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Latvia's Ambiguous Attitude towards the Framework Convention for the Protection of National Minorities: Is Diversity a Threat?

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Abstract: On 22 February 2024, the Advisory Committee on the Framework Convention for the Protection of National Minorities published a critical opinion on Latvia within the framework of the fourth monitoring cycle. This text is centred on government comments as an important element of the standardised FCNM monitoring mechanisms provided by the Latvian Government during the four monitoring circles. This study identifies and assesses the key arguments and techniques employed by Latvia in this sectoral dialogue framework. It shows that the Latvian authorities view diversity as a threat to social cohesion, and their endeavours, inter alia, in the minority education domain, combine references to Latvia's traumatic historical experience, constitutional identity, and the margin of state discretion that camouflage the absence of political will to advance minority rights. Among other negative factors, this signals a dangerous path that could likely be followed by other states that are parties to this Convention.

Keywords: Latvia, national minorities, Framework Convention for the Protection of National Minorities, European Court of Human Rights, equality, constitutional identity

1. Introduction

On 22 February 2024, the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) published its fourth opinion on Latvia. In the Committee's view, the FCNM implementation level in Latvia "underwent a marked decline during the monitoring period", *inter alia,* because its "authorities further reinforced an exclusive narrative of Latvian national identity inextricably linked to the Latvian language" and the country's "public discourse does not always distinguish between the actions of the Russian Federation and the domestic concerns of persons belonging to the Russian national minority, which is highly diverse" (Fourth Opinion, 2024, p. 4). The Committee interprets this as undue restrictions that affect access to minority rights.

In turn, the Latvian government comments (2024, p. 4) underline that "the Advisory Committee does not understand or does not want to understand the historical situation of Latvia", delivering the recommendations that could lead to the reduction of Latvian language use and its apparent destruction in the long term. Specifically, a considerable part of the Government's comments is dedicated to the development of the argument about the negative consequences of the USSR's Russification policies for the ethnic and linguistic landscape of today's Latvia, which, in the view of Latvian authorities, justifies the country's minority policies.

In their comments, Latvian authorities underlined that education in minority languages in post-Soviet Latvia was inherited from "the segregated education system established during the [Soviet] occupation" (Government comments, 2024, p. 6). It is hard not to agree with those experts who amount this interpretation of the concept of segregation to "a novelty for the international protection of minority rights" (Dimitrovs, 2019). This interpretation dates back to the judgement of the Constitutional Court of 23 April 2019, in Case No. 2018-12-01[1] on minority schools and was subsequently repeated, for instance, in Case No. 2018-22-01[2] pronounced on 13 November 2019. This logic of the Latvian Constitutional Court could be described as "a judicial path to nowhere" because "all subsequent judgments of this court on minority education in Latvia will likely be based on the very same arguments" (Kascian, 2019). This leaves minority activists in Latvia with a very limited scope of arguments when they attempt to claim before the Constitutional Court the violation of minority rights arising from Latvia's domestic legislation and international legal instruments.

Another important element of the argumentation by Latvian authorities is their reference to the case law of the European Court of Human Rights (ECtHR), specifically to the recent cases of *Valiullina and others v. Latvia* and *Džibuti and others v. Latvia* related to minority education. Latvian authorities' logic is based on the clash between the recommendatory nature of the conclusions of the Venice Commission and the binding nature of the ECtHR decisions. While the "Advisory Committee refers extensively to the conclusions of the Venice Commission on the 2018 education reform", Latvia suggests addressing the above judgements since "the Court found no violation of the right to education and prohibition of discrimination in relation to the 2018 education reform in public, municipal and private education institutions" (Government comments, 2024, p. 6). This approach of the Latvian authorities creates two problems for minority education rights advocacy: the first one derives from the fact that the "Court agreed with the Latvian government that the existence of minority rights was the problem and not the violation of said minority rights" (Ganty & Kochenov, 2023). The second arises from the fact that the European Convention on Human Rights (ECHR) and the FCNM are two different legal instruments within the Council of Europe legislative framework, and the ECtHR's mandate is to interpret the former and not the latter treaty. Although

[1] This case resulted from the 2018 education reform, which restricted the options for education in minority languages in public schools. The Court found that legislative amendments contested by a group of MPs complied with Latvia's Constitution and international agreements.

