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# The Right to Use Minority Languages in the Public Sphere:

## Evaluation of Estonian Legislation in Light of the International Standards

### 1. Introduction

Estonian language legislation has received a lot of attention both at a domestic and an international level. Since its initial drafting, several changes have been introduced to the legislation, partly in response to the criticism made by international organisations. In the course of the drafting process, national security and arguments for the protection of the Estonian language and culture have been of primary concern. However, the possible human rights restrictions have been less considered or escaped attention. According to the Estonian Supreme Court, it is the legitimate purpose of the legislation to protect the Estonian language and culture.<sup>1</sup> Nevertheless, every measure that interferes with the exercise of fundamental rights and freedoms has to be also necessary in a democratic society and proportional to the aims pursued. Therefore, the impacts of the regulations on the people belonging to a linguistic minority and to their fundamental rights have to be taken into account as well.

In addition to the equal treatment clause that prohibits discrimination *inter alia* on the basis of language, the Estonian Constitution enlists among its extensive catalogue of fundamental rights and freedoms also the right to preserve one's national identity (§ 49), right to establish self-governing agencies in the interests of national culture (§ 50), the right to receive responses from state agencies, local governments, and their officials also in the language of the national minority in such localities where at least one-half of the permanent residents belong to a national minority (§ 51) and use the minority language as an internal working language in local governments where the language of the majority of the residents is not Estonian (§ 52).

Not all of these guarantees have been enforced in practice. The overview of the language legislation and practices in the Baltic States reveals rather that the higher the proportion of the Russian-speakers in a given population, the more rigorous the linguistic containment policy is.<sup>2</sup> Yet according to international law

<sup>1</sup> Decision of the Constitutional Review Chamber of the Supreme Court, 2 February 1998, No. 3-4-1-1-98. – Riigi Teataja (the State Gazette) I 1998, 14, 230 (in Estonian). The Court stated that the preamble of the Constitution establishes as one of the duties of the state the preservation of Estonian nation and culture through the ages, which inherently covers also protection of Estonian language.

<sup>2</sup> B. Tsilevich. Development of the Language Legislation in the Baltic States. – MOST Journal on Multicultural Societies, 2001, vol. 3, No. 2 (section 8.1). Available at: <http://www.unesco.org/most/vl3n2tsilevich.htm>.

instruments, the size of the minority group is one aspect, which determines the extent of state obligations towards the minorities — the more sizeable the minority group, the more extensive possibilities should be provided for the usage of the minority language. Moreover, as different surveys still demonstrate, the Estonian language command among the Russian-speaking population in Estonia is quite modest<sup>\*3</sup> and differences in non-Estonians' linguistic competences are largely dependent on their place of residence.<sup>\*4</sup>

The present paper first discusses the notion of language rights as they have been codified in international law. Then, Estonian legislation on the usage of minority languages in the public sphere, such as for communication with public authorities, within public bodies and the language of public signs will be analysed in the light of this discussion.

## 2. Language rights under international law

Estonia is a state party to the main international human rights treaties. The following chapter gives an overview of the main instruments dealing with language rights.

Estonia has ratified the International Covenant on Civil and Political Rights<sup>\*5</sup> (ICCPR) and its additional protocol establishing the individual complaint system to the Human Rights Committee. Prohibition of discrimination on the basis of ethnic or national origin is prohibited also by the International Covenant on Prohibition of All Forms of Racial Discrimination.<sup>\*6</sup> As a member state of the Council of Europe Estonia is a state party to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)<sup>\*7</sup>, and has ratified also the Framework Convention for the Protection of National Minorities<sup>\*8</sup> (FCNM).

