant on Civil and Political Rights introduced a provision in Article 27 on the protection of persons belonging to minorities who "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." The Covenant's counterpart, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, emphasised in Article 13 the importance of education for an individual's enablement to participate effectively in a free society and promote understanding among all ethnic groups. In terms of how such activities should be implemented in practice, under Article 13(4) ICESCR, everyone, including non-nationals, and legal persons and entities, has the liberty to establish and direct educational institutions (CESCR General Comment No. 13: The Right to Education (Art.13), 1999, para. 30). Here, the key component for the development of policies that concern the education rights of minorities is acceptability. This can be concluded from the wording of Paragraph 50 of the CESCR General Comment No. 13 (1999), which indicates that the state must take positive measures to ensure that education is culturally appropriate for minorities as this will contribute towards fulfilling the acceptability of education principle. The principle of acceptability in education complements the other three principles of the right to education: availability, accessibility, and adaptability (CESCR

General Comment No. 13: The Right to Education (Art.13), 1999, para. 6). These principles were first introduced by the Committee on Economic, Social and Cultural Rights to develop an analytical framework in relation to the rights to adequate housing in General Comment No.12 and the right to food (Preliminary Report of the Special Rapporteur on the Right to Education, 1999, para. 50). The Special Rapporteur on the right to education adapted these principles to education rights in the Special Rapporteur's 1999 preliminary report (Preliminary Report of the Special Rapporteur on the Right to Education, 1999, para. 50).

However, the wording in Paragraph 50 does not elaborate in detail how the needs of minorities in terms of cultural acceptability of education are to be identified and who the key stakeholders that need to be considered are. Nevertheless, in paragraph 64, the Special Rapporteur's 1999 report gave some elaboration on the principle of acceptability of education and the negative effects of changes to the language of instruction in schools that may lead to inaccessibility of schools for minorities resulting in poor attendance of minority children:

> The language of instruction can preclude children from attending school. It has always created a great deal of controversy in education and this is not likely to diminish, on the contrary. Controversies span decision-making on the official language(s) of instruction for public schools, the teaching of as well as teaching in minority languages (as well as the recognition thereof), and the teaching of (as well as in) foreign languages (Preliminary Report of the Special Rapporteur on the Right to Education, 1999, para. 64).

At the European level, the area of education rights and the rights of persons belonging to minorities received an increasing amount of attention from international organisations interested in promoting democracy, human rights, and security among their member states. For example, Article 14 FCNM (1995) in its first and second points offers more guidance on how states should promote education rights of minorities, while the article's third point maintains an integration-orientated approach towards minority language education:

> 1) The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.
> 2) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.
> 3) Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

In addition to the abovementioned legally-binding norms, non-legally-binding documents/agreements further contribute to the interpretation of the education rights of minorities. They do so by providing details regarding which policies are not permissible. Policies that are not in line with international standards include "submersion-type approaches whereby the curriculum is taught exclusively through the medium of the [s]tate language and minority children are entirely integrated into classes with children of the majority" (Hague

Recommendations Regarding the Education Rights of National Minorities, 1996). Likewise, this applies to segregated schools in which the entire curriculum is taught exclusively through the medium of the minority mother tongue, throughout the entire educational process and where the majority language is not taught at all or only to a minimal extent (Hague Recommendations Regarding the Education Rights of National Minorities, 1996, pp. 13-14). These examples show that education policies concerning instruction of minority languages in schools need to have a balanced and gradual approach. The OSCE Hague Recommendations Regarding the Education Rights of National Minorities (1996) explain that international instruments relating to minority language education declare that minorities have "the right to integrate into and participate in the wider national society by learning the [s]tate language" as well as "the right to maintain their identity through the medium of their mother tongue." They specify that certain approaches in minority education need to support minority language teaching at lower levels of education with a gradual increase of teaching through the medium of the majority language in higher levels of education (Hague Recommendations regarding the Education Rights of National Minorities, 1996).

The examples discussed in the previous paragraphs indicate a preference for facilitating a balanced and gradual multilingual – or at least bilingual – education to accommodate the needs of minority children and the state's wishes for the integration/participation of minorities in the wider society. The benefits of this type of model of education include enhancement of intercultural understanding and cooperation (ACFC Thematic Commentary No.3 'The Language Rights of Persons Belonging to National Minorities under the Framework Convention', 2012, para. 79). The understanding of minority education rights has seen further developments as the limitation of minority languages solely to cultural or historical subjects in schools should be prohibited (ACFC Thematic Commentary No.3 'The Language Rights of Persons Belonging to National Minorities under the Framework Convention', 2012, para. 81). In Paragraph 79 of the 2012 ACFC commentary, the wording further highlights the dangers of assimilation should the state choose to promote one or more official languages at the expense of minority language protection and development:

> Where states have introduced measures to promote the official language(s), it is particularly important that these go hand in hand with measures to protect and develop the languages of minorities, as otherwise such practices may lead to assimilation rather than integration (ACFC Thematic Commentary No.3 'The Language Rights of Persons Belonging to National Minorities under the Framework Convention', 2012, para. 79).

This balanced approach model in minority language education is also maintained in other interpretations of European normative documents, such as the 2008 ACFC commentary on the effective participation of minorities and the latest ACFC commentary on education that replaced the 2006 version of the commentary, as well as the latest recommendations of the OSCE (ACFC Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, 2008, para.

164; Thematic Commentary No. 1 on Education under the Framework Convention for the Protection of National Minorities, 2024, para. 106; Recommendations on the Effective Participation of National Minorities in Social and Economic Life, 2023, p. 41).

Overall, the development and continuous interpretation of education rights and how these apply to policies influencing minority language education have seen significant development and continuous interpretation by international organisations in Europe and beyond. In the next subsection, the paper turns to the question of how such policies should be developed and whether the right to effective public participation of persons belonging to minorities can potentially contribute to the realisation of the right to education.

Meaningful consultation or dialogue

The first important link between effective public participation rights of persons belonging to minorities and the right to education can be observed in the principle of meaningful consultation/dialogue. This link can be seen in the Convention on the Rights of the Child (1989) which establishes the paramount role of children belonging to minority groups in expressing their opinions and being heard when education policies are shaped (Convention on the Rights of the Child, 1989, Article 12). From the wording of the Committee on the Rights of the Child General Comment No. 14 (2013), there is a degree of recognition of the importance of minority children in participating in the decision-making processes as the state needs to consider the best interests of the child belonging to a minority group:

> The fact that the child is very young or in a vulnerable situation (e.g. has a disability, belongs to a minority group, is a migrant, etc.) does not deprive him or her of the right to express his or her views, nor reduces the weight given to the child's views in determining his or her best interests. The adoption of specific measures to guarantee the exercise of equal rights for children in such situations must be subject to an individual assessment which assures a role to the children themselves in the decision-making process, and the provision of reasonable accommodation and support, where necessary, to ensure their full participation in the assessment of their best interests.