[2] In this judgement, the Constitutional Court extended its conclusions from Case 2018-12-01 to the situation of private schools and thus restricted the options for education in minority languages there.

the texts of the ECHR and the FCNM have much in common, the very existence of the latter convention suggests that it addresses the specific needs of national minorities that by virtue of their belonging to a numerically inferior group need an additional protection explicitly formulated in a specific legal tool.

The above puzzle, involving Latvian authorities' argumentation and minority activists' capacities to successfully claim violations of their rights, suggests the goal of this article. It primarily focuses on the strategies and argumentation of Latvian authorities in dialogue within the FCNM framework – that is, on what Latvia communicates internationally. For many, this could be the reverse logic because the primary focus has shifted from the justified criticism of the Latvian authorities from international advisory bodies, such as the FCNM Advisory Committee, for the minority policies pursued by Riga. This implies the inclusion of diverse Latvian domestic contexts, including the country's history, ethno-linguistic landscape and politics, which affect the contents of the law and the argumentation of those who design it. The design of this study is as follows: it begins with an explanation of the relevant domestic contexts and designates the key arguments and techniques employed by the Latvian authorities in their communication within the FCNM framework and divided across three elements, followed by their critical assessment. Based on this, a conclusion is made, arguing that a more sophisticated approach towards criticism of Latvian authorities' argumentation could potentially offer a solution countering the current path to nowhere.

2. Latvian domestic contexts

Latvia is a small EU member state. Its features include the existence of a significant minority constituency and a traumatic historical experience during the 20th century described below in this section of the paper. These two features intersect when Latvia's minority policies are analysed, as they include elements of the country's history, constitutional identity, current ethnic and linguistic composition, domestic political configurations and minority policies. Thus, four aspects should be explained for a reader unfamiliar with Latvian realities before going into legal details.

First, Latvia achieved its independent statehood for the first time in history as a result of "an unprecedented international crisis" caused by the First World War, but failed to preserve its independence through the Second World War (Purs, 2012, pp. 47–48). This independence was interrupted by the Soviet occupation in 1940, and Latvia became a de facto part of the USSR for nearly five decades. Soviet policies have significantly transformed Latvia's society, which is heavily embedded in the country's constitutional doctrine and official discourse. Latvia restored its independence on 4 May 1990 and perceives itself "as the same state whose independence was unlawfully terminated in 1940" (Ziemele, 2020, p. 111).

Second, national minorities have always formed a considerable proportion of Latvia's population. However, postwar Latvia faced a significant influx of labour force from other parts of the Soviet Union. The following table shows the historical dynamic ethnic composition of Latvia's residents based on the three population censuses: the 1935 census

was the last conducted in prewar independent Latvia, the 1989 census was the last organised by Soviet authorities, and the 2021 census was the most recent.

Table 1.
Ethnic composition of Latvia's population in a historical perspective

		1935		1989		2021
Ethnicity	**Number**	**%**	**Number**	**%**	**Number**	**%**
Latvians	1,472,612	75.50	1,387,757	52.04	1,187,891	62.74
Livonians	944	0.05	135	0.01	160	0.01
Russians	206,499	10.59	905,515	33.96	463,587	24.49
Belarusians	26,867	1.38	119,702	4.49	58,632	3.10
Ukrainians	1,844	0.09	92,101	3.45	42,282	2.23
Poles	48,949	2.51	60,416	2.27	37,203	1.97
Lithuanians	22,913	1.17	34,630	1.30	21,517	1.14
Jews	93,479	4.79	22,897	0.86	4,372	0.23
Germans	62,144	3.18	3,783	0.14	2,447	0.13
Other	14,251	0.74	39,631	1.48	75,132	3.96
Total	1,950,502	100.00	2,666,567	100.00	1,893,223	100.00

