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Case note: *Valiullina* and *Džibuti* v Latvia
The right of minorities to education and cultural
identity under the European Convention on
Human Rights

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Case note: *Valiullina and Džibuti v Latvia* - The right of minorities to education and cultural identity under the European Convention on Human Rights

Gabriel Mitablinda¹

“Central Governments sometimes regard national minorities purely as a nuisance and like to try to level them out.”²

Abstract:

This case note analyses two judgments delivered by the ECtHR in 2023 in the cases *Valiullina and Džibuti v Latvia*. This series of cases deals with the compatibility of the 2018 Latvian education reform with the Convention. The Latvian authorities introduced high national language quotas in school curricula, a measure that disproportionately affected the right of national minorities to access education in their native language. The case note analyses the main reasons why the ECtHR did not follow the recommendations of international human rights bodies, which concluded that the 2018 education reform is not in line with Latvia's positive obligations under international law, respect for minorities and children's rights. This case note also analyses whether the right to education under the Convention encompasses the right to cultural identity for national minorities. In previous judgements, the Court has avoided answering the question of whether the Convention protects the right to cultural identity.

Keywords:

Language rights, minority rights, right to education, russian minority, cultural identity, discrimination, constitutional identity.

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² “Preparatory Work on Article 14 of the European Convention on Human Rights” (Council of Europe, May 9, 1967), 25, https://www.echr.coe.int/documents/d/echr/library_travprep_table_eng.

Case note: *Valiullina and Džibuti v Latvia* - The right of minorities to education and cultural identity under the European Convention on Human Rights

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Summary: 1. Introduction; 2. Background of the cases; 3. The arguments of the parties before the European Court of Human Rights, including 3.1 The arguments of the applicants and 3.2 The position of the Latvian authorities; 4. The assessment of the European Court of Human Rights 5. Commentary, 5.1 The right to education, the right to choose the language of instruction and the protection of minority identity under the Convention, and 5.2 The right to education and the positive obligations of the State; 6. Conclusion.

1. Introduction

This case note analyses two judgments from 2023, delivered by the European Court of Human Rights (the Court or ECtHR) in the cases of *Valiullina and Others v. Latvia*³ and *Džibuti and Others v. Latvia*⁴. The judgments address the compatibility of the 2018 Latvian Education reform with the European Convention on Human Rights (the Convention or ECHR). More specifically, the judgments assess the compatibility of high national language quotas in school curricula with the right of minorities to benefit from education in their minority language. In *Valiullina*, the applicants challenge the language quotas applied to public schools, and in *Džibuti*, to private schools. This is the main difference between the two cases. The Fifth Section of the Court sitting as a Chamber unanimously rejected the applications. In February 2024, the Panel of the Grand Chamber rejected the applicants' request for referral.⁵ This means that the judgments are final and that all proceedings before the Court have ended.

The case note analyses the main reasons why the ECtHR did not follow the recommendations of international human rights bodies, which concluded that the 2018 education reform is not in line with Latvia's positive obligations under international law, respect for minorities and children's rights. Instead, the ECtHR chose to uphold Latvia's prerogative to promote the unity of its education system and its constitutional identity. This case note also analyses if the right to

³ *Valiullina and Others v. Latvia*, No. 56928/19, 7306/20, 11937/20 (ECtHR September 14, 2023).

⁴ *Džibuti and Others v. Latvia*, No. 225/20, 11642/20, 21815/20 (ECtHR November 16, 2023).

⁵ "Grand Chamber Panel's Decision - February 2024," accessed April 15, 2024, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22003-7880939-10958169%22%5D%7D>.

education under the Convention encompasses the right to cultural identity for national minorities. In previous judgements, the Court has avoided addressing whether the Convention protects the right of minorities to cultural identity within the context of the right to education.

These two cases perfectly illustrate the tensions between the Court's interpretation of the right to education and that of other international human rights bodies. Not often judgments from the Court go against recommendations of international human rights bodies. This is one of those rare cases. Departing from international standards is neither desirable nor encouraged. However, when such cases do occur in practice, states and international institutions need strong reasons and compelling arguments to justify their departure.

Sarah Ganty and *Dimitry Kochenov* have published an interesting blog on the judgments. Their blog illustrates well the flaws in the Court's reasoning. The authors highlight how the judgments divert from international standards for the protection of minorities.⁶ However, they do not address the tensions between the right of minorities to cultural identity and the prerogative of the state to promote its constitutional identity. Nor do they show how these judgments depart from the Court's case law on the right to education. This case note will address these two aspects.

2. Background of the cases

Significant parts of the Latvian population identify themselves as belonging to the Russian minority. Most Russians moved to Latvia during the Soviet occupation, although some had lived there prior to this. Since Latvia's independence in 1991, the Russian minority has faced various obstacles to its integration into society. For example, citizenship requirements made it difficult for most ethnic Russians to obtain Latvian citizenship, rendering them stateless with the status of permanent residents. As a result, members of the Russian minority had difficulty accessing the national pension fund or entering the civil service. The government justifies these policy choices with the need to reverse the effects of the policies implemented during the Soviet occupation.