Article 27 of the ICCPR sets forth that

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

The negative wording of article 27 has caused several disputes over the meaning of this article. However, there is an emerging consensus in academic literature that despite the negative wording of the provision it establishes positive duties on states to guarantee the right to use one's language in public and in private.<sup>\*9</sup> The position of the mere prohibition of intervention is supported by textual interpretation and *travaux préparatoires*, while systematic and teleological interpretation support the existence of positive state obligations.<sup>\*10</sup> Accordingly, if to look at the scope of article 27 in light of other rights guaranteed under the ICCPR, such as freedom of religion, expression and right to privacy and non-discrimination, and without providing some additional protection article 27 can be considered to be superfluous (see also the further discussion on the nature of the language rights).<sup>\*11</sup> Article 27 has also been used as a basis to argue for special measures to guarantee substantive equality for persons belonging to minorities.<sup>\*12</sup>

The 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities<sup>\*13</sup>, which has been inspired by article 27 of the ICCPR, elaborates further on the right to use

<sup>3</sup> According to the data from 2000, 34% of stateless people in Estonia consider that they are not able to communicate in Estonian and only 4% of them think that they can communicate well. 25% can speak Estonian more or less and 37% can speak only a little. The same figures about Russian citizens in Estonia: 50% do not speak a word, 6% speak well, 10% more or less, and 34% only a little. The knowledge of the Estonian language is a little bit higher among Estonian citizens: 39% can speak it well, 33% speak more or less, 18% can speak only a little, and 10% cannot speak at all in Estonian. Compared to the data from 1997, there has not appeared a significant improvement in the knowledge of the Estonian language among the Russian-speaking population. – See I. Proos. Linguistic competence and communicative capabilities of Russians in Estonia (“Russian Estonians”). Available at: <http://www.meis.ee/eng/index.html> (12.6.2003).

<sup>4</sup> Of Estonian cities Narva and Sillamäe are the most monolingual towns, where only 13% of the Russian-speaking people can communicate in Estonian. In Kohtla-Järve and Jõhvi the knowledge of Estonian is a little bit better – 27% of the Russian-speakers have good or passable knowledge on the level of every-day communication. – See I. Proos (Note 3).

<sup>5</sup> Riigi Teataja (the State Gazette) II 1993, 10/11, 11.

<sup>6</sup> Riigi Teataja (the State Gazette) II 1995, 5/6, 30.

<sup>7</sup> Riigi Teataja (the State Gazette) II 1996, 11/12, 34.

<sup>8</sup> Riigi Teataja (the State Gazette) II 1996, 40, 154. Entry into force 1 February 1998.

<sup>9</sup> See K. Henrard. Devising an Adequate System of Minority Protection. The Hague: Kluwer Law International, 2000, pp. 167–172; F. Capotorti. Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities (quoted in K. Henrard, p. 171); P. Thornberry. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analysis and Observations, Minority Rights Group. London, 1993, p. 22.

<sup>10</sup> K. Henrard (Note 9), pp. 167–168.

<sup>11</sup> *Ibid.*, p. 168.

<sup>12</sup> *Ibid.*, p. 170.

<sup>13</sup> United Nations General Assembly, U.N. Doc. A/RES/47/135, 18 December 1992. Available at: <http://www.un.org/documents/ga/res/47/a47r135.htm>.

one's language in public and in private, freely and without interference or any form of discrimination. The Declaration also establishes explicitly the obligation for the states to encourage conditions for the promotion of the identity of the minorities (article 1), to take measures to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law and to create favourable conditions to enable minorities to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4).

The Framework Convention for the Protection of National Minorities of the Council of Europe, ratified by Estonia in 1996, and the European Charter for Regional or Minority Languages (of which Estonia is not a signatory yet) are the first legally binding instruments specialised on minority protection, though the latter has been considered as protecting the languages and not the rights of the persons belonging to the minority group.<sup>\*14</sup> Nevertheless, the Explanatory Report of the Charter also states that although the Charter is not meant to establish any individual or collective rights, "the obligations of the parties with regard to the status of these languages and the domestic legislation which will have to be introduced in compliance with the Charter will have an obvious effect on the situation of the communities concerned and their individual members."<sup>\*15</sup> Although the Charter includes similarly to the Framework Convention several "escape clauses", e.g. that the state should take measures when it is "justified" by the number of the people speaking the minority or regional language, corresponding to the situation of the particular language or as far as "reasonably" possible, it enlists the obligations of the states parties more precisely.<sup>\*16</sup>

The Framework Convention, as also reflected in the name of the convention, includes mainly programmatic provisions, which establish state obligations to be implemented through domestic legislation. However, the provisions that repeat general human rights, such as the principle of non-discrimination, freedom of religion and freedom of expression, assembly and association, have been considered to be directly applicable.<sup>\*17</sup> The second weakness of the Framework Convention is its supervisory system. The state has to submit periodic reports on the legislative and other measures taken to give effect to the principles set out in the Convention, but there is no individual complaint system. Implementation is monitored by the Committee of Ministers of the Council of Europe, who is assisted by the advisory committee, which consists of members having recognised expertise in the field of the protection of national minorities.<sup>\*18</sup>