The link highlighting close consultation and dialogue is further emphasised in the 2008 ACFC commentary that establishes the need for authorities to provide for the participation of persons belonging to minorities in the preparation of legislation on education, as well as in the monitoring and evaluation of educational policies and programmes, particularly those concerning them (ACFC Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, 2008, para. 162). The subsequent 2012 ACFC commentary further elaborates that representatives of school boards, teachers, and parents' organisations should be included in the measures of "close consultation" when designing education policies (ACFC Thematic Commentary No.3 'The Language Rights of Persons Belonging to National Minorities under the Framework Convention', 2012, para. 81). The element of close consultation for areas of crucial interest for minorities (such as education) is also emphasised in the recent OSCE Recommendations

on the Effective Participation of National Minorities in Social and Economic Life (2023) in Recommendation No.12. Hence, it becomes clear that substantive and meaningful consultation measures form a key component within the development of minority language education policies in state.

The aforementioned non-binding Lund Recommendations (1999) provide examples of how measures of meaningful consultation and/or dialogue should be implemented. For instance, advisory bodies and consultative bodies should "serve as channels for dialogue between governmental authorities and national minorities" (Lund Recommendations, 1999, Rec. 12). The recent OSCE recommendations highlight that these measures require sufficient access, capacity, and resources to ensure the effectiveness of the dialogue (Recommendations on the Effective Participation of National Minorities in Social and Economic Life, 2023, p. 25). Therefore, as this paper demonstrates here, the right to effective public participation of minorities intertwines with education rights through the requirement of meaningful consultation/dialogue opportunities as this interpretation can be found in both legally binding and politically binding documents.

Potential benefits of self-governance arrangements

The second link between the right to effective public participation of persons belonging to minorities and education rights is observed in the need for self-governance of minorities on matters concerning education. Such self-governance rights can be implemented through autonomy arrangements which in turn may help ensure that minorities 'are not disadvantaged [...] enabling the minority, like the majority, to sustain "a life of its own"' (Kymlicka, 1995, p. 52). This can be observed in the latest ACFC commentary on education, where the requirement to recognise the autonomy of schools in matters of education is perceived to enhance the mainstreaming of the participatory approach throughout the various aspects of the organisation of minority language education (Thematic Commentary No.1 on Education under the Framework Convention for the Protection of National Minorities, 2024, para. 100).

Regarding how minority education autonomy could be implemented in practice, the Lund Recommendations specify that both non-territorial and territorial arrangements can apply to this area (Lund Recommendations, 1999, Recs. 18 and 20). Opportunities for non-territorial or cultural self-governance are emphasised in Paragraph 135 of the ACFC Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs (2008), where it is seen as a benefit for many areas important to minorities, including education. Suksi (2015: p. 112) writes that such self-governance arrangements are "normally created through public law rules of the state in question, but with a view to establishing legal persons, more specifically statutory association under public law."

Overview

This section demonstrated that the general stance among many European bodies, as well as binding and non-binding mechanisms on the participation of minorities in public affairs, is clear: areas of life that are of importance to minorities should have significant influence by minorities themselves. The right to effective public participation for minorities ensures that the state of public life in a country is not constructed in a majoritarian way that excludes persons belonging to minorities from participation in the democratic life of their states. Through measures contributing to decision-making, self-governance, and guarantees, effective public participation of persons belonging to minorities can also ensure the protection of education rights for minorities.

As demonstrated in this section, the right to education has seen significant levels of development including in relation to the rights of minorities in the sense that education policies should position the best interests of the child belonging to a minority group through a balanced and multilingual approach. Furthermore, effective public participation rights of minorities and the right to education were identified to have two important links: the development of education policies in close consultation/dialogue that can be achieved through advisory bodies or consultative bodies; and the potential benefit of self-governance arrangements on the maintenance of minority schools.

Overall, this section demonstrates that the understanding of minority public participation and education rights has seen significant developments through constant interpretation of binding and non-binding norms that resulted in considerable interlinking and re-enforcement of the two normative areas. However, as demonstrated in the next section, despite these important developments, the fragmented nature of minority rights protection in Europe precludes the integration of these norms and the latest understanding of them into a common approach for the protection of the rights of minorities when education rights are concerned.

Fragmentation of minority rights protection in Europe

It is evident from the previous section that the international normative framework on the right to effective public participation and the right to education made some attempts to harmonise and complement the normative principles thus establishing a link between the two fields. However, this is not always the practice for other general human rights bodies and minority-specific instruments in Europe. This section identifies that the major issue in the realisation of minority rights protection in Europe is the trend of fragmentation between the work of general human rights protection bodies and monitoring mechanisms specialising in minority rights protection. More specifically, this trend of fragmentation is observable within the different branches of the Council of Europe, which potentially affects the protection and advancement of minority rights (Berry, 2016). Most importantly, while both the ECHR and the FCNM exist under the organisational functions of the Council of Europe, they are supervised by two different – and at times opposing – monitoring bodies, the ECtHR and ACFC

respectively. The two bodies are also different in that the ACFC monitors the implementation of all provisions in the FCNM. In contrast, the ECtHR monitors only individual cases and takes a violations approach. The overall difference can be explained by the ECHR containing the minimum standards that may be applicable to minority rights protection, while the FCNM contains aspirational standards (Berry, 2016, p. 19). Despite the aspirational nature of the FCNM, the legally-binding document has been accused of being weak, ineffective, and inadequate (Berry, 2016, p. 3); this leaves minorities to use the more general human rights provisions of the ECHR to defend claims that allege violations of their rights. This polarisation that led to the continued calls for an additional protocol to the ECHR specifically dedicated to minorities.

However, there is no reason to assume that, due to the failure to introduce a minority-specific protocol, the ECHR is incapable of protecting persons belonging to minorities. On the contrary, within the ECHR, as Henrard writes, the ECtHR embraces principles of real and substantive equality (not just formal equality) and recognises the right to be respected in a separate, minority way of life (Henrard, 2020, p. 56). In addition, the Court has a "number of tools at its disposal that would allow it to pursue the two pillars of minority rights protection, namely, the preservation of minority identity and [...] non-discrimination" (Berry, 2016).