The Russian minority has brought several cases before the Court denouncing their treatment in Latvia. More recently, in the case of *Savickis and Others v Latvia*, the Court had to decide whether

⁶ Sarah Ganty, "Hijacking Human Rights to Enable Punishment by Association: Valiullina, Džibuti and Outlawing Minority Schooling in Latvia," *Strasbourg Observers* (blog), November 23, 2023, <https://strasbourgobservers.com/2023/11/23/hijacking-human-rights-to-enable-punishment-by-association-valiullina-dzibuti-and-outlawing-minority-schooling-in-latvia/>.

the Latvian pension rules discriminated against Russians.⁷ The pension rules excluded certain periods of work. This restriction only applied to permanent residents, most of whom were of Russian ethnicity. The Court found that the pension scheme was not discriminatory and concluded that Latvia had not violated the Convention.⁸ The ECtHR upheld the legitimacy of the objectives pursued by the Latvian government to protect the constitutional identity and economic system. *Ignatius Yordan Nugraha* published a case note on the *Savickis* decision.⁹ The case note analyses how concepts such as constitutional identity can be misused to restrict minority rights.¹⁰

The 2018 Latvian education reform continues this trend. The Latvian authorities wanted to reverse Soviet education policies that had divided the education system and suppressed the use of the Latvian language. The language reform aimed to unify the education system and push students to use the Latvian language. According to the case materials, approximately 37% of the Latvian population spoke Russian in 2011. The Latvian education system reflected the bilingual nature of society.¹¹ Pupils could attend schools where the curriculum was taught predominantly in Latvian or in Russian under minority curriculum programmes.¹² However, the 2018 education reform abolished the minority curriculum programmes and made Latvian the main language of instruction in schools. The minority curriculum was favoured by Russian-speaking pupils because it allowed a greater number of classes to be taught in their native language.

The 2018 reform introduced a system that requires quotas for classes to be taught in Latvian. For grades 1 to 6, at least 50% of classes must be in Latvian, for grades 7 to 9 at least 80%, and for upper secondary schools 100%. Under this system, the number of classes taught in Latvian increases significantly for pupils enrolled in elementary and middle schools. At the same time, for high schoolers, the only language of instruction is Latvian.

Several international bodies reviewed the language reform to determine whether the language quotas were compatible with international human rights standards. In 2018, the Committee on the Elimination of Racial Discrimination (CERD) published its *Concluding observations on the*

⁷ *Savickis and Others v. Latvia*, No. 49270/11 (ECtHR [GC] June 9, 2022).

⁸ *Savickis and Others v. Latvia* paragraph 221.

⁹ Ignatius Yordan Nugraha, “Protection of Constitutional Identity as a Legitimate Aim for Differential Treatment: ECtHR 9 June 2022, No. 49270/11, *Savickis and Others v Latvia*,” *European Constitutional Law Review* 19, no. 1 (March 2023): 141–62, <https://doi.org/10.1017/S1574019622000463>.

¹⁰ Nugraha, 162.

¹¹ *Valiullina and Others v. Latvia* at page 39.

¹² *Valiullina and Others v. Latvia* paragraph 16.

periodic reports of Latvia and found that the language policy discriminates against minorities in the field of education.¹³ The observations also pointed out that reducing teaching in minority languages in public and private schools creates undue restrictions on access to education in minority languages.¹⁴ The CERD advised Latvia against reducing the number of minority language classes in both public and private schools.¹⁵

In 2022, three United Nations Special Rapporteurs addressed an open communication to Latvia regarding the Education Reform.¹⁶ The Special Rapporteur on minority issues, the Special Rapporteur on cultural rights and the Special Rapporteur on the right to education expressed their concerns about the impact of the education reform on minorities and children's rights. In particular, they argued that the reform was contrary to Latvia's international human rights obligations. The Special Rapporteurs referred to the standards enshrined in the Convention on the Rights of the Child (CRC). According to the CRC, children belonging to a minority group should be able to enjoy their culture and speak their own language.¹⁷ The education of children from minority backgrounds should contribute to the development of their cultural identity, language and minority values.

The Venice Commission also issued an Opinion in 2020, reviewing the language quotas implemented by the education reform.¹⁸ The Venice Commission stressed that the education reform should take better account of minority rights. The government was advised to reintroduce the minority education programme and to exempt private schools from language quotas.¹⁹

Despite the arguments and concerns raised by international bodies, the Latvian authorities continued with the reform. In this context, the applicants challenged the language quotas and claimed before the Court that Latvia had violated their right to education, protected by *Article 2 of*

¹³ "Concluding Observations on the Combined Sixth to Twelfth Periodic Reports of Latvia*" (United Nations, Committee on the Elimination of Racial Discrimination, September 25, 2018), para. 16.

¹⁴ "Concluding Observations on the Combined Sixth to Twelfth Periodic Reports of Latvia*," paras. 16, a).

¹⁵ "Concluding Observations on the Combined Sixth to Twelfth Periodic Reports of Latvia*," paras. 16, a).

¹⁶ "Mandates of the Special Rapporteur on Minority Issues; the Special Rapporteur in the Field of Cultural Rights and the Special Rapporteur on the Right to Education," September 28, 2022, 2, <https://www.ohchr.org/en/press-releases/2023/02/latvia-un-experts-concerned-about-severe-curtailement-minority-language>.

¹⁷ "Mandates of the Special Rapporteur on Minority Issues; the Special Rapporteur in the Field of Cultural Rights and the Special Rapporteur on the Right to Education," September 28, 2022, 2, <https://www.ohchr.org/en/press-releases/2023/02/latvia-un-experts-concerned-about-severe-curtailement-minority-language>.

¹⁸ "Opinion of the Venice Commission ON THE RECENT AMENDMENTS TO THE LEGISLATION ON EDUCATION IN MINORITY LANGUAGES," June 18, 2020, Opinion No. 975/2020.

¹⁹ para. 120.