The Convention does not define the notion "national minorities", which is left to the states to determine. Accordingly states, when ratifying the FCNM, have made declarations on which groups they consider as national minorities.<sup>\*19</sup> The concept of minority has caused a lot of discussion also in regard to article 27 of the ICCPR.<sup>\*20</sup> However, the Human Rights Committee has explicitly stated that the existence of an ethnic, religious or linguistic minority in a given state party does not depend upon a decision of the state, but has to be established by objective criteria.<sup>\*21</sup> Hence, the "minority" has been defined as a group, which

- is numerically smaller than the rest of the population of the state;
- has ethnic, linguistic or religious characteristics different from those of the rest of the population;

<sup>14</sup> Although the widely recognised purpose of the Charter is the protection of the languages, it takes notice also of the "rights aspect". As it is stated in the preamble: "the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms".

<sup>15</sup> European Charter for Regional or Minority Languages. Explanatory Report. Available at: <http://conventions.coe.int/treaty/en/Reports/Html/148.htm>, § 11.

<sup>16</sup> For example, the Charter sets forth the requirement that users of regional or minority languages in communication with administrative authorities may submit oral or written applications or documents, and receive a reply in these languages; to make available widely used administrative texts and forms for the population in the regional or minority languages or in bilingual versions; to allow the administrative authorities to draft documents in a regional or minority language; the publication by local authorities of their official documents also in the relevant regional or minority languages; the use by regional or local authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the state. The above stated obligations should be reached through the translation or interpretation, recruitment and training of the officials and other public service employees required and compliance as far as possible with requests from public service employees having a knowledge of a regional or minority language to be appointed in the territory in which that language is used. See article 10 of the Charter.

<sup>17</sup> P. Thornberry. Unfinished Story of Minority Rights. – A. M. Biro, P. Kovacs (eds.). Diversity in Action: Local Public management of Multi-Ethnic Communities. Available at: [http://lgi.osi.hu/publications/books/Diversity\\_in\\_Action/1\\_3.PDF](http://lgi.osi.hu/publications/books/Diversity_in_Action/1_3.PDF), p. 60.

<sup>18</sup> See articles 24–26 of the Framework Convention.

<sup>19</sup> Estonia has made the following declaration: "The Republic of Estonia understands the term 'national minorities', which is not defined in the Framework Convention for the Protection of National Minorities, as follows: are considered as 'national minority' those **citizens** [emphasis added] of Estonia who (a) reside on the territory of Estonia; (b) maintain longstanding, firm and lasting ties with Estonia; (c) are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics; (d) are motivated by a concern to preserve together their cultural traditions, their religion or their language, which constitute the basis of their common identity."

<sup>20</sup> See the overview of the discussion in K. Henrard (Note 9), pp. 30–55.

<sup>21</sup> CCPR General Comment 23. The Rights of Minorities, 08/04/94, § 5.2. Available at: <http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/fb7fb12c2fb8bb21c12563ed004df11?OpenDocument>.

- shows a sense of mutual solidarity focused on the preservation of their culture, traditions, religion or language.<sup>\*22</sup>

Nevertheless, because of the insufficiency of the supervisory system of the specialised minority rights treaties and restrictive interpretations of the concept of national minority, there is a tendency to interpret general human rights norms in a minority sensitive way.

### 3. Right to use a minority language: a distinct or universal right?

The rationale of the language rights is the respect for the identity of a person and its basis lies in article 1 of the Universal Declaration of Human Rights as language can be regarded as one of the most fundamental components of human identity.<sup>\*23</sup> Therefore the right to use one's language is a general human right guaranteed to everyone, not only to persons belonging to a minority group. However, as the right to use minority languages has been stated separately, it raises the question as part of the wider debate on the nature of minority rights, whether the right to use minority languages is a distinct minority right or a right protected by universal human rights.