However, the problem lies within the wide margin of appreciation allocated to states (Henrard, 2020), especially in complex questions linked to the accommodation of (religious and ethnic) diversity within the state party's population (Henrard, 2020). By permitting a wide margin of appreciation for the states in these questions, the ECtHR has deferred to the prejudice of the majority (Berry, 2016, p. 32). Regarding questions and matters concerning other provisions in the ECHR, the wide margin of appreciation does not remain static. On the contrary, the ECtHR describes the ECHR as a living instrument "which must be interpreted in the life of present-day conditions" or "present-day circumstances" (*Tyrer v. United Kingdom* (1978). Furthermore, it is known that the living instrument doctrine raised concerns among state parties as the doctrine allowed the Court to narrow the margin of appreciation afforded to states and expand the scope of the ECHR (Ita and Hicks, 2021). While the ECHR is indeed a living instrument, it seems that the area of education, specifically minority language education, has not seen the same, or at least similar, levels of development as other provisions of the ECHR have.

The trend of stagnated development and interpretation of ECHR's provisions concerning issues of importance to minority communities is potentially exemplified in the case law concerning the effective participation of minorities in public life. For example, individuals belonging to minorities can claim discrimination under Article 14 ECHR in conjunction with Article 3 of Protocol No.1 ECHR, which creates an obligation for the state parties to hold free elections "under conditions which will ensure the free expression of the people in the choice of legislature." Unsurprisingly, the cases mostly concern elections, as neither the ECHR nor its protocols ensure the protection of other aspects of the right to effective public participation for minorities. This can be seen in the following case-law:

Aziz v. Cyprus (2004); *Sejdic and Finci v. Bosnia and Herzegovina* (2009); *Zornic v. Bosnia and Herzegovina* (2014); *Danis et l'Association des personnes d'origine turque c. Roumanie* (2015); and *Bakirdzi and E.C. v. Hungary* (2022).

When considering minority language education, the crucial *Belgian linguistics case* (1968) sets the overall limitation on how minority language education is interpreted by the Court. Here, the Court's reasoning sides with the right of the state party to determine official languages of the country which are thus the languages of instruction in public schools; it also denies that there was a right to education in a language of one's choice (Preliminary Report of the Special Rapporteur on the Right to Education, 1999, para. 65). In the aforementioned case, the Court held that while Article 2 of Protocol No. 1 ECHR intends to favour its beneficiaries (i.e. pupils as far as their right to be educated in the national language or one of the national languages is concerned), the article did not require state parties to respect parents' linguistic preferences in the sphere of education or teaching.

When analysing other more recent crucial jurisprudence from the ECtHR on national minorities and the right to education under Article 2 Protocol No.1 ECHR, the majority of the case law focuses on the forced segregation of Roma children in education (see *D.H. and Others v. the Czech Republic* (2007); *Oršuš and Others v. Croatia* (2010); *Elmazova and Others v. North Macedonia* (2023); and *Szolcsán v. Hungary* (2023)). Two cases that are deviant from the listed portfolio of cases are the cases of *Catan and Others v. the Republic of Moldova and Russia* (2012) and *Cyprus v. Turkey* (2001), which concern language of instruction in educational institutions in disputed areas. However, the core of the problem in these two cases is not that the applicants possess the right to access educational institutions in a language of their choice. Instead, the matter in the two cases concerns the right to be educated in the 'national language' of the state. This principle is also seen in the latest case of *Ádám and Others v. Romania* (2021). In this case, the Court emphasised that the FCNM recognised that the protection and encouragement of minority languages should not be to the detriment of official languages and the need to learn them. It was recognised that under the opportunities that the ECHR provides in terms of teaching in minority languages, a balance between proficiency in the official language of the state and proficiency in minority languages had to be maintained. Therefore, the conclusions that the Court reached in the *Belgian linguistic case* did not see significant reinterpretation, such as accessing educational institutions in a language of one's choice and incorporating elements of effective public participation of minorities in a more all-encompassing way.

The significance of the next section dedicated to the analysis of the two cases lies in the presentation of a worrying link that the Court establishes between the right to education and effective public participation of minorities, which has the potential to reverse the progress achieved in the development of the wider normative framework protecting the rights of minorities concerning participation in the public life of the country.

Analysing the recent interpretation of effective public participation for minorities at the ECtHR

The cases of *Valiullina and Others v. Latvia* (2024) and *Džibuti and Others v. Latvia* (2024), which are analysed in this section, combine several individual cases brought by applicants who identify as 'belonging to the Russian-speaking minority.' The Russian-speaking minority in Latvia is a linguistic minority category that is significantly comprised of the ethnic Russian population and many other ethnic communities, many of whom formed part of the Union of Soviet Socialist Republics (Laitin, 1998; Cheskin, 2012; Vihalemm et al., 2019; Kaprāns and Mieriņa, 2019; Cheskin and Kachuyevski, 2019). The individuals who belong to this minority group may not share common ethnic, national, or religious characteristics, but the language that they share is a common and highly apparent feature (Grigas, 2014). The proportion of Russian-speakers, as available data from 2011 for the most commonly-spoken languages at home and mother tongue demonstrates, reaches 37.2 per cent of the overall population, thus making Russian the second most-spoken language in the country (*Permanent resident population by statistical regions, cities under state jurisdiction and counties by gender, most languages used at home and by age group on 1 March 2011*, 2021). The proportion of Russian-speakers in the country is significantly higher than the proportion of ethnic Russians, as the available census data from 2011 demonstrates that this ethnic category of the population reaches approximately 23 per cent (*Population by ethnicity in regions, counties, cities, parishes, neighbourhoods and densely populated areas*, 2024). The language of the Russian-speaking minority is not recognised as an official language or an official minority language in the constitutional law and ordinary legislation of the state party.

Minority language education in public schools: *Valiullina and Others v. Latvia* (2024)

The *Valiullina and Others v. Latvia* case concerns the legislative amendments of 2018 (discussed in the introduction section of this paper) and the effects of these amendments on the use of minority languages in public school education. The ECtHR combined three applications into one case (*Valiullina and Truši* (application no. 56928/19); *Neronovas* (application no. 7306/20); *Raizere-Rubcova and Rubcovas* (application no. 11937/20)). The parents and children, in this case, complained that the amendments significantly restricted the use of their mother tongue and argued that the high proportion of subjects to be taught in the state language, as a result of the 2018 amendments, had disproportionately affected them. The applicants relied on Article 2 of Protocol No. 1 ECHR taken alone and in conjunction with Article 14 ECHR. The Court found that no violations had taken place in relation to the increase of the share of teaching in the official state language in public basic and secondary schools for minorities. The ECtHR accepted that Latvia had a wide margin of appreciation, as the Court found that national authorities and courts were better placed to assess the balance between the interests of the state and minority communities.