Protocol No. 1 to the Convention, taken alone. They also claim a violation of *Article 2 of Protocol No. 1* in conjunction with *Article 14 Prohibition of Discrimination*.²⁰ Finally, the applicants allege a violation of *Article 8(2) of the right to respect for private and family life*.²¹

3. The arguments of the parties before the European Court of Human Rights

The applicants

Multiple complaints were submitted to the Court denouncing the language quotas implemented by the Latvian authorities. The Court decided to divide the complaints into two groups, based on the applicants studying in public and private schools. Both groups of applicants are affected by the new language quotas because they are permanent residents of Latvia.²² The applicants denounce the legislative amendments as part of the efforts to marginalise and limit the use of Russian in Latvia. The applicants rely on three main arguments before the Court: 1) the reform discriminates against the Russian-speaking minority; 2) the parents have the right to choose the language of instruction in public and private schools; and 3) the reform contradicts international human rights standards which protect the right to education for minorities.

1) The reform discriminates against the Russian-speaking pupils.

According to the applicants, the language requirements are aimed at Russian-speaking pupils. Schools teaching in German, English, or French are not affected by the language quotas.²³ It is true that the language reform allows many exceptions for schools teaching in an EU language or schools established under international agreements between Latvia and third countries.

In *Valiullina*, the applicants claim that in public schools, Latvian-speaking pupils can study in their mother tongue. Restrictions on the use of Russian in the education system are discriminatory because they prevent Russian-speaking pupils from studying their mother tongue.²⁴ In *Džibuti*, the applicants claim that private schools are not part of the national education system.²⁵ Private schools should be free to choose the language of instruction, just like schools that use German, English or

²⁰ *Valiullina and Others v. Latvia* paragraph 1.

²¹ *Džibuti and Others v. Latvia* paragraph 1.

²² *Valiullina and Others v. Latvia* paragraph 32,33,34.

²³ *Valiullina and Others v. Latvia* paragraph 137.

²⁴ *Valiullina and Others v. Latvia* paragraph 156.

²⁵ *Džibuti and Others v. Latvia* paragraph 104.

French.²⁶ Forcing private schools to teach in Latvian, while other schools are exempted, discriminates against Russian speakers. According to the applicants, the education reform is a deliberate attempt to make education in minority languages very difficult.²⁷

2) The right to choose the language of instruction in schools.

The parents claim that they have the right to choose their children's language of instruction in schools. In *Valiullina* the parents claimed that the previous minority curriculum allowed them to choose the language of instruction for most courses.²⁸ On this basis, the parents claim the right to choose the language of instruction in public schools.²⁹ In *Džibuti*, the applicants denounced the strict language quota in private schools as excessive regulation of the private sector.³⁰ According to them, private schools must have more freedom to manage their educational programmes, including the right to choose their language of instruction.³¹

The applicants argued that the development of international standards and the evolution of the Court's caselaw recognised the existence of the right to choose the language of instruction.³² The applicants relied on the cases of *Cyprus v. Turkey* and *Catan and Others v. Moldova and Russia*.³³ In those cases, the Court held that measures prohibiting teaching in the applicant's mother tongue were incompatible with the Convention.³⁴ The applicants consider that the cases of *Cyprus v. Turkey* and *Catan* have extended the right to education to cover the right to choose the language of instruction in schools.

More importantly, the applicants argued that the restrictions on the use of their mother tongue threatened their minority culture and identity.³⁵ The applicants argued that, in the long term, restrictions on education in the Russian language would reduce their children's knowledge of the language and thus threaten their minority identity. For the applicants, their identity is strongly

²⁶ *Džibuti and Others v. Latvia* paragraph 105.

²⁷ *Valiullina and Others v. Latvia* paragraph 155.

²⁸ *Valiullina and Others v. Latvia* paragraph 17.

²⁹ *Valiullina and Others v. Latvia* paragraph 17.

³⁰ *Džibuti and Others v. Latvia* paragraph 9.

³¹ *Džibuti and Others v. Latvia* paragraph 9.

³² *Valiullina and Others v. Latvia* paragraph 121.

³³ *Valiullina and Others v. Latvia* paragraph 120.

³⁴ *Valiullina and Others v. Latvia* paragraph 120.

³⁵ *Džibuti and Others v. Latvia* paragraph 69.

linked to their language, minority status and ethnic origin. Their identity as a minority would be preserved if their children could be educated in Russian.³⁶

- 3) The reform contradicts international human rights standards which protect the right to education for minorities.

In both cases, the applicants strongly emphasised the incompatibility of language quotas with international human rights standards, minority rights, children's rights and the right to education.³⁷ The applicants relied on the Venice Commission Opinion from 2020, the CERD Report from 2018 and the above-mentioned caselaw of the Court. The applicants highlighted the recommendations of the Venice Commission to reintroduce the bilingual approach in the education system and to exempt private schools from language quotas.³⁸

To demonstrate the evolution of international standards on minority rights, the applicants relied on the Council of Europe's Framework Convention for the Protection of National Minorities (the Framework Convention). The Framework Convention was adopted in 1995 and was ratified by Latvia in the same year.³⁹ The Framework Convention obliges States Parties to ensure that national minorities can preserve their essential elements, such as language and identity.⁴⁰ According to the applicants, the education reform implemented by Latvia violates the obligations under the Framework Convention.⁴¹

The applicants have made it clear that the language reform does not take into account their linguistic rights as a minority. They want the Court to allow their children to continue to study in their mother tongue and to recognise their minority right to cultural identity. The applicants argued that, in the long run the restriction would reduce their children's knowledge of Russian and threaten their identity as a minority.

The position of the Latvian authorities

³⁶ Džibuti and Others v. Latvia paragraph 69.

³⁷ Valiullina and Others v. Latvia paragraph 121.

³⁸ "Opinion of the Venice Commission ON THE RECENT AMENDMENTS TO THE LEGISLATION ON EDUCATION IN MINORITY LANGUAGES," para. 120.

³⁹ "Framework Convention for the Protection of National Minorities" (European Treaty Series - No. 157, II 1995), <https://www.coe.int/en/web/conventions/cets-number/-/abridged-title-known>.