The general approach of the post Second World War system of the protection of human rights was to guarantee to everyone universal human rights in conjunction with the principle of non-discrimination. Accordingly the Universal Declaration of Human Rights, UN Charter and European Convention on Human Rights do not include separate minority rights provisions. However, such a system was considered as insufficient to guarantee effective protection of minority rights, and therefore a separate article on minorities was included in the text of the ICCPR. The purpose was to take into account the more vulnerable position of the minorities. Special rights were therefore aimed to provide additional protection to the identity of the persons belonging to the minority. At the same time, the interpretation of the scope of the general human rights has also evolved. Now general human rights put likewise positive obligations on the state to guarantee the rights to everyone.<sup>\*24</sup> Moreover, the principle of substantive equality requires states to take into account the different situation of the minorities, as failure to do so would amount to discrimination. Thus the theoretical justifications for specific measures are blurred, as also demonstrated in several decisions of the Human Rights Committee.<sup>\*25</sup>

The right to use the minority language has been considered as a distinct right for example by the Human Rights Committee, differentiating between the right of the persons belonging to a minority group to use their language among themselves from other language rights protected under the Covenant.<sup>\*26</sup> The Committee notes that the right formulated in article 27 is directed to protect the cultural, religious and social identity of the minorities and to protect their continuous development. For this reason, this right deserves separate protection and is thus situated separately and is additional to other Convention rights.<sup>\*27</sup> Thus the reason for differentiation lies in the more vulnerable identity of the minorities that can remain unprotected if the minority would be subjected to the same treatment as the majority. However, this rationale does not exclude the application of the alternative approach of protecting the language rights through general human rights norms.

Proponents of the protection through general human rights or the added protection approach argue that the so-called language rights are only one dimension of the universal human rights, such as the freedom of expression, right to privacy and non-discrimination, rather than separate or additional rights.<sup>\*28</sup> Accordingly de Varennes defends the view that under international law there is no "unqualified "right to use a minority language" or "right to language"", but "[t]here are a number of basic human rights and freedoms

<sup>22</sup> K. Henrard (Note 9), p. 55.

<sup>23</sup> Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights [...]." See the Explanatory Report of the Oslo Recommendations Regarding the Linguistic Rights of National Minorities. Foundation on Inter-Ethnic Relations, 1998, p. 1.

<sup>24</sup> M. Scheinin. State Responsibility, Good Governance and Indivisible Human Rights. – H. O. Sano, G. Alfredsson (eds.). Human Rights and Good Governance. The Hague: Kluwer Law International, 2002, pp 30–31.

<sup>25</sup> For example, the complaint *Francis Hopu and Tepoaitu Bessert v. France*, Communication No. 549/1993, U.N Doc. CCPR/C/60/D/549/1993 (Date of adoption of views 29 July 1997); *J. G. A. Diergaart et al. v. Namibia*, Communication No. 760/1997, U.N Doc. CCPR/C/69/D/760/1997 (Date of adoption of views 6 September 2000).

<sup>26</sup> CCPR General Comment 23 on the rights of minorities (article 27) 08/04/94 (Note 21), § 5.3.

<sup>27</sup> *Ibid.*, § 9.

<sup>28</sup> Language rights as part of general human rights see F. de Varennes. Language Rights as an Integral Part of Human Rights. – MOST Journal on Multicultural Societies, 2001, vol. 3, No. 1. Available at: <http://www.unesco.org/most/v13n1var.htm> (section 0.3). See also general analysis of minority rights as added protection to universal human right in M. Scheinin. Minority Rights: Additional Rights or Added

that affect the issue of language preferences and use by members of a minority or by the State”.<sup>29</sup> He further considers the guarantees enlisted for the use of minority languages in the minority rights treaties to be just as “a more detailed enumeration of the consequences of general human rights in specific situations”.<sup>30</sup>

### 3.1. Language regulation and general human rights

Several of the so-called special minority rights have successfully been addressed under general human rights provisions.

#### 3.1.1. Protection of identity

The right to privacy covers the protection of the identity of the person. This includes the protection of the traditional way of life and covers therefore also some economic activities, like traditional hunting and fishing rights. But also the right to have one’s name or surname in one’s own language is protected under the privacy right as part of a person’s identity<sup>31</sup>, while the same right has been established in article 11 (1) of the Framework Convention.