Note: The 1935 census data cover the interwar territory of Latvia, including territories of the Abrene/Pytalovo district, which were formally ceded to Russia in 1945. For section "Other" percentage was calculated by subtracting the sum of the shares of the ethnic groups specified in the table from 100%, which in some cases can result in an error margin of 0.01.
Source: National Statistical System of Latvia, s. a.; Salnītis & Skujenieks, 1937.

As the table reveals, by the collapse of the USSR, the proportion of ethnic Latvians in Latvia had decreased to just above half of the population, whereas the share of ethnic Russians had grown to roughly one-third. Latvian authorities consistently refer to these historical demographics in their arguments to emphasise the sui generis case of Latvia before various international institutions. This historicisation is also embedded in constitutional doctrine. For instance, the Constitutional Court in Case No. 2004-18-0106 (13 May 2005) emphasised that in the USSR, Latvia was not capable of controlling and designing incoming labour migration. Specifically, the court argued that "the Soviet immigrants were not integrated into the society of Latvia", and "a school system based on the segregation principle" was developed instead of liquidated prewar minority schools.

Third, ethnic issues have always been important elements of Latvia's political landscape. In Latvia, "the sense of an impending demographic catastrophe" when ethnic Latvians "would slip into minority status in their own homeland and eventually extinction" (Purs, 2012, p. 95) was one of the main causes for anti-Soviet protests. This cautious approach is linked with the emergence of the category of the so-called Latvia's "non-citizens" (Latvian: *nepilsoņi*), i.e. the former Soviet citizens who were not qualified to automatically obtain Latvian citizenship after the restoration of independence and who did not receive any other citizenship ever since. In ethnic terms, this category is almost entirely formed by people belonging to national minorities. As of the 2021 census, this

group comprised 190,522 persons or 10.06 percent of the country's residents, subject to a further decrease. In Latvia, its non-citizens are not entitled to elect and be elected. After the restoration of independence, "the central characteristic of the Latvian party system is the deep and continuing cleavage between ethnic Latvians and Russian-speakers" (Auers, 2013, p. 87). Typically, "a[n ethnic] Latvian voter chooses among [ethnic] Latvian candidates" (Kolstø & Tsilevich,[3] 1997, p. 389), and patterns of electoral behaviour of the minority constituency mirror this approach. On the one hand, today's Latvia has all the characteristics of democracy by ensuring equal rights to its citizens through participation in elections and other political activities. On the other hand, neither political group with predominant or overwhelming minority constituencies has so far been part of the government, and the potential votes of non-citizens (should they be granted citizenship or electoral rights) could strengthen their electoral results. As a result, the Latvian case is an illustration when the dominant ethnic group enjoys ownership over the state by making it "a tool for advancing their national security, demography, public space, culture and interests" (Smooha, 2002, p. 475).

Fourth, Latvia signed the FCNM on 11 May 1995, and ratified it on 6 June 2005 (Council of Europe, s. a.) with the declaration that the concept of minorities within the meaning of the convention applies solely to Latvia's citizens. More than ten years between signature and ratification illustrates the complexity of the issue for Latvian political elites. In practice, there were "no legal obstacles to [earlier] ratification, only political ones", because some politicians did not see it as an urgent matter, others appealed not to divide the society or connected ratification with the termination of the protests against the formation of a unified education system (Morris, 2005, p. 258). In other words, Latvia's relationship with the FCNM caused many emotions from the beginning.