With regard to Article 2 of Protocol No.1 ECHR, the applicants called upon the ECtHR to determine whether the conclusions drawn in the previously mentioned *Belgian linguistic case*

were applicable and, consequently, the ECtHR explored whether there had been any further development of the Court's case law or any other applicable rules of international law or practice affecting the meaning and scope of Article 2 of Protocol No. 1 ECHR. Accordingly, the right enshrined by Article 2 of Protocol No. 1 ECHR did not include the right to access education in a particular language; it guaranteed the right to education in one of the national languages or, in other words, the official languages of the country concerned. Given that the Latvian language was the only official language in the state party concerned, the applicants could not complain under Article 2 of Protocol No. 1 ECHR about the decreased use of Russian-language teaching in public schools. The Court claimed that applicants had not put forward specific arguments alleging that the restrictions would have had adverse consequences on them having a possibility of obtaining an education. Therefore, this claim alone was deemed inadmissible.

Regarding Article 14 ECHR, the ECtHR noted the wide margin of discretion allocated to state parties concerning the provision of minority language teaching in their education systems. Furthermore, the Court noted the state party's findings that there was no European consensus concerning minorities' rights in the field of education and that there had been no grounds to consider that, under the FCNM, state parties would have to ensure such form of preservation and development of the language. Instead, that reasoning seems to rely on the arguments that the FCNM does not contain an unequivocal principle regarding minorities receiving an education in their mother tongue in Article 14 FCNM (*Valiullina and Others v. Latvia*, 2024, para. 211). The ECtHR listed the alternative options that the FCNM allows: bilingual or multilingual education; classes in minority languages in public schools; and private minority language schools or 'Sunday classes' organised by communities themselves (*Valiullina and Others v. Latvia*, 2024, para. 211). In the Court's assessment, the respondent state had not overstepped its margin of appreciation, as it had maintained the possibility for Russian-speaking pupils to learn their language and preserve their culture and identity. The Court observed that tuition in a minority language was found to be ensured in varying proportions, depending on the school and class in which a pupil was enrolled; thus, a gradual and balanced approach was found to be maintained (*Valiullina and Others v. Latvia*, 2024, para. 207).

Furthermore, in its assessment, the framing associated with historical considerations was used by the Court that highlighted the significant restriction of the use of the Latvian language during the unlawful occupation and annexation of Latvia by the Soviet regime for more than fifty years. Basing its analysis on these historical considerations, the Court concluded that because the Russian language had been imposed in many spheres of daily life during that time, the need to protect and strengthen the Latvian language was a legitimate aim pursued in the present case (*Valiullina and Others v. Latvia*, 2024, para. 200). In addition, the Court based its reasoning on the need for "unity" and "equal access" regarding the right to education, specifically that all children in the same class, irrespective of which school or education programme they were enrolled in, were required to follow a similar curriculum

which clearly defined the proportion of official state language to be used as the language of instruction (*Valiullina and Others v. Latvia*, 2024, para. 203).

This paper considers that the most crucial framing used by the Court in this case is the agreement with the legitimacy of the aims pursued by the reforms for the consolidation of and participation in a "democratic society" (*Valiullina and Others v. Latvia*, 2024, paras. 198 and 203). Most crucially, the ECtHR sided with the state party's arguments that, while the state has an obligation to create preconditions for the participation of minorities in a public debate intrinsic to a democratic society, at the same time minorities should take the initiative to participate in such discourse in the official language; therefore, the measures introduced by the 2018 reforms to the education system ensure the full participation of minorities in the life of a democratic society (*Valiullina and Others v. Latvia*, 2024, para. 53).

It was noted previously that the jurisprudence of the Court influences other judicial institutions around the world. In contrast to this fact, in this case the ECtHR argues that it cannot incorporate international treaties such as the FCNM and the recommendations from the OSCE that go further than the provisions of the ECHR. Despite this argument, in the section in the judgment titled 'Relevant Legal Framework and Practice', the ECtHR considers the relevant international norms as well as monitoring body reports. Upon reading the references prepared by the ECtHR, it becomes potentially observable that the use of references is somewhat limited. For example, while the Court makes references to the ICESCR in its analysis of the international treaties by highlighting state obligations in relation to the right to education, there was limited exploration of the obligations of states to take positive measures towards fulfilling "the acceptability of education by taking positive measures to ensure that education is culturally appropriate for minorities" (CESCR General Comment No.13: The Right to Education (Art.13), 1999, para. 50). Furthermore, the OSCE Hague Recommendations are mentioned without exploration into the forms of minority education curriculum development that are deemed to violate international law as outlined in this paper's section 'Effective participation of minorities in public life and the right to education'.

This trend in the limited inclusion and interpretation of legal sources is also apparent when public participation opportunities are analysed. For example, the Court does not examine the requirements of Article 15 FCNM on the effective participation of minorities. Instead, the judgment makes references to Article 4 FCNM on equality. Furthermore, the ECtHR references several points from the Third Opinion on Latvia of the ACFC (2018) which described the worsening condition of participation in public life. The ECtHR quotes the said opinion from the part of the executive summary which solely focuses on the state of education for minorities. However, if one were to revisit the said opinion from the ACFC, the preceding paragraph highlights: the issue of the predominance of the official state language in public life; increasingly strict proficiency requirements that are applied to virtually all professions and the potential adverse effects on the possibility of persons belonging to national minorities to access many positions within the public domain; the strict use of the state language as the only language authorised in dealings with the administrative authorities; and the termination

of mandates of elected municipal council members due to language proficiency requirements, among other issues. It is not possible to establish the reason for this omission of text from the ACFC opinion in the Court's analysis. However, this concerning trend in the use of sources from monitoring bodies also occurs in the section where references are made to the Committee of Ministers of the Council of Europe Resolution on the Implementation of the Framework Convention in Latvia (2021). While certain parts regarding education are referenced, other parts which concern the problems that minorities experience in relation to effective public participation seem to be omitted. Specifically, the ECtHR omitted the Committee of Ministers' recommendations in respect of issues for immediate action:

> 1) promote the integration of society as a two-way process, in particular encouraging active participation of all segments of society in all relevant fields, such as education, culture and employment, particularly in the public sector, and enhance intercultural contacts within society as a whole, beyond the promotion of proficiency in Latvian; consider the establishment of a dedicated structure whose functions would include co-ordination of social cohesion policies in all relevant sectors;
> 2) strongly encourage effective participation of persons belonging to national minorities including ethnic Russians, Belarusians, Ukrainians, Polish, Lithuanians, Jews, Roma and others, in cultural, social and economic life and in public affairs, in particular those affecting them, in accordance with Article 15 of the Framework Convention; and
> 3) review whether language proficiency standards regulating access to public employment are necessary and proportionate for all occupations in state and public service; make sure that language proficiency standards regulating access to elected positions and those within civil society organisations do not create undue obstacles.