#### 3.1.2. Freedom of expression

The right to freedom of expression protects in addition to the content of the speech also the language as a medium of communication as stated by the Human Rights Committee.<sup>32</sup> This relates to the right to display signs in a minority language as well as other information of a private nature visible to the public, which is separately established under article 11 (2) of the Framework Convention, but is protected also under the general right to freedom of expression.

#### 3.1.3. The principle of non-discrimination

Language requirements also have the effect on the possibility to enjoy several other rights, such as political participation rights protected under article 25 of the ICCPR. The enjoyment of these rights has to be guaranteed without discrimination *inter alia* on the basis of language.

The principle of non-discrimination is stated in general human rights treaties, such as ECHR and ICCPR, but also in instruments dealing separately with the rights of persons belonging to minorities. Discrimination is understood as any distinction, exclusion, restriction or preference *inter alia* on the basis of language, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms in the political, economic, social, cultural or any other field of public life.<sup>33</sup> The question of the effect of the measure is particularly relevant in regard to the linguistic minorities. Differently from most of other generally accepted non-discrimination grounds, the state action cannot be neutral and it automatically puts the persons not speaking the official language as their mother tongue at a certain disadvantage.<sup>34</sup> Nevertheless, every differentiation in treatment is not necessarily discriminatory, if the criteria for distinction are reasonable and objective and it pursues a legiti-

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Protection (forthcoming). M. Scheinin brings analogy to women’s human rights: “although there are separate instruments and provisions on women’s human rights, [...] they should be seen as one way to strive for full and equal enjoyment of universal human rights by women [...]”, a view that takes into account the problem that human rights violations appear in gender-specific forms and the necessity of gender-sensitive reading of in its face neutral human rights provisions.

<sup>29</sup> F. de Varennes (Note 28), (section 0.5).

<sup>30</sup> *Ibid.*, (section 0.4).

<sup>31</sup> Human Rights Committee in *Coeriel and Aurik vs. Netherlands*, Communication No. 453/1991, U.N. Doc. CCPR/C/52/D/453/1991 (Date of adoption of views 9 December 1994), § 10.2. (Quoted in F. de Varennes (Note 28), (section 1.5)).

<sup>32</sup> *Ballantyne et al v. Canada*, Communications No. 359/1989, 385/1989, U.N. Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1 (Date of adoption of views 5 May 1993), § 11.5.

<sup>33</sup> CCPR General Comment 18. Non-discrimination, 10/11/89, § 7. Available at: <http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/3888b0541f8501c9c12563ed004b8d0e?OpenDocument>; article 1 CERD.

<sup>34</sup> F. de Varennes. The Protection of Linguistic Minorities in Europe and Human Rights: Possible Solutions to Ethnic Conflicts? – Columbia Journal of European Law, 1996, pp. 108-115.

<sup>35</sup> CCPR General Comment 18 (Note 33), § 13. Similarly, European Court of Human Rights has stated that the principle of equal treatment is violated if the distinction has no objective and reasonable justification. Whether there exists such a justification is assessed in relation to the aim and also effects of the measure under consideration. In addition to the existence of legitimate purpose the measure has to be also proportional to the aim sought to be realised. – Case “Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium”, No. 1474/62 *et al.* (Judgment of 23 July 1968). Available at: <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=616170010&Notice=0&Noticemode=&RelatedMode=0>.

mate aim.<sup>\*35</sup> Hence, taking into account the effect of the measure and as explicitly recognised by the European Court of Human Rights, discrimination may arise also where the state without an objective and reasonable justification fails to treat differently persons whose situation is significantly different.<sup>\*36</sup>

Accordingly, in certain conditions the state has to adopt positive measures to guarantee equal treatment of groups in a systematically unfavourable situation. Positive measures are necessary to eliminate continuous disadvantages and such special promotion measures should provide equal opportunities for those groups that have been systematically excluded or disadvantaged.<sup>\*37</sup> This could include for a certain period of time for some population groups in certain questions preferential treatment, which is legitimate to the extent that it is necessary to correct factual discrimination.<sup>\*38</sup> Such measures are usually temporary in nature, they cannot entail the maintenance of unequal or separate rights for different racial or ethnic groups after the objectives for which they were taken have been achieved.<sup>\*39</sup>