3. Latvia's interpretation of the FCNM: Narratives and strategies

Country-specific monitoring of FCNM implementation envisages a standardised approach. Among other things, it includes state reports and government comments as documents produced by authorities through the FCNM monitoring mechanism. However, it is not uncommon that State Reports do not "reflect openly on problematic issues" or demonstrate "how the FCNM is implemented in practice" (Phillips, 2002, p. 2). In this regard, the focus on government comments would be more sophisticated, as they envisage the reaction of the authorities towards the main points of critics and frequently develop arguments that are particularly important to understand the position of a specific state. Referring to Latvia's comments on the Advisory Committee's fourth opinion described in the introduction, this section addresses the contents of Latvia's government comments on all four monitoring cycles. It is divided across three interconnected elements: the identity of the state, relations with international bodies and ECtHR case law.

[3] Elsewhere in the text, he is referred to as Boriss Cilevičs.

3.1. In the shadow of the Soviet past, or Latvia as an allegedly special case

The phrase about the Advisory Committee's unwillingness or reluctance to consider the Latvian historical past as the key to explaining the current minority issues from the government comments on the Fourth Opinion on Latvia is essential to understanding the shift in Latvia's official rhetoric. In all three previous circles, Latvia's government consistently emphasised the need to address historical contexts. However, they focused on it to a significantly lesser extent and used a more restrained language.

In its comments within the first monitoring circle, the Latvian Government addressed the issue in the introduction. It emphasises that evaluation of the FCNM implementation "from the point of view of Latvia's historic experience" needs to distinguish between the country's citizens and non-citizens and comply with "the fundamental principles of Latvia as an independent sovereign state" (Government comments, 2011, p. 2). Subsequently, it provides a moderate explanation of Latvia's citizenship policies after the restoration of independence. The comments from the second and third monitoring cycles essentially repeat this position, as they emphasise the need to consider Latvia's specifics, historical context and the doctrine of state continuity (Government comments, 2014, p. 2; Government comments, 2018, p. 4).

Hence, the comments to the Fourth Opinion form a qualitative change, as they contain an in-depth explanation of the ethnic demography in Latvia throughout the 20th century, with relevant figures and examples of Soviet Russification policies. Some provisions have clear patterns of securitisation in the context of the region's current situation. Specifically, Latvia articulates that "the Russian Federation's hybrid war and disinformation campaigns are also aimed at influencing the views of national minorities living in Latvia and that such actions pose a threat to both national security and the development of a cohesive society" (Government comments, 2024, p. 11). Indeed, Russia poses a threat to Latvia's national security, and Kremlin propaganda reaches its audience among some segments of Latvia's minority constituency. However, these hybrid threats would probably be less effective if Latvia's cohesive policies would better accommodate the country's ethnolinguistic diversity in the identity of the state and, eventually, apply different means to achieve social cohesion.

It seems reasonable to illustrate the logic of the country's cohesive policies through the interpretation of the 2012 referendum on the status of the Russian language as another official language in Latvia when 74.8 percent of Latvian citizens turned this initiative down. The Latvian Government argues that its result "confirms that both before and after the referendum, the responsible state institutions must do more, not less, to ensure that the will of the people – the use of the Latvian language – becomes a reality" (Government comments, 2024, p. 11). This argument is quite dubious because the referendum question did not even mention the Latvian language, and it would enjoy the status of Latvia's official language regardless of referendum outcomes. Yet, this argument by the Latvian Government complies with the identity of the state embodied in the *Satversme* (Constitution of Latvia) and judgements of the country's Constitutional Court. For instance, in its judgement in Case No. 2018-12-01, the Court recalls that the constitutional preamble (adopted on 19 June 2014, that is, after the referendum) contains

the values for an inclusive democratic society in Latvia, with the Latvian language as one of its core values and an inalienable element of the country's constitutional identity. In the court's view, it is an obligation of all permanent residents of Latvia to know the official language "on the level allowing full participation in the life of democratic society". Following this logic, it is merely an individual's duty to master the Latvian language to the required level based on the available options and not the state's task of ensuring the relevant education process of adequate quality.