These requirements that are set out in the resolution document of the Committee of Ministers are not examined in detail and are referred to in the judgment by the Court using the phrase "among other things" (*Valiullina and Others v. Latvia*, 2024, para. 91).

In respect to the first link of meaningful dialogue that the right to education has with effective public participation rights of persons belonging to minorities (as identified in the subsection of this paper on 'Meaningful consultation or dialogue'), in paragraph 52, the judgment references the state party's position that consultation with minority representatives was conducted. Furthermore, paragraph 175 (*Valiullina and Others v. Latvia*, 2024) references that the state party had 'had not only sought the views of various' national authorities but also:

> had sufficiently consulted the representatives of opposition parties, social partners and parents' associations and had sought and discussed their views about the proposed amendments. In addition, the views of the Advisory Council for Minority Education had been sought and discussed. The impugned amendments had been discussed at three readings before being passed by Parliament.

Furthermore, it was identified that the Court uses the findings of the Council of Europe's European Commission for Democracy through Law (known as the Venice Commission) to demonstrate that consultation opportunities have been adequate. However, this is contrary

to the views of the Venice Commission itself. It is true that the Venice Commission Report (2020) in paragraph 60 mentioned that the dialogue conducted with the Advisory Council for Minority Education under the Ministry of Education gave a positive response towards planned reforms during instances of dialogue. However, most importantly, the Venice Commission's Report (2020) specifically states that it had limited access to the resources used by the constitutional court of the state party to achieve its conclusion on the provision of sufficient consultation processes for the minority's participation during the development of the 2018 education reform. Therefore, the Venice Commission could not establish whether the aforementioned consultation/dialogue opportunities were "sufficient" as the Venice Commission states that it could not "ascertain whether representatives of national minorities were sufficiently and adequately consulted in the legislative process" (Venice Commission, 2020, para. 62; *Valiullina and Others v. Latvia*, 2024, para. 93).

Nevertheless, in paragraph 64, the Venice Commission report underlines the importance of creating conditions for the effective participation of persons belonging to national minorities in public affairs, in particular those affecting them, and invited the state party in question to "involve or continue to involve civil society, especially representatives of national minorities, in the actual implementation of the adopted changes as well as in the process of possible future changes affecting minorities' rights" as required by the 2008 Explanatory Report to the Framework Convention in paragraph 80 (Venice Commission, 2020). Despite these important points being raised in the Venice Commission's (2020) report, it seems that no further exploration was conducted by the ECtHR in this case. Considering the timing of the Venice Commission's report, the adoption of the 2018 iteration of education reforms and the adoption of subsequent reforms in 2022, it is concerning that the area of consultation and dialogue was not explored by the Court in more detail.

When analysing whether the Court identified the second link of self-governance that the right to education has with the effective public participation rights of persons belonging to minorities, the Court did not explore the benefits of self-governance on minority language education. This is despite the existence of the relevant domestic legislation such as the Law on Free Development of Latvia's National and Ethnic Groups and Their Right to Cultural Autonomy (1991) and the interpretation provided by other monitoring bodies that highlight the benefits of self-governance arrangements for the protection of education rights of minorities (discussed in subsection 'Potential benefits of self-governance arrangements').

Overall, the Court's decision on the alleged discriminatory nature of the 2018 education reform found no violation as it did not completely remove Russian from the school curriculum and thus, the reformed education system continued to provide adequate opportunities for minorities to preserve their culture and identity (*Valiullina and Others v. Latvia*, 2024, paras. 207 and 212). The ECtHR links the education rights of minorities to effective public participation in *Valiullina and Others v. Latvia* (2024) in a disconcerting manner, where the reduction of minority language teaching ensures better effective participation of minorities in public life. The Court does not investigate the accepted interpretation of effective public participation of minorities.

With the recent judgment, the potential impact of the ECtHR's interpretation is that the term is positioned against minorities. Thus, the judgment can potentially endanger the work conducted by many organisations that have contributed to the development of the understanding of the right to effective public participation for minorities. While it is very early to conclude whether the judgment will have implications for minority rights protection in other contracting parties to the ECHR, the impact of this judgment can be seen in the following case – *Džibuti and Others v. Latvia* (2024) – concerning private minority language education in the same state.

Minority language education in private schools: *Džibuti and Others v. Latvia* (2024)

The *Džibuti and Others v. Latvia* (2024) case is less detailed, as the Court bases a large amount of its decision on the analysis conducted in *Valiullina and Others v. Latvia* (2024). Similarly to the previously-discussed case, the applicants were parents and children who alleged that Russian-speaking pupils had been treated in a discriminatory manner. The case combined three separate applications (*Džibuti* (application no. 225/20), *Boroduļa* (application no. 11642/20), *Ševšeļova* (application no. 21815/20)). The applicants alleged that they could not pursue education in their mother tongue, whereas pupils whose mother tongue was the official language of a country with which the state party had concluded an international agreement could. Specifically, the applicants alleged that the 2018 amendments did not affect education in the European Union (EU) languages, thus alleging discriminatory treatment. The applicants relied on Article 2 of Protocol No. 1 ECHR taken alone and in conjunction with Article 14 ECHR (the other alleged violation of Article 8 ECHR was inadmissible).

The Court found that the difference in treatment was not unreasonable, given that Latvia is a member state of the EU. The ECtHR, therefore, found that there had been no violation of Article 14 ECHR taken in conjunction with Article 2 of Protocol No. 1 ECHR. Similarly to *Valiullina and Others*, the ECtHR emphasised that state parties have a wide margin of appreciation in organising their education system, especially in terms of the language(s) of instruction as there is a general absence of a European consensus on minority language education. The Court set a specific limit that cannot be exceeded in its reasoning where the state is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions (*Džibuti and Others v. Latvia*, 2024, para. 126), as the reasoning highlighted that democracy does not simply mean that the views of a majority must always prevail as "a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position" (*Džibuti and Others v. Latvia*, 2024, para. 126).

However, in the present case, the ECtHR seems to side with the argument of the state party that an adequate ability to use the state language allows people belonging to minorities to successfully pursue their education and participate in democratic discourse in society (*Džibuti and Others v. Latvia*, 2024, para. 39). Therefore, the measures achieved a balanced model of education where the needs of minorities and the needs of the majority are met. The Court references the government's submission, citing that if other languages were to

possess a similar status to the official one, as the applicants claimed, this "would result in a fragmented education system and would inevitably put the integration of minorities and their participation in the democratic processes of the [s]tate at risk" (*Džibuti and Others v. Latvia*, 2024, para. 122). The Court does not dedicate a significant amount of the wording in the judgment to exploring the participation of minorities in public life. However, given the fact that a large part of the judgment relies on the analysis conducted in *Valiullina and Others v. Latvia* (2024), the Court ultimately sides with the views presented in the state party's arguments: that the management of the education system under the reform promotes the effective public participation of minorities, without undertaking an analysis of what effective public participation means when minorities are concerned.