At the same time, although the obligation to take positive measures in certain circumstances is recognised, different authors have noted the problem that the real content of the obligations is still unclear as it is not specified which actions are precisely required to be taken. Fredman considers it a shortcoming, as simply “imposing a positive duty is not sufficient: the aims need to be articulated and the content of the duty defined for it to be effective”.<sup>\*40</sup> As regards the use of minority languages, the requirements enlisted in minority language treaties provide insight into which opportunities should be available for the use of the minority languages. These include the possibility to use the minority language in communication with public bodies, but in certain conditions also as an internal working language of the representative councils or administrative bodies. These guarantees are established in different minority rights treaties, but in certain conditions prescribed also by the non-discrimination principle.

The following factors have been suggested to determine the extent of state obligations concerning the providing the necessary facilities for the usage of the minority languages:

- the relative size of the groups;
- the length of time the groups have coexisted within the state;
- the degree of difference or similarity in their culture, and
- spatial distribution, as the situation should be different in situations where each large group live in their own separate habitat compactly together, or where the groups live fully interspersed.<sup>\*41</sup>

## 4. The use of minority languages in the public sphere

Section 6 of the Constitution establishes Estonian as the official language in Estonia. The Constitution sets forth also everyone’s right to address state agencies, local governments, and their officials in Estonian and to receive responses in Estonian (§ 51 (1)) and that the official language of state agencies and local governments is Estonian (§ 52 (1)). The Constitution includes also the principle of non-discrimination and quite extensive rights for the use of minority languages. The guarantees to use minority languages apply to local governments where at least half of the permanent residents belong to a national minority, where they have the right to use their language in communication with public authorities. The Constitution sets forth also the possibility to use their language as the internal working language in the local governments, where the language of the majority of the residents is not Estonian.

<sup>36</sup> *Thlimmenos v. Greece*, No. 34369/97 (Judgment of 6 April 2000), § 44. Available at: <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=616132704&Notice=0&Noticemode=&RelatedMode=0>.

<sup>37</sup> E. Appelt. *Affirmative Action: A Cross-National Debate*. – E. Appelt, M. Jarosch (eds.). *Combating Racial Discrimination. Affirmative Action as a Model for Europe*. Oxford, 2000, pp. 16–17.

<sup>38</sup> CCPR General Comment 18 (Note 33), § 10.

<sup>39</sup> A. Eide. *Good Governance, Human Rights, and the Rights of Minorities and Indigenous Peoples*. – H. O. Sano, G. Alfredsson (eds.). *Human Rights and Good Governance*. The Hague: Kluwer Law International, 2002, p. 58.

<sup>40</sup> S. Fredman. *Combating Racism with Human Rights: The Right to Equality*. – S. Fredman (ed.). *Discrimination and Human Rights. The Case of Racism*. Oxford University Press, 2001, p. 43.

<sup>41</sup> A. Eide (Note 39), p. 65.

## 4.1. Working languages of public bodies

At the end of the year 2001 the disputed language requirements for candidates to parliament and local government councils were abolished.<sup>42</sup> As a response, the parliament enacted amendments to the laws regulating procedure and organization of the parliament and local government. The amendment to the *Riigikogu* Rules of Procedure Act set forth *expressis verbis* that the working language of the *Riigikogu* is Estonian.<sup>43</sup>

The notion “working language” itself has not been defined in the act. The analysis of the Chancellery of the *Riigikogu* defines the notion “working language” as the language, “which is used for oral communication including inside the institution (oral communication among the officials and employees of the institution). This is also the language used to draw up the internal working documents, presentations, certificates, records, acts which are not meant for public use or knowledge or implementation by the persons outside the institution.”<sup>44</sup>

If one can consider the enactment of the Estonian language as the internal working language in the parliament as justified due to the need for effectiveness of the work of the parliament and this requirement has also strong symbolical importance, then the same requirement to local government councils is more problematical. The standard in the case of the local governments should be lower taking into account the right of local inhabitants to participate in local affairs. Although the international law does not directly prescribe which language has to be used in legislative or executive bodies, there are some limitations to the absolute discretion of the state.