On various occasions, many states, including Latvia, refer to their negative historical experiences, portray themselves as victims, and thus obtain certain political benefits. According to Boriss Cilevičs (2024): "Soviet annexation stopped Latvia's democratic development by force, and after the restoration of independence Latvia's political elites continue to adhere to the political logic rooted in interwar authoritarian Latvia under president Kārlis Ulmanis." This has a direct impact on minority policies. In Cilevičs's (2024) view, Latvian authorities perceive homogeneity as a norm and diversity as a threat; hence, equality could be achieved through elimination of these differences by minorities' assimilation for their own good. In practice, this stance of Latvian authorities places the state's goodwill as the key determinant of the scope and content of minority rights. This also contradicts the FCNM approach, which sees minority rights as an integral part of human rights.

3.2. International bodies and interpretation of sources

As mentioned earlier in the text, in its comments to the Fourth Opinion, the Latvian Government explicitly emphasised that the position of the Advisory Committee extensively relies on the conclusions of the Venice Commission which are "of a recommendatory nature" (Government comments, 2024, p. 6). However, a thorough look at the government comments from previous circles suggests that Latvian authorities had a different stance towards the assessments expressed by the Venice Commission at one instance. Specifically, in the first circle the Latvian Government extensively relied on its "Declaration on the consequences of state succession for the nationality of natural persons" (1996) to back its citizenship policies based on the principle of state continuity and justified by the need to recover "a political and legal identity which had been suppressed during the time of annexation" (Government comments, 2011, p. 4). A similar favourable position of the Parliamentary Assembly of the Council of Europe on this issue was mentioned as an additional argument.

A similar selectiveness can be observed in the practices of other Latvian institutions. For example, in Case 2019-20-03[4] (19 June 2020), the Constitutional Court in Case "dismissed quite easily the action letter by the Committee on the Elimination of Racial Discrimination and the letter of three UN Special Rapporteurs – as being based on their lack of comprehensive information" (Dimitrovs, 2020). These documents expressed

[4] In this case, the Constitutional Court found that restrictions on the use of minority languages in public and private kindergartens were consistent with the Constitution.

concerns regarding the new regulation of preschool education in the context of minority rights. However, the court saw them merely as an invitation to dialogue between Latvia and relevant international bodies.

The argument about the insufficient comprehensiveness of the information could be supplemented by the appeal to its accuracy, as demonstrated in the government comments on the Fourth Opinion on Latvia. While commenting on the linkage between Russia's aggression against Ukraine and the rights of Latvia's Russian minority, the government of Latvia regretted that the Advisory Committee "ignores the fact that by further strengthening the Russian language, the desire of a strong and self-sufficient minority to learn Latvian and integrate into Latvian society is being taken away" (Government comments, 2024, p. 4). Hence, the Advisory Committee's stance on the discrimination of this identifiable group of Latvia's society expressed in its Fourth Opinion was interpreted as false information distributed internationally.

Latvia is not unique in its selective attitude towards interpretations of certain events or policies by various international bodies who lack a mandate to issue legally binding decisions. This also confirms that "the FCNM remains a politically and legally weak instrument" (Morris, 2005, p. 251), particularly if the state is not interested in demonstrating its goodwill concerning specific contexts of minority issues.

3.3. ECtHR case law and FCNM contexts as seen by Latvian authorities

Specific references to the ECtHR case law appear in the Government comments (2024, p. 6) to the Fourth Opinion as an invitation for the Advisory Committee to "take [them] into account and refer to". They include three subject lines to be addressed here: minority education, rights of non-citizens and writing of personal names in the official documents issued by Latvia.