When analysing the first link of meaningful dialogue that the right to education has with the effective public participation rights of persons belonging to minorities, it becomes apparent that the Court does not go into further detail and relies on the information provided in *Valiullina and Others.* Therefore, the Court's judgement seems to overlook the area of consultation and dialogue. When analysing whether the Court identified the second link of self-governance that the right to education has with effective public participation rights of persons belonging to minorities, its reasoning seems indicate that minorities could establish and manage private schools providing general education, which would mean under the current reforms that instruction would be conducted in the state language. This was contrary to the applicants' arguments that private schools did not form part of the state education system (*Džibuti and Others v. Latvia*, 2024, para. 104). In the opinion of the ECtHR, as the state partially finances private schools, these institutions are not separate from the overall national education system; therefore, the state can determine the parameters and requirements that these institutions must adhere to (*Džibuti and Others v. Latvia*, 2024, para. 149).

Therefore, the ECtHR's reasoning is not significantly different from its verdict in *Valiullina and Others v. Latvia* (2024) as it concludes that Article 2 Protocol No.1 ECHR does not guarantee the right to access education in a specific language. This reasoning is potentially disconcerting as it demonstrates a fragmented approach to minority rights protection among different Council of Europe institutions. Specifically, the Court explicitly acknowledged that its stance is different from the Venice Commission's Opinion on Latvia (2020), which recognised that "persons belonging to a national minority have the right to set up and to manage their own private educational establishments" and advised "to exempt private schools from the mandatory proportions of the use of the Latvian language applied to state schools implementing minority education programmes" (Venice Commission Opinion 'On the recent amendments to the legislation on education in minority languages in Latvia', 2020, para. 96). This further indicates the potentially fragmented nature of minority rights protection in Europe, where the Court not only opposes the work done by the ACFC but also by other important Council of Europe institutions, such as the Venice Commission.

There have been further important developments since the judgments for the two cases were issued by the ECtHR. Under Article 43 of the ECHR, within three months from the

date of a Chamber judgment, any party to the case may, in exceptional circumstances, request that the case be referred to the Grand Chamber of the Court. Appeals were requested for both cases; however, the appeals were rejected, making the previous decisions on both cases final. Another case of *Djeri and Others v. Latvia* (2024) that concerns the same state party, this time regarding the reforms requiring for transition in teaching to the state language in pre-school educational institutions, experienced a similar fate. In this case, in July 2024, the ECtHR unanimously held that there had been no violation of Article 14 ECHR taken together with Article 2 of Protocol No. 1 ECHR, as the judgment linked the measures taken by the state party to increase the use of the national language in pre-schools to proportionality and the necessity of preparing pupils for primary education, thus ensuring unity in the education system and a sufficient level of state language proficiency for residents to participate effectively in public life ('Partial transition to education in Latvian in 2018 is not discriminating – ECHR', 2024). The judgment made in July 2024 was made final on 18 October 2024.

Conclusion

This article critically examined the two latest ECtHR cases of *Valiullina and Others v. Latvia* (2024) and *Džibuti and Others v. Latvia* (2024) and identified a potential new trend of jurisprudence justifying limitations to minority language education using effective public participation framing without considering its substance (*Valiullina and Others v. Latvia*, 2024, para. 53; *Džibuti and Others v. Latvia*, para. 39). This contribution demonstrates that effective public participation is understood by an array of international organisations and scholars as an essential right that belongs to individuals with ethnic, religious, linguistic, national, and other minority backgrounds. This right covers the areas of decision-making, self-governance, and guarantees. The right to effective public participation goes beyond the limitations of general human rights and offers measures that help achieve genuine equality for – and influence of – minority groups in the public life of a democratic society. The contribution of this right lies in its recognition that public life is not a neutral space because the political nature of this space makes it susceptible to the hegemony of the (ethnic, religious, linguistic, and other) majority. Therefore, the genuine effective public participation of individuals belonging to minorities ensures meaningful influence over areas of critical importance to minorities, including the area of education.

In *Valiullina and Others v. Latvia* (2024) and *Džibuti and Others v. Latvia* (2024) the effective public participation and education rights of minorities, specifically in minority language education, is overwhelmingly interpreted as a one-way relationship where minority education can shape the participation of minorities in public life. However, the analysis conducted in this paper demonstrates the important links that the right to effective public participation of individuals belonging to minorities and education rights have, namely: 1) the need for meaningful consultation/dialogues between different minority stakeholders and the authorities; and 2) the benefit of self-governance arrangements that can protect and develop education programmes of minorities. Therefore, the two links identified inform the

present understanding of how effective public participation of minorities and education rights inform each other, resulting in a two-way relationship where education enables minorities to participate in the public life of their countries and the effective public participation of minorities shapes the education opportunities important to them.

While this interpretation has seen a significant number of developments within the general international human rights framework and the specific minority rights protection principles, the analysis of *Valiullina and Others v. Latvia* (2024) and *Džibuti and Others v. Latvia* (2024) indicates that the education rights of linguistic minorities have not seen the same level of development within the ECHR system. In the two cases, it seems that the continued use of the wide margin of appreciation allocated to the state in question concerning minorities is accompanied by a potentially concerning opinion of the Court that refrains from exploring the entire normative framework as well as an array of reports that apply to the issues raised in the two cases. In doing so, the latest reasoning at the ECtHR potentially refrains from engaging in an analysis of whether the consultation opportunities were implemented in a 'meaningful' way. Furthermore, the second link of self-governance opportunities in minority language education remains unexplored in the two cases.

The analysis conducted in this paper indicates there is continued fragmentation taking place within the Council of Europe between human rights protection principles and mechanisms and minority rights protection processes, due to the lack of engagement in the reasoning of the ECtHR with other Council of Europe bodies (such as the ACFC and the Council of Europe Committee of Ministers) who have been consistent in their findings that both areas of minority language education and public life participation for minorities are progressively getting worse. In the Court's analysis in *Valiullina and Others v. Latvia* (2024), the reasoning seems to overlook the position of the Venice Commission (2020): that persons belonging to minorities need effective public participation opportunities for the development of education system. While the Court is not required to incorporate other international norms, the issue lies in the fact that the Court linked the reduction of minority language teaching to the effective participation of minorities in the public life of the state, which potentially undoes the thoroughly-developed understanding by other monitoring mechanisms, including the ones who form part of the Council of Europe system. Furthermore, in the Court's *Džibuti and Others v. Latvia* (2024) judgment, it could be observed that the ECtHR's logic on minority rights protection differs from the Venice Commission's opinion of 2020 'On the recent amendments to the legislation on education in minority languages in Latvia', which explicitly recognises the right of minorities to set up and manage their own private educational establishments and requires refrainment from subjecting private minority education institutions to the reform (Venice Commission, 2020, para. 96).