⁴⁰ Valiullina and Others v. Latvia paragraph 88.

⁴¹ Valiullina and Others v. Latvia paragraph 88.

The Latvian authorities defended the reform and rejected the claims raised by the applicants. The government claims that the reform has two main objectives: 1) to ensure the unity of the education system and 2) to protect and strengthen the Latvian language and its constitutional identity.⁴²

At the national level, the Latvian Constitutional Court (the Constitutional Court) issued several judgments about the compatibility of Education Reform with the Constitution.⁴³ The Constitutional Court recognised the legitimacy of the objectives pursued by the reform and concluded that these objectives can prevail over some rights protected by the Latvian Constitution. More precisely, the objectives of the reform prevail *over Article 112 The Right to Education, Article 114 Rights of Minorities, and Article 91 The Principle of Non-discrimination*.⁴⁴ In its defence before the Court, the Government relied on the decisions of the Constitutional Court.

1) Safeguarding the unity of the education system

For the first part, concerning the unity of the education system, the authorities argued that language is a factor that divides the national education system.⁴⁵ This linguistic division creates two parallel education systems, one for Latvian speakers and another for Russian speakers.⁴⁶ According to the Latvian authorities, this division can be traced back to the Soviet times. The Soviet authorities favoured and promoted education in Russian and marginalised the Latvian language. As a result, the education system inherited by the Latvian authorities echoes the previous segregation policies.⁴⁷ According to the authorities, the reform is part of the efforts to fix the divided education system and to eliminate cases where pupils who follow the minority language curriculum, end up with no knowledge of Latvian by the time they graduate.⁴⁸

According to the Latvian authorities, the right to choose the language of instruction is not protected by the Convention.⁴⁹ The authorities referred to the *Belgian Linguistic Case*, in which the Court recognised the right to access education only in the state language.⁵⁰ The Government also rejected the claim that the Court had recognised the right to choose the language of instruction in *Catan*

⁴² Valiullina and Others v. Latvia paragraph 169.

⁴³ Valiullina and Others v. Latvia paragraph 45.

⁴⁴ Valiullina and Others v. Latvia paragraph 45.

⁴⁵ Valiullina and Others v. Latvia paragraph 48.

⁴⁶ Valiullina and Others v. Latvia paragraph 12.

⁴⁷ Valiullina and Others v. Latvia paragraph 170.

⁴⁸ Valiullina and Others v. Latvia paragraph 181.

⁴⁹ Valiullina and Others v. Latvia paragraph 116.

⁵⁰ Valiullina and Others v. Latvia paragraph 116.

and *Cyprus v. Turkey*.⁵¹ According to the Government, these cases concern the use of national languages, not minority languages.

The government also argued that the right to choose the language of instruction contradicted the principle of the unity of the education system.⁵² This argument was based on the decision of the Constitutional Court, which ruled that parents and pupils do not have the right to choose the language of instruction in *public schools* if this right threatens the unity of the education system.⁵³ Therefore, the right to choose the language of instruction in public schools is outside the scope of the right to education as protected by the Latvian Constitution. The Constitutional Court took a similar approach with regard to *private schools*. According to this, private schools must ensure that pupils can achieve a good level of knowledge of the state language.⁵⁴ Private schools cannot be used to circumvent the requirement to promote and learn the state language, as this hinders the unity of the education system.⁵⁵

2) *Protecting the Latvian language and constitutional identity.*

The second aim of the reform is to protect and strengthen the Latvian language. According to the government, the use of Russian in schools undermines the use of Latvian.⁵⁶ The reform is part of the efforts to strengthen the use of Latvian at the national level.⁵⁷ At the same time, knowledge of Latvian is weak among pupils of Russian ethnicity. The poor knowledge of Latvian can be attributed to the high number of courses taught in Russian.⁵⁸ For this reason, the government intends to replace the use of Russian with Latvian in private and public schools.⁵⁹

According to the government, the obligation to strengthen the national language stems from the Constitution because the Latvian language is an essential element of the Constitution.⁶⁰ This interpretation has been supported by the Constitutional Court, which has recognised the State's

⁵¹ *Valiullina and Others v. Latvia* paragraph 114.

⁵² *Valiullina and Others v. Latvia* paragraph 159.

⁵³ *Valiullina and Others v. Latvia* paragraph 46.

⁵⁴ *Džibuti and Others v. Latvia* paragraph 33.

⁵⁵ *Džibuti and Others v. Latvia* paragraph 33.

⁵⁶ *Valiullina and Others v. Latvia* paragraph 12.

⁵⁷ *Valiullina and Others v. Latvia* paragraph 173.

⁵⁸ *Valiullina and Others v. Latvia* paragraph 170.

⁵⁹ *Valiullina and Others v. Latvia* paragraph 115.

⁶⁰ *Valiullina and Others v. Latvia* paragraph 178.

responsibility to strengthen the use of the national language and constitutional identity.⁶¹ According to the Latvian authorities the right to education must be exercised to reinforce a feeling of affiliation with Latvia among pupils.⁶² The constitutional status of the language can take precedence over other minority languages and Russian cannot be compared to Latvian because it does not have a special legal status.⁶³

According to the government, the language reform does not discriminate against Russian speakers. Schools using German, French or English are exempt from the language quotas because they teach in an EU language. The promotion of EU languages is a legitimate goal, as Latvia is a member of the EU.⁶⁴ For this reason, Russian-speaking pupils are not comparable to pupils studying one of the official EU languages.⁶⁵ For similar reasons, the government stated that Russian-speaking pupils are not in a comparable position to those in schools established under international agreements.