### 4.1.1. Working languages of the local government

As a main rule, the language of state authorities and local governments is Estonian. The local governments may use the language of the majority of the permanent residents for internal communication in localities where the language of the majority of the population is other than Estonian. This concerns mainly the use of the minority languages in the localities in the North-East of Estonia, which are inhabited by a significant number of persons belonging to national minorities.<sup>45</sup>

The use of the minority languages is specified in the Language Act. Section 11 of the Act stipulates that in local governments where the majority of permanent residents are non-Estonian speakers, the language of the national minority constituting the majority of the permanent residents of the local government may be used alongside Estonian as the internal working language of the local government on the proposal of the corresponding local government council and by a decision of the Government of the Republic. This norm specifies constitutional guarantee for usage of minority languages, and requires permission of the Government. However, the criteria for refusing to grant the permission are not specified in the Language Act.

In practice, the Government has not until now granted such permission. The local government councils of Sillamäe and Narva applied for such permissions already in 1995, but the Government rejected the request, because some requirements of the Language Act were not fulfilled. Among the stated reasons were the insufficient knowledge of Estonian by the civil servants; failure to have correspondence with state authorities in Estonian; and the language of the seals, rubber stamps and letter-heads of the local government.<sup>46</sup> One of the indicated shortcomings was also that public signs, signposts, announcements, notices and advertisements were mostly in Russian, although the Language Act stipulates that these have to be in Estonian. It is allowed to add interpretation in minority languages only in local governments, which have received permission to use a minority language as the internal working language alongside Estonian. Thus, the Government made granting the permission conditional upon fulfilment of other requirements of the Language Act.

<sup>42</sup> *Riigikogu* valimise seaduse §-de 2, 21 ja 26 ning kohaliku omavalitsuse volikogu valimise seaduse §-de 3, 31 ja 26 muutmise seadus (Amendment Act to § 2, 21 and 26 of the *Riigikogu* Election Act and §§ 3, 31 and 26 of the Local Government Council Election Act). Adopted 21 November 2001. – Riigi Teataja (the State Gazette) I 2001, 95, 588 (in Estonian). Language requirements and their enforcement have been discussed in *Ignatane v. Latvia*, Communication No. 884/1999, U.N. Doc. CCPR/C/72/D/884/1999 (Date of communication of views 31 July 2001); *Podkolzina v. Latvia*, No. 46726/99 (Date of communication of views 9 April 2002). Available at: <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=616132448&Notice=0&Noticemode=&RelatedMode=0>.

<sup>43</sup> *Riigikogu* kodukorra seaduse muutmise seadus *Riigikogu* asjaajamisekeele sätestamiseks. (Amendment Act to the *Riigikogu* Rules of Procedure Act to stipulate the working language of the *Riigikogu*). Adopted 20 November 2001. – Riigi Teataja (the State Gazette) I 2001, 94, 581 (in Estonian).

<sup>44</sup> Keeleseaduse muutmise seaduse eelnõu (830 SE) esimene lugemine. Toimetatud stenogramm (First reading of the draft amendment Act of the Language Act (830 SE). The shorthand records). 4 December 2001. Available at: <http://www.riigikogu.ee> (11.5.2002) (in Estonian).

<sup>45</sup> Estonians constitute less than 20% of the population in East-Viru County; in Narva and Sillamäe cities Estonians constitute less than 4% of the whole population. See the data of the Population Census 2000, [www.stat.ee](http://www.stat.ee).

<sup>46</sup> Information of the Estonian Language Board.

However, this approach is problematic in light of the above-discussed concepts of substantive equality and state positive duties. These exceptions to the main rule in the Constitution have been enacted as a response to the *de facto* existing situation, which would take into account the differences of some local governments. The need for exception is most acute during the transitional period, when in light of the above-presented statistical data on language command it is inevitable that all requirements of the Language Act cannot be fulfilled. Moreover, only lately have the incentives and programmes for teaching the state language been initiated with some financial support for language studies, which could create a situation where the established requirements in reality could be fulfilled.<sup>\*47</sup>

The use of the minority language as an internal working language alongside Estonian is further related to the language requirements for civil servants. The Language Act stipulates that civil servants and employees of state agencies and local governments have to have a good command of Estonian. This requirement is in practice still causing problems despite the additional time given by the officials of the Language Board to improve the language knowledge and is deterrent for minority language speakers' access to civil service. Here again the proportionality of the requirements has to be considered, taking into account the nature of the work and the ability of the person to perform the duties, as well as the possibility to accommodate the issue of language knowledge inside the respective organisation, keeping also in mind everyone's constitutional right to address public agencies in Estonian. The issue of the requirement of the high level of knowledge of Estonian language by all higher civil servants has been raised in the court practice, but constitutionality of the requirement has still to be decided.<sup>\*48</sup>