Since the ECtHR upheld that the strengthening of national language use was a legitimate aim with the 2018 reform, and that a balance was maintained in terms of state interest and the needs of minorities, a new and more restricted version of the education reform was introduced in 2022 which set a September 2025 deadline for further reduction

of minority language education. In this scenario, the ECtHR's judgments carry potentially significant consequences on minority protection as the Court confirmed that, while the ECHR is a 'living instrument' and many of its provisions have seen significant development, the area of education rights in minority languages has not seen the same level of development, especially when it comes to the important mutual links that this area of rights has with the right to effective public participation of persons belonging to minorities.

References

Ádám and Others v. Romania (2021) 81114/17 and 5 others ECtHR.

Advisory Committee on the Framework Convention for the Protection of National Minorities, Thematic Commentary No. 1 on Education under the Framework Convention for the Protection of National Minorities (31 May 2024) revising and replacing Thematic Commentary No. 1 (2006).

Advisory Committee on the Framework Convention for the Protection of National Minorities, Thematic Commentary No.2 on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and Public Affairs (27 February 2008) ACFC/31DOC(2008)001.

Advisory Committee on the Framework Convention for the Protection of National Minorities, Thematic Commentary No.3 'The Language Rights of Persons Belonging to National Minorities under the Framework Convention' (24 May 2012) ACFC/44DOC(2012)0001.

Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Latvia (23 February 2018) ACFC/OP/III(2018)001REV.

Aziz v. Cyprus (2004) 69949/01 ECtHR.

Bakirdzi and E.C. v. Hungary (2022) 49636/14 and 65678/14 ECtHR.

Beetham, D. (1999). *Democracy and Human Rights*. Polity Press.

Berry, S. E. (2016). The siren's call? Exploring the implications of an additional protocol to the European Convention on Human Rights on national minorities. *International Journal on Minority and Group Rights,* 23(1), 1–38. https://doi.org/10.1163/15718115-02301002

Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" v. Belgium (1968) 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64 ECtHR.

Catan and Others v. the Republic of Moldova and Russia (2012) 43370/04, 8252/05, and 18454/06 ECtHR.

Cheskin, A. (2012). Synthesis and conflict: Russian-speakers' discursive response to Latvia's nationalising state. *Europe-Asia Studies,* 64(2), 325-347. https://doi.org/10.1080/09668136.2011.642582

Cheskin, A. and Kachuyevski, A. (2019). The Russian-speaking populations in the post-Soviet space: Language, politics and identity. *Europe-Asia Studies,* 71(1), 1-23. https://doi.org/10.1080/09668136.2018.1529467

Committee of Ministers, Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Latvia (3 March 2021) CM/ResCMN(2021)9.

Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Art.13) (1999) E/C.12/1999/10.

Committee on the Rights of the Child General Comment No. 14 (2013) CRC/C/GC/14.

Conference on Security and Co-operation in Europe, 'Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE' (1990).

Convention on the Rights of the Child (1989).

Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

Council of Europe, Framework Convention for the Protection of National Minorities (1995) (ETS No.157) as of its entry into force, on 1 February 1998.

Council of Europe, Protocol No.1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 (1952) (ETS No. 155) as of its entry into force, on 1 November 1998.

Cyprus v. Turkey (2001) 25781/94 ECtHR.

D.H. and Others v. the Czech Republic (2007) 57325/00 ECtHR.

Danis et l'Association des personnes d'origine turque c. Roumanie (2015) 16632/09 ECtHR.

Djeri and Others v. Latvia (2024) 50942/20 and 2022/21 ECtHR.

Dzehtsiarou, K. (2015). *European consensus and the legitimacy of the European Court of Human Rights*. Cambridge University Press. https://doi.org/10.1017/CBO9781139644471

Džibuti and Others v. Latvia (2024) 225/20, 11642/20 and 21815/20 ECtHR.

Education Law (adopted on 29 October 1998, entry into force on 1 June 1999).

Elmazova and Others v. North Macedonia (2023) 11811/20 and 13550/20 ECtHR.

European Commission for Democracy through Law (Venice Commission), Opinion "On the recent amendments to the legislation on education in minority languages in Latvia" (2020) CDL-AD(2020)012.

Ganty, S. and Kochenov, D. V. (2023). *Hijacking human rights to enable punishment by association: Valiullina, Džibuti and outlawing minority schooling in Latvia*. Strasbourg Observers. https://strasbourgobservers.com/2023/11/23/hijacking-human-rights-to-enable-punishment-by-association-valiullina-dzibuti-and-outlawing-minority-schooling-in-latvia/

Gould, G. C. (2004). *Globalizing democracy and human rights*. Cambridge University Press. https://doi.org/10.1017/CBO9780511617096

Grigas. A. (2014). *The new generation of Baltic Russian speakers*. Euractiv. http://www.euractiv.com/sections/europes-east/new-generation-baltic-russian-speakers-310405

Henrard, K. (2005). "Participation", "representation" and "autonomy" in the Lund Recommendations and their reflections in the supervision of the FCNM and several human rights conventions. *International Journal on Minority and Group Rights,* 12, 133-168. https://doi.org/10.1163/157181105774740606

Henrard, K. (2020). Integration reasoning at the ECtHR: Challenging the boundaries of minorities' citizenship. *Netherlands Quarterly of Human Rights,* 38(1), 55–74. https://doi.org/10.1177/0924051920901371

Ita, R. and Hicks, D. (2021). Beyond expansion or restriction? Models of interaction between the living instrument and margin of appreciation doctrines and the scope of the ECHR. *International Human Rights Law Review*, 10(1), 40-74. https://doi.org/10.1163/22131035-01001004

International Covenant on Civil and Political Rights (1966).

International Covenant on Economic, Social and Cultural Rights (1966).