4. The assessment of the European Court of Human Rights

Considering the parties' arguments, the Court must assess the compatibility of the language quotas with the Convention. More specifically, it must answer whether the right to choose the language of instruction is protected by the Convention and whether the quotas discriminate against the Russian-speaking students.

Article 2 of Protocol No.1 of the Convention – the right to choose the language of instruction, and cultural identity under the right to education.

The Court starts by recalling the *Belgian Linguistic Case*, in which it defined the scope of the right to education.⁶⁶ Delivered over 50 years ago, the judgment is regarded as a landmark judgment on the right to access education and to be taught in an official state language.⁶⁷ The Court recognised that the *Belgian Linguistic Case* was applicable to the present cases.⁶⁸ The Court then turned to the

⁶¹ Valiullina and Others v. Latvia paragraph 53.

⁶² Valiullina and Others v. Latvia paragraph 46.

⁶³ Valiullina and Others v. Latvia paragraph 178.

⁶⁴ Džibuti and Others v. Latvia paragraph 159.

⁶⁵ Džibuti and Others v. Latvia paragraph 156.

⁶⁶ Valiullina and Others v. Latvia paragraph 122.

⁶⁷ Valiullina and Others v. Latvia paragraph 122.

⁶⁸ Valiullina and Others v. Latvia paragraph 129.

judgments *Cyprus v Turkey* and *Catan* to determine whether the scope of the right to education had been extended to include the right to choose the language of instruction.⁶⁹

In its analysis, the Court rejected the applicants' claims that the *Cyprus v. Turkey* and *Catan* judgments recognise the right to choose the language of instruction.⁷⁰ According to the Court, in those cases, the applicants challenged measures imposed by unrecognised separatist authorities prohibiting education in the national language.⁷¹ The applicants in those cases claimed the right to access education in an official state language.⁷² Since in the present case the applicants seek access to education in their minority language, the precedents of *Cyprus v. Turkey* and *Catan* are not applicable.⁷³ The Court concluded that the applicants had not provided sufficient reasons as to how education in the Latvian language would affect their right to access education.⁷⁴ Applying the same reasoning to private and public schools, the Court concluded that the Convention does not cover the right to choose the language of instruction.⁷⁵

The Court analysed the Framework Convention in order to respond to the claims of evolving international standards on the language rights of minorities.⁷⁶ The Court concluded that even in the Framework Convention there is no right to choose the language of instruction.⁷⁷ According to the Court, the Framework Convention gives States a wide margin of discretion in the promotion of minority languages, it does not impose strict obligations in this regard.⁷⁸ At the same time, the Court added that the language rights of minorities cannot take precedence over the obligation to learn and promote the national language.⁷⁹

Article 2 of Protocol No.1 in conjunction with Article 14 – the principle of non-discrimination

The Court then analysed whether the language quotas discriminate against Russian speaking students. First, the Court stated that Russian and Latvian-speaking pupils are in comparable or

⁶⁹ *Valiullina and Others v. Latvia* paragraphs 130, 131.

⁷⁰ *Valiullina and Others v. Latvia* paragraph 130.

⁷¹ *Valiullina and Others v. Latvia* paragraph 132.

⁷² *Valiullina and Others v. Latvia* paragraph 132.

⁷³ *Valiullina and Others v. Latvia* paragraph 132.

⁷⁴ *Valiullina and Others v. Latvia* paragraph 135.

⁷⁵ *Džibuti and Others v. Latvia* paragraph 93.

⁷⁶ *Valiullina and Others v. Latvia* paragraph 134.

⁷⁷ *Valiullina and Others v. Latvia* paragraph 134.

⁷⁸ *Valiullina and Others v. Latvia* paragraph 135.

⁷⁹ *Valiullina and Others v. Latvia* paragraph 135.

similar situations.⁸⁰ The Court found that Russian-speaking pupils are also in a similar situation to pupils studying in EU languages.⁸¹ According to the Court, the grounds for the different treatment of the groups is language.⁸² Recognising that not all differences in treatment are discriminatory, the Court applies its test to establish whether the difference in treatment pursues legitimate aims and is proportionate.

The Court recognised the legitimacy of the aims presented by the Government.⁸³ Firstly, safeguarding the unity of the education system was considered legitimate because of the segregated education system inherited by the Latvian authorities.⁸⁴ The Court recognised that the Latvian education system is still affected by the former Soviet policy which led to segregation. According to the Court, in such a situation, the unity of the education system prevails over the language rights of the applicants. Secondly, the Court approved the next objective of the reform, to promote the national language. The Court added that it was legitimate for Latvia to adopt measures to strengthen the use of the national language, because its use had been suppressed during the Soviet occupation.⁸⁵ The Court concluded that promoting EU languages is also legitimate because Latvia is part of the EU.⁸⁶ The promotion of the national language and EU languages is neither arbitrary nor unreasonable.

The Court recognised the tension between the legitimate aims of the reform and the language rights of the Russian minority.⁸⁷ The Court ruled that the unity of the education system and the need to promote the national language took precedence over minority rights. Given that both objectives of the reform are legitimate, the Court must assess the proportionality of the measures adopted.

The applicants stressed that the language quotas were not proportionate because they unduly restricted their rights. Furthermore, the Framework Convention and other international instruments recognise the right of minorities to be educated primarily in their mother tongue.⁸⁸ According to the applicants a proportionate measure cannot go beyond these guarantees.

⁸⁰ *Valiullina and Others v. Latvia* paragraph 194.

⁸¹ *Džibuti and Others v. Latvia* paragraph 153.

⁸² *Valiullina and Others v. Latvia* paragraph 194.

⁸³ *Valiullina and Others v. Latvia* paragraph 195.

⁸⁴ *Valiullina and Others v. Latvia* paragraph 200.

⁸⁵ *Valiullina and Others v. Latvia* paragraph 200.