The first line includes the recent cases of *Valiullina and others v. Latvia* and *Džibuti and others v. Latvia,* and could be classified as a continuation of a quite frequent series of Latvian–Russian memory battles at the ECtHR (Muižnieks, 2011, pp. 219–220). The reason for this classification is the argumentation of the Latvian authorities to consider the context of the Soviet policies in Latvia and their impact on the current ethno-linguistic situation in the country. With no violations of the right to education and prohibition of discrimination within the context of the education reform found by the ECtHR, they serve as an argument for Latvian authorities to claim the correctness and consistency of their minority policies in education. It is based on three elements arising from the judgements. First, no obligation exists for the state to ensure education in the languages other than the official one. Second, the states have a significant margin of discretion on whether and how to ensure minority education. Third, "segregation" is the correct designation for the very fact of the education in minority languages, even though the need for it is backed by a considerable degree of demand by the country's national minorities. Hence, this logic puts the existence of the right to minority education solely to the state's good and eventual expediency.

These judgments became subjects of considerable criticism, which could probably best be wrapped up by an eloquent title of a piece by Ganty and Kochenov (2023) "Hijacking Human Rights to Enable Punishment by Association". Overall, Latvia's approach, as evidenced by the dialogue on FCNM implementation, is dangerous to the entire European minority rights system. As Aleksejs Dimitrovs (2024) emphasises, although scholars and practitioners currently proceed from an axiom that minority schools should be welcomed as a positive element for the preservation and development of ethnic identity, "Latvia, on the contrary, develops a narrative that the very existence of these schools amounts to segregation that poses danger to social unity".

The second line derives from the case *Savickis and others v. Latvia,* a case that links pension rights and citizenship factors. In its position, Latvia presented non-citizenship as a temporary instrument created for humanitarian purposes to prevent statelessness, with the option of obtaining either Latvian or other citizenship in the future. The Latvian Government emphasises that "non-citizenship status depends on non-citizens themselves should be given weight, as the legal framework allows them to naturalise", although it admits that many Latvia's residents with non-citizen status prefer not to do so (Government comments, 2024, p. 8). Hence, these facts prevent Latvia from accepting the Advisory Committee's proposal to extend minority rights to non-citizens. More importantly, the Latvian Government proposes that the Advisory Committee accepts the ECtHR's view on the naturalisation of citizens as a choice, as those "who decided not to naturalize in the country of residence are not entitled to non-discrimination" (Ganty & Kochenov, 2022; see also Nugraha, 2023).

In fact, *Savickis and others v. Latvia* stems from the situation in which the state did not recognise their employment beyond Latvia's borders during Soviet times that affected their pensions. Should they have been Latvian citizens, this problem would not have been an issue. Hypothetically, this situation could have affected Latvia's non-citizens irrespective of their ethnicity. As of 1 January 2024, there were 403 ethnic Latvians with a non-citizen status (Office of Citizenship and Migration Affairs, 2024, p. 4). Hence, this situation potentially extends beyond the minority context. Ganty and Kochenov (2022) further remind us that *Savickis and others v. Latvia* overruled *Andrejeva v. Latvia,* the case recalled by the Latvian Government in its comments during the second monitoring cycle. A comparison of these two cases deserves a separate analysis that goes beyond the thematic scope of this study. However, in 2014, the Latvian Government acknowledged that the issues pertinent to *Andrejeva v. Latvia* were successfully resolved. Meanwhile, it underlined that it would be groundless to extend the ECtHR conclusions from this case to the individuals "whose actual or legal situation differs considerably from that of Mrs Andrejeva irrespective of the fact that they currently reside in the territory of Latvia" (Government comments, 2014, p. 26).

The third line is based on the case of *Mentzen v. Latvia* and deals with the practice of writing personal names in the official documents of Latvia's citizens. After marriage to a German national, the applicant adopted her husband's surname Mentzen. However, in her new Latvian passport, her surname was inscribed as Mencena in compliance with the rules of the Latvian language to preserve the original pronunciation to the highest possible extent, with a special remark that confirmed that Mentzen was the original form

(Latvian: *oriģinālforma*). The reference to this case appears in the government comments on three occasions.