European Court of Human Rights (2023). *Judgment Concerning Latvia*. https://www.echr.coe.int/w/judgment-concerning-latvia

Kaprāns, M. and Mieriņa, I. (2019). Minority reconsidered: Towards a typology of Latvia's Russophone identity. *Europe-Asia Studies*, 71(1), 24-47. https://doi.org/10.1080/09668136.2018.1556250

Kymlicka, W. (1996). *Multicultural citizenship : A liberal theory of minority rights*. Oxford University Press. https://doi.org/10.1093/0198290918.001.0001

Laitin, D. L. (1998). *Identity in formation: The Russian-speaking populations in the new abroad*. Cambridge University Press.

Law On Free Development of Latvia's National and Ethnic Groups and Their Right to Cultural Autonomy (adopted and entered into force on 19 March 1991).

League of Nations. (1935). Minority Schools in Albania, Advisory Opinion, PCIJ Series A/B no 64, ICGJ 314 (PCIJ 1935).

Lederman, S. (2022). Representative democracy and colonial inspirations: The case of John Stuart Mill. *American Political Science Review*, 116(3), 927–939. https://doi.org/10.1017/S0003055421001283

Lijphart, A. (1977). Majority rule versus democracy in deeply divided societies. *Politikon*, 4(2), 113–126. https://doi.org/10.1080/02589347708704717

Machnyikova, Z. and Hollo, L. (2010). The principles of non-discrimination and full and effective equality and political participation. In M. Weller and K. Nobbs (eds.), *Political participation of minorities: A commentary on international standards and practice* (pp. 95-149). Oxford University Press.

Malloy, T. H. (2009). The Lund Recommendations and non-territorial arrangements: Progressive de-territorialization of minority politics. *International Journal on Minority and Group Rights*, 16, 665-679. https://doi.org/10.1163/15718115_016_04-13

Malloy, T. H. (2015). Introduction. In T. H. Malloy, A. Osipov, and B. Vizi (*eds.*), *Managing diversity through non-territorial autonomy: Assessing advantages, deficiencies, and risks* (pp. 1-12). Oxford University Press. https://doi.org/10.1093/acprof:oso/9780198738459.003.0001

Nootens, G. (2015). Can non-territorial autonomy bring an added value to theoretic and policy-orientated analysis of ethnic politics? In T. H. Malloy and F. Palermo (eds.), *Minority accommodation through territorial and non-territorial autonomy* (pp. 33-56). Oxford University Press. https://doi.org/10.1093/acprof:oso/9780198746669.003.0003

O'Loughlin, F. (2023). *The Reykjavik Summit of the Council of Europe: United around values in the face of extraordinary challenges* (No. 15681). Council of Europe.

Organization for Security and Co-operation in Europe High Commissioner on National Minorities, Recommendations on the Effective Participation of National Minorities in Social and Economic Life (2023).

Organization for Security and Co-operation in Europe High Commissioner on National Minorities, The Hague Recommendations Regarding the Education Rights of National Minorities (1996).

Organization for Security and Co-operation in Europe High Commissioner on National Minorities, The Lund Recommendations on Effective Participation of National Minorities in Public Life (1999).

Oršuš and Others v. Croatia (2010) 15766/03 ECtHR.

Palermo, F. (2015). Owned or shared? Territorial autonomy in the minority discourse. In T. H. Malloy and F. Palermo (eds.), *Minority accommodation through territorial and non-territorial autonomy* (pp. 13-32). Oxford University Press. https://doi.org/10.1093/acprof:oso/9780198746669.003.0002

Permanent resident population by statistical regions, cities under state jurisdiction and counties by gender, most languages used at home and by age group on 1 March 2011. (2021). [Dataset]. Central Statistical Authority. https://data.stat.gov.lv/pxweb/lv/OSP_OD/OSP_OD__tautassk__taut__tsk2011/TSG11-07.px/table/tableViewLayout1/

Population by ethnicity in regions, counties, cities, parishes, neighbourhoods and densely populated areas. (2024). [Dataset]. Central Statistical Authority. https://data.stat.gov.lv/pxweb/lv/OSP_PUB/START__POP__IR__IRE/RIG040/

Preece, J. J. (2008). Democracy, minority rights and plural societies: *Plus ça change*? *Sociology Compass*, 2(2), 609–624. https://doi.org/10.1111/j.1751-9020.2007.00070.x

Sartori, G. (1987). The theory of democracy revisited. In R. Blaug and J. Schwarzmantel (eds.), *Democracy*, (pp. 192–196). Columbia University Press. https://doi.org/10.7312/blau17412-044

Sejdic and Finci v. Bosnia and Herzegovina (2009) 27996/06 and 34836/06 ECtHR.

Suksi, M. (2015). Non-territorial autonomy: The meaning of '(non-)territoriality'. In T. H. Malloy and F. Palermo (eds.), *Minority accommodation through territorial and non-territorial autonomy* (pp. 83-116) Oxford University Press. https://doi.org/10.1093/acprof:oso/9780198746669.003.0005

Szolcsán v. Hungary (2023) 24408/16 ECtHR.

The Baltic Times (2024). *Partial transition to education in Latvian in 2018 is not discriminating – ECHR*. https://www.baltictimes.com/partial_transition_to_education_in_latvian_in_2018_is_not_discriminating_-_echr/

Toivanen, R. (2010). Rethinking the concept of effective participation: Are minorities similar to women? *Journal on Ethnopolitics and Minority Issues in Europe*, 9(2), 1-31.

Tyrer v. United Kingdom (1978) 5856/72 ECtHR.

United Nations Declaration on the Rights of Ethnic, Linguistic, Religious or National Minorities, (1992) UNGA Res 47/134.

United Nations Economic and Social Council. (1999). Preliminary report of the Special Rapporteur on the Right to Education, Katarina Tomasevski, submitted in accordance with Commission on Human Rights resolution 1998/33. E/CN.4/1999/49.

United Nations Educational, Scientific and Cultural Organisation, Convention Against Discrimination in Education (1960).

United Nations Office of the High Commissioner on Human Rights (2023). *Latvia: UN experts concerned about severe curtailment of minority language education.* https://www.ohchr.org/en/press-releases/2023/02/latvia-un-experts-concerned-about-severe-curtailment-minority-language

Valiullina and Others v. Latvia (2024) 56928/19, 7306/20 and 11937/20 ECtHR.

Verstichel, A. (2010). Understanding minority participation and representation and the issue of citizenship. In M. Weller and K. Nobbs (eds.), *Political participation of minorities: A commentary on international standards and practice* (pp. 72-94). Oxford University Press.

Vihalemm, T., Juzefovičs, J., and Leppik, M. (2019). Identity and media-use strategies of the Estonian and Latvian Russian-speaking populations amid political crisis. *Europe-Asia Studies*, 71(1), 48-70. https://doi.org/10.1080/09668136.2018.1533916

Zornic v. Bosnia and Herzegovina (2014) 3681/06 ECtHR.