⁸⁶ *Džibuti and Others v. Latvia* paragraph 156.

⁸⁷ *Valiullina and Others v. Latvia* paragraph 204.

⁸⁸ *Valiullina and Others v. Latvia* paragraph 210.

The Court noted that there is no consensus among European countries on the language of instruction for minorities in schools. At the same time, there is no minimum percentage of courses to be taught in minority languages.⁸⁹ The Court concluded that states have a wide margin of appreciation regarding the use of minority languages in their education systems.⁹⁰ Furthermore, the linguistic rights of minorities can be limited by the obligation to learn the national language.⁹¹ According to the Court, the new language quotas are proportionate because they do not excessively restrict the rights of the applicants and do not restrict access to education. For this reason, the differential treatment of Russian-speaking pupils is not discriminatory and is compatible with the Convention.⁹²

5. *Commentary*

I will now move on to analyse the Court's assessment. In this analysis, I will focus on the reasons why the Court chose to depart from the recommendations of international organisations, which emphasised that the language reform is not in line with Latvia's positive obligations with regard to the right to education and the protection of minority rights. I will also compare the similarities between the judgments in *Valiullina* and *Džibuti* with the *Savickis* judgment. In these cases, the Latvian authorities choose to limit the rights of the Russian minority in order to promote the national constitutional identity, the unity of the education system or to protect the national economic system.

Similar aims and objectives were employed by the Latvian authorities to justify restrictions on the rights of the Russian minority in *Savickis*, *Valiullina* and *Džibuti*. In these cases, the government always invoked strengthening constitutional identity as an objective pursued by reforms. This objective was accompanied by case-specific objectives, for example in *Savickis* the protection of the economic system, and in *Valiullina* and *Džibuti* the protection of the unity of the education system and the promotion of the Latvian language.

In *Savickis*, the Court recognised that governments have a wide margin of appreciation in the context of general measures regarding economic and social policy. The Court recognised that the

⁸⁹ *Valiullina and Others v. Latvia* paragraph 210.

⁹⁰ *Valiullina and Others v. Latvia* paragraph 212.

⁹¹ *Valiullina and Others v. Latvia* paragraph 210.

⁹² *Valiullina and Others v. Latvia* paragraph 213.

protection of the Latvian economic system was a legitimate aim under the Convention. Then, the Court held that it cannot rule on the legality of such measures and policies, unless they are discriminatory and disproportionate.⁹³ The Court did not analyse this aim in detail, but rather recalled its conclusion from *Andrejeva*, decided in 2009. Similarly, in *Andrejeva*, the Court held that the protection of the economic system was a legitimate aim because Latvia faced economic difficulties after the collapse of the Soviet Union.⁹⁴ In these circumstances, according to the Court, the difference in access to social security services between permanent residents and Latvian citizens is justified.⁹⁵

In *Savickis*, the joint dissenting opinion of Judges *O'Leary*, *Grozev* and *Lemmens* argued that the objectives pursued by the Latvian authorities should be analysed in the light of the circumstances of the case.⁹⁶ According to the judges, the protection of the economic system can no longer be considered a legitimate aim.⁹⁷ Because Latvia has significantly improved its economic situation and overcome the difficulties it faced during the transition period. This justification no longer carries the same weight because Latvia became an economically successful member of the European Union.⁹⁸ In *Savickis* the majority of the judges did not find it necessary to reassess whether the objectives pursued by Latvia, are relevant for today's circumstances.

Unlike *Savickis*, the *Valiullina* and *Džibuti* cases concern restrictions on the right to education. Access to education is strongly protected by the Convention.⁹⁹ The Convention does not provide a list of legitimate aims under the right to education that can limit the State's policy choices. States have a wide margin of appreciation in implementing educational policies, provided that the measures are non-discriminatory and proportionate and cannot pursue policies that indoctrinate students.¹⁰⁰

⁹³ *Savickis and Others v. Latvia*, No. 49270/11 (ECtHR [GC] June 9, 2022).

⁹⁴ *Andrejeva v. Latvia*, No. 55707/00 (ECtHR [GC] February 18, 2009).

⁹⁵ *Andrejeva v. Latvia* paragraph 86.

⁹⁶ *Savickis and Others v. Latvia*, ECtHR [GC] June 9, 2022 paragraph 25 Separate Opinions of judges O'Leary, Grozev and Lemmens.

⁹⁷ *Savickis and Others v. Latvia* paragraph 25 Separate Opinions of judges O'Leary, Grozev and Lemmens.

⁹⁸ *Savickis and Others v. Latvia* paragraph 25 Separate Opinions of judges O'Leary, Grozev and Lemmens.

⁹⁹ *Catan and Others v. the Republic of Moldova and Russia*, No. 43370/04, 18454/06, 8252/05 (ECtHR [GC] October 19, 2012).

¹⁰⁰ *Catan and Others v. the Republic of Moldova and Russia* paragraph 140.

5.1 *The right to education, the right to choose the language of instruction and the protection of minority identity under the Convention*

The Court did not agree that the Convention covers the right to choose the language of instruction under the right to education. The Court relied on the *Belgian Linguistic Case* which established that the Convention protects the right to access education in the national language. According to the Court, the precedent from the *Belgian Linguistic Case* does not apply to the *Valliluna and Džibuti* cases because they concern the right to access education in a language other than the national language.

However, it is important to mention that the *Belgian Linguistic Case* was decided in a different context. In that judgment, the Court ruled that the right to choose the language of instruction is not protected in public schools because parents have the possibility to send their children to private schools that can freely decide on the language of instruction.¹⁰¹ Back then, the Court recognised that sending children to private schools can bear financial costs, however such difficulties cannot amount to a violation of the Convention.¹⁰² Even under the caselaw of the Court, in the *Belgian Linguistic Case*, private schools are exempt from language quotas. This is an important detail which supports the arguments of the applicants, at least those who study in private schools.