The first dates back to 2011, when Latvian authorities cited this case to emphasise that their restrictive practices have the legitimate aim "to protect the rights of other inhabitants of Latvia to use the Latvian language on all of Latvia's territory and to protect the democratic order" (Government comments, 2011, p. 31). They also stressed that state language, such as state territory and symbols, form core constitutional values. Hence, the decision of the Latvian authorities was presented as not violating an individual's right to decide how their personal names should be written. During the third monitoring cycle, Latvian authorities largely repeated these arguments and underlined the right of citizens to use the official language "also in communication with public authorities when sending or receiving information in that language" (Government comments, 2018, p. 21). The comments within the fourth monitoring cycle are quite concise, as Latvian authorities referenced this case to back their argument about the consistency of the practices of writing the personal names of Latvia's citizens in official documents with the country's international obligations (Government comments, 2024, p. 13). Later, they wrote that both the ECtHR and the Court of Justice of the European Union "have held that the presentation of personal names in Latvian has a legitimate aim" (Government comments, 2024, p. 26). The ECtHR practice is referenced in the case of *Mentzen v. Latvia,* whereas the CJEU approach is backed by the case *Malgožata Runevič-Vardyn and Łukasz Paweł Wardyn v. Vilniaus miesto savivaldybės administracija and Others.*

A reference to the case *Runevič-Vardyn and Wardyn* in the government comments works twofold for Latvia. On the one hand, as with any CJEU judgement, it serves as a precedent in subsequent cases with relevant effects on the judiciary and policy-making of other member states. On the other hand, it addresses Lithuania's situation. This southern neighbour of Latvia has also long been criticised for its practice of writing personal names in official documents. After the restoration of the independence of these two countries, Lithuania's approach in this domain, despite considerable similarities, has always been more liberal than that in Latvia, and after further liberalisation of Lithuanian legislation in January 2022 through the adoption of Law No. XIV-903, this discrepancy significantly increased (Kascian, 2023, pp. 73–86), but not in Latvia's favour. This legislative change provided relief for many Lithuanian citizens, both those who belong to national minorities and those of foreign spouses, irrespective of their ethnicity. Just before the vote on this law, Viktorija Čmilytė-Nielsen, speaker of the Lithuanian Parliament, stressed that this liberalisation is an important step that brings together human dignity, human rights and aspects of security (TVP Wilno, 2022). Therefore, Lithuania could serve as an example of a good, though not perfect, practice for Latvia in this domain, irrespective of what is written in the *Runevič-Vardyn and Wardyn* judgement.

Since Latvian authorities referred to the CJEU case law to back its arguments, the practices of this court should be discussed. In *Runevič-Vardyn and Wardyn,* the Luxembourg court referred to Article 4(2) TEU as a tool that protects the national identity of member states, including the protection of their official language. A more recent CJEU judgement in Case No. C-391/20 *Boriss Cilevičs and Others* concerning minority education in Latvia confirms the argument about the importance of the national identity of states pursuant

to Article 4(2) TEU. Overall, the outcomes of *Cilevičs and Others* case imply that Article 49 TFEU, as such, does not preclude the EU member states from limiting teaching in educational institutions solely to their official language provided that these measures are "justified on grounds related to the protection of its national identity, that is to say, that it is necessary and proportionate to the protection of the legitimate aim pursued". As Di Federico and Martinico (2023, p. 359) stress, "the identity clause – in its current formulation – was not intended to protect the linguistic diversity of the member states, which is in turn covered by other primary law provisions". Linked with the doctrine of state discretion, this logic of the CJEU contributes to the situation when EU law can be, and in fact, is used to hamper the scope of minority protection at the national level. Therefore, *Cilevičs and Others* can serve as further evidence of "the ineffectiveness of the use of national minority rights at the European level" (Krivcova, 2023).

4. Discussion and concluding remarks

An analysis of the public communication between Latvia and the Advisory Committee on the FCNM within the fourth monitoring cycle suggests that this legal instrument of the Council of Europe remains weak, both legally and politically. The decline in FCNM implementation in Latvia during this monitoring cycle is, in many ways, an extreme example. However, this situation has at least three implications: domestic contexts, case law of the relevant transnational courts, and the eventual patterning of Latvia's attitudes by other states that are parties to this convention.