In *Džibuti*, the applicants pointed out that the *Belgian Linguistic Case* concerned public schools and not private schools, however, the Court did not directly address this aspect.¹⁰³ It can be concluded that *Džibuti* creates an exception to the rule established in the *Belgian Linguistic Case*. According to the Court's new interpretation of the right to education, states can oblige private schools to teach in the national language if they are pursuing legitimate aims such as ensuring the unity of the education system and the promotion of the national language. This is an important development of the right to education, and this aspect deserved more consideration from the Court. Instead, this new limitation on the right to education for private schools was imposed in a very casual manner, without any second considerations.

¹⁰¹ CASE “RELATING TO CERTAIN ASPECTS OF THE LAWS ON THE USE OF LANGUAGES IN EDUCATION IN BELGIUM” (MERITS), accessed September 15, 2024, 3. Decision of the Court, 7.

¹⁰² CASE “RELATING TO CERTAIN ASPECTS OF THE LAWS ON THE USE OF LANGUAGES IN EDUCATION IN BELGIUM” (MERITS) paragraph 7, 3. Decision of the Court, 7.

¹⁰³ *Džibuti and Others v. Latvia* paragraph 88.

Next, the Court ruled that the Convention did not cover the right to choose the language of instruction. The Court is not wrong in this conclusion, *Catan* and *Cyprus v. Turkey* did not recognise the right to choose the language of instruction. However, this conclusion does not answer the question raised by the applicants. The Court interprets the right to choose the language of instruction as the linguistic preference of the parents. This is an important distinction to be made, because according to the interpretation of *Catan* and *Cyprus v. Turkey*, the right to education does not extend to the linguistic preference of the parents. In our case, the applicants do not simply wish to impose their linguistic preferences on the Latvian authorities. The applicants, who belong to a minority, want their children to have access to education in a language that will enable them to preserve their minority and cultural identity.

The issue of the language of instruction in schools and the right to cultural identity under the right to education is not new. In the partial dissenting opinion in *Catan*, a group of judges argue that *Article 8 - The Right to Private and Family Life* of the Convention should be applied.¹⁰⁴ According to them, *Article 8* allows the Court to protect the right to cultural identity.¹⁰⁵ The right to cultural identity had to be protected because the separatist authorities prohibited schools from teaching in the applicants' mother tongue. The judges considered that this prohibition was part of an attempt to force the applicants to adopt a new identity.¹⁰⁶ In *Catan*, the dissenting opinion came after the Court refused to analyse the protection of cultural identity under *Article 8* because it was sufficient to find a violation of *Article 2 Protocol 1*. The dissenting judges concluded that *Article 2 Protocol 1* could not be extended to cover the right to cultural identity.¹⁰⁷ This shows that the Court is aware of the effect of measures adopted under the right to education, on the cultural identity of the applicants.

In our cases, the applicants invoked *Article 8*. The text of the judgments shows that in *Valiullina* the applicants invoked *Article 8* but did not explicitly claim a violation of their right to cultural identity.¹⁰⁸ In *Džibuti*, the applicants mentioned that language quotas threatened their cultural

¹⁰⁴ Claire Fenton-Glynn, "The Right to Education," in *Children and the European Court of Human Rights*, ed. Claire Fenton-Glynn (Oxford University Press, 2020), 161, <https://doi.org/10.1093/oso/9780198787518.003.0006>.

¹⁰⁵ Fenton-Glynn, 161.

¹⁰⁶ Fenton-Glynn, 161.

¹⁰⁷ Fenton-Glynn, 161.

¹⁰⁸ *Valiullina and Others v. Latvia* paragraph 100.

identity, they referred to *Article 8*.¹⁰⁹ The Court declared the claims inadmissible on the ground that this claim had not been raised in domestic proceedings.¹¹⁰ By declaring the claim inadmissible, the Court avoided answering whether right to cultural identity is protected under the *Article 8* of the Convention. Again, the Court took the easy way out, avoiding any challenge to its established rules.

There are some other similarities between the *Catan* case and the *Valiullina and Džibuti* cases. As mentioned above, the dissenting judges in the *Catan* case claimed that the ban on schools teaching in the applicants' mother tongue was aimed at eliminating the linguistic heritage of the Moldovan population in order to promote a separatist ideology.¹¹¹ This aim was pursued by the unrecognised separatist authorities of Transnistria, whose political activities are illegitimate and cannot pursue legitimate aims.¹¹²

This element is present in our judgments. In *Valliluna*, the government mentions that education and language should promote loyalty to the Latvian constitution and values.¹¹³ Citizens, regardless of their minority status, should participate in public debates, become fully developed members of a democratic society and promote the constitutional order of the country.¹¹⁴

The differences between the circumstances of the cases are obvious. In *Catan*, the unrecognised and unconstitutional separatist authorities wanted to use the language ban as a means of forcing the population to have stronger allegiance to them and not to the constitutionally recognised Moldovan authorities. In *Valliluna* and *Džibuti*, it is the constitutional authorities who want to encourage a minority to develop a sense of loyalty to national identity and values. Even if the measures are imposed via concept such as constitutional identity by legitimate authorities, minority groups should also have a minimum standard for the protection of their culture and identity, as pointed out by the international bodies in their reports. The Court failed to address this aspect and to balance the interests of both sides.

5.2 *The right to education and the positive obligations of the State*

¹⁰⁹ *Džibuti and Others v. Latvia* paragraph 69.

¹¹⁰ *Džibuti and Others v. Latvia* paragraph 81.

¹¹¹ *Catan and Others v. the Republic of Moldova and Russia* paragraph 144.

¹¹² *Catan and Others v. the Republic of Moldova and Russia* paragraph 144.

¹¹³ *Valiullina and Others v. Latvia* paragraph 46.

¹¹⁴ *Valiullina and Others v. Latvia* paragraph 46.

There is a great contrast between the threshold of the right to education under the Convention and the right to education as currently defined in international law. In *Valliluna* and *Džibuti*, the Court did not analyse Latvia's positive obligations regarding the right to education. The Court limited its analysis to the state's obligation to guarantee access to education in an official state language. This approach makes no distinction between the right to education for minorities and access to education in a minority language.

The reports of international bodies such as the Venice Commission, CERD and the Special Rapporteurs mentioned above, have highlighted important aspects of the right to education of minorities. The right to education for minorities must take into account their language, beliefs and identity. The international bodies also mentioned that Latvia should ensure that minorities can study in their minority language at the beginning of the educational process.¹¹⁵ The Court's approach shows little regard for these important details. It is true that the Convention does not mention minority rights. For this reason, the Court is somewhat limited to the protection of minority and language rights.¹¹⁶ In previous case law, the protection of minorities is analysed through other articles such as freedom of expression, religion and others.¹¹⁷

The only reference to minorities in the Convention is in *Article 14, Prohibition of Discrimination*.¹¹⁸ This article ensures that minorities are not discriminated against in the exercise of the rights protected by the Convention. The Court found no discrimination against the Russian-speaking minority because the language reform pursues legitimate aims and the restriction of language rights is proportionate. The Court based its decision on two main arguments: 1) the language quotas are not disproportionate because they don't restrict access to education and don't completely exclude the possibility of studying in Russian, and 2) there is no consensus among European states on minority languages in schools.

Simply ensuring that minorities have access to education is a rather low threshold, but the Court decided to stick to this interpretation. The Court did not take into account the positive obligations under the right to education and the recommendations of international bodies. The

¹¹⁵ *Valliluna and Others v. Latvia* paragraphs 92, 93.

¹¹⁶ Lourdes Peroni, "Minorities before the European Court of Human Rights: Democratic Pluralism Unfolded," in *International Approaches to Governing Ethnic Diversity*, ed. Jane Boulden and Will Kymlicka (Oxford University Press, 2015), 49, <https://doi.org/10.1093/acprof:oso/9780199676583.003.0002>.

¹¹⁷ Peroni, 49.

¹¹⁸ Peroni, 49.

recommendations suggest more appropriate measures for minorities, like exempting private schools from language restrictions and introducing minority education programmes.

The Court discusses the lack of consensus among European states on the extent of the right to education for minorities.¹¹⁹ In particular, the Court held that there are no minimum language rights that minorities should have in the education system. I find this argument rather strange. Because it is difficult to assess the consensus of European states on such a specific issue. Namely, the percentage of courses required to meet the language needs of their minorities. Each minority exists in a different context, some have their own language, others don't. It is almost impossible to find a consensus among 46 European states. In this case, the Court should have relied on the recommendations and observations of international bodies, which have detailed the many challenges faced by minorities in Latvia.

Finally, the Court refers to the Baltic context and the historical suppression of the use of Latvian. This approach allows the Court to emphasise the need to learn the national language without taking into account the positive obligation of the state to promote minority languages and education in minority languages.

6. Conclusion

In this note I have tried to outline the implications of *Valiullina* and *Džibuti* for the protection of the right to education and minority language rights under the Convention. It is not difficult to understand why these judgments touch on very sensitive issues. The Court has emphasised the prerogative of the Contracting Parties to the Convention to promote their constitutional identity and language and the unity of the educational system over minority rights. The Court's interpretation of the right to education is very narrow and does not take into account Latvia's positive obligations under international law, respect for minorities and children's rights.

The Court also changed its existing caselaw, established in the *Belgian Linguistic Case*, which excepted private schools from language quotas and restrictions. The Court now allows its contracting parties to impose language quotas on private schools. The manner in which the Court

¹¹⁹ *Valiullina and Others v. Latvia* paragraph 210.

added this new restriction on the right to education is concerning, because its reasoning completely fails to give any compelling arguments for adding such an important limitation on private schools.

Secondly, the Court could have addressed interesting questions concerning the right to cultural identity under *Article 8* and the right to education. In the *Catan* judgment, the Court avoided to answer if the right cultural identity can be protected under *Article 8*. The current judgments provide the Court with an opportunity to address this issue. The Court failed again, to find a way to strike a balance between the right of minorities to cultural identity and the right of the state to promote adherence to national identity and values over such minorities.

Thirdly, the Court seems to interpret the right to education under the Convention in a completely autonomous way. The judgments in *Valiullina* and *Džibuti* are entirely blind to the existing international standards of the right to education and minority rights. The Court choose to not apply the recommendations of international bodies because that would have changed the outcome of the cases. This approach is concerning because the Convention standard of the right to education and minority rights is so low, that it has almost nothing in common to the content of the rights as promoted by other international human rights bodies.

It cannot be denied however, that the judgments have little to do with minority and language rights, but rather they are tailored to the Baltic context and the historical occupation of this region by the Soviet Union. Finally, it is worrying that the Court adopted the judgments unanimously. In the *Savickis* case, the dissenting judges expressed concern about the attitude of the Court towards minorities. They underlined the risks of elevating concepts such as constitutional values and identity above other fundamental rights.¹²⁰ *Savickis* sets the tone for how the Russian minority is treated in Strasbourg, and the *Valiullina* and *Džibuti* judgements confirm this.

¹²⁰ Nugraha, “Protection of Constitutional Identity as a Legitimate Aim for Differential Treatment.”