As shown earlier, Latvia consistently demonstrates the approach when it is the state's goodwill, which determines the scope and content of minority rights. Hence, homogenisation is seen as a tool to achieve equality and social cohesion, and the existence of minority schools is perceived as segregation. It is a clearly opposite approach to that promoted by international bodies dealing with minority rights. This is in conjunction with references to the traumatic Soviet past, which, in the view of Latvia's authorities, makes the country a special case that should be considered to comprehensively evaluate minority policies and the implementation of relevant legal instruments. Finally, the case law developed by Latvia's Constitutional Court significantly contributed to this restrictive attitude. In various decisions on minority education, the Constitutional Court relied extensively on its own case law (Dimitrovs, 2020), and this path resembled a one-way road.

At the same time, the judgement in Case No. 2021-45-01[5] pronounced on 8 June 2023, contains a positive trend because it was the first example of case law by Latvia's Constitutional Court when the Satversme was interpreted in conjunction with the FCNM, and violation was found with regard to language and cultural minority education programs. More importantly, "the court put an end to the application of a populist approach, when the goal of protecting the state language justified any restrictions"

[5] This case deals with the use of minority languages in higher education. The Court found the contested norms of the Law on Higher Education Institutions inconsistent with the Constitution. Inter alia, the Court found that "universities have inherent academic freedom and the right to choose the language of instruction is part of this freedom" (Krivcova, 2023).

(Krivcova, 2023). This positive moment should not be exaggerated because it does not eliminate general trends. However, it demonstrates that there are still avenues to successfully challenge endeavours to undermine minority rights at the national level. Therefore, minority activists should not focus only on their argumentation on why specific documents or policies violate minority rights. In addition, they should pay meticulous attention to the analysis of the arguments used by relevant bodies and the judiciary to justify their endeavours aimed at undermining minority rights. Reliance on this analysis can contribute to more effective minority advocacy strategies.

The text also revealed that Latvian authorities effectively appeal to numerous ECtHR and CJEU case law as an additional argument to substantiate their position in communication with international bodies. This logic is reasonable, particularly when a legally binding reference with favourable content is measured vis-à-vis the critical one of a recommendatory nature. This demonstrates two interconnected systemic problems.

First, minority rights remain a niche topic that is frequently sidelined in favour of constitutional identity and protection of state language as an element thereof. Second, the example of Latvia demonstrates that judges at the ECtHR and the CJEU tend to see hampering minority rights as a lesser evil that characterises the corpus of the EU and the CoE legal acts, as interpreted by the relevant courts, as at least minority-unfriendly. For example, *Cilevičs and Others* shows that the CJEU "fail[ed] to elucidate the nature and intensity of the link between the relevant domestic measure and the identity element necessary to bring the situation within the realm of Article 4(2) TEU" (Di Federico & Martinico, 2023, p. 369). The same commentators also argue that in this specific case, the court opted not to address Article 22 of the Charter of Fundamental Rights of the European Union "to adequately balance the policy elaborated by the national legislator with (fundamental) minority rights" (Di Federico & Martinico, 2023, p. 369). As for the ECtHR, its attitude, demonstrated in the recent case law on Latvia discussed above, shows the path towards the toleration of abridging minority rights as a necessary and proportional step if this measure is justified by the need to protect state identity. Hence, the problem is not about the corpus of applicable law by the ECtHR and the CJEU, but about the attitudes towards their interpretation with a subsequent binding effect.

Finally, Latvia's stance towards FCNM implementation potentially shows a behavioural pattern for other states to fully or partially mirror it, appealing to extensive references to the specific situation caused by historical traumas or current threats and relying on a broad margin of state discretion. If chosen, it opens a potentially unbraked path to justify social homogeneity as a norm and diversity as a threat.

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