#### 4.1.2. The working language of the local government councils

Although the possibilities for differentiation established in the Constitution should guarantee the wider possibility to participate in the work of the local government councils, they have not been fully applied in practice. According to the recent changes in the Local Government Act, which came into force in October 2002, the meetings of the local government councils have to be exclusively in Estonian, and interpretation of the meeting is conditional depending on whether the minority language is used as an internal working language in the municipality.<sup>\*49</sup> In localities where the persons belonging to a national minority constitute the majority of the residents the minutes of the local government council may still be also in the minority language.

The right to use the minority language in council meetings in local governments where the majority of the residents belong to the linguistic minority can be addressed also under the right to political participation, which has to be guaranteed without any discrimination. As stated above, in evaluation whether a requirement is discriminatory, the effect of the measure is taken into account as well. Also the concept of substantive equality requires that the persons in a substantially different position would be provided with different treatment.

Article 25 of the ICCPR, which sets forth political participation rights, establishes positive duties on states to guarantee this right also to persons belonging to minorities.<sup>\*50</sup> In regard to the political participation, A. Eide has argued that in the case of several large groups in society, which are "culturally quite different one from the other, effective political participation will require some special approaches."<sup>\*51</sup> Respective criteria

<sup>47</sup> State Programme "Integration in the Estonian Society 2000–2007" has, for example, a sub-programme "The teaching of Estonian to adults", which is mainly funded by foreign aid. Teaching of the Estonian language was earlier supported by the EU Phare Estonian Language Training Programme in 1998–2000, which continues in 2001–2003. Objectives of the Phare Programme are: (a) to permit children and adolescents in Estonia to achieve a sufficient level of proficiency in the Estonian language; (b) to offer non-Estonian adults language training on more favourable conditions; (c) to improve the communication between different linguistic communities through the notification of the public. The programme supports, for example, teaching materials for Russian comprehensive schools, continuing education for teachers, extracurricular language study, the teaching of Estonian to adults, awareness campaigns, implementation of expert support programme. In 1998 the Estonian Republic Integration Foundation was established. The purposes of the Integration Foundation are to (a) launch and facilitate various projects related to the integration of non-Estonians into Estonian society; (b) co-ordinate the efficient use of various sources in this field, including the implementation of several large-scale projects funded by foreign donors. See also <http://www.meis.ee/eng/index.html>.

<sup>48</sup> See decision of Administrative Law Chamber of Supreme Court, 7 March 2003, No. 3-3-1-20-03. – Riigi Teataja (the State Gazette) III 2003, 7 71 (in Estonian). In that case the applicant had a good knowledge of Estonian, while according to the Language Act all senior civil servants have to have the certificate of the high level of the knowledge of Estonian.

<sup>49</sup> Kohaliku omavalitsuse korralduse seaduse muutmise seadus (Amendment Act of the Local Government Organisation Act) – Riigi Teataja (the State Gazette) I 2001, 100, 642 (in Estonian).

<sup>50</sup> The principle of effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them has been set forth also in article 15 of the Framework Convention. The importance of the participation in the decision-making process, especially at local level, and the concern for under-representation of certain groups has been emphasised in different documents, see e.g. European Charter of Local Self-Government; The Report on the Working Conditions of Elected Members of Local Authorities in CBSS Member States. March 1998, p. 13. Available at: [http://www.cbss-commissioner.org/surveys/PDF\\_Documents/survey\\_mar\\_1998.pdf](http://www.cbss-commissioner.org/surveys/PDF_Documents/survey_mar_1998.pdf).

<sup>51</sup> A. Eide (Note 39), p. 65.



have been elaborated further in the Oslo Recommendations Regarding the Linguistic Rights of National Minorities<sup>\*52</sup>, which arguably codifies the principle of substantive equality.<sup>\*53</sup> According to the recommendations in regions and localities where persons belonging to a national minority are present in significant numbers, the state has to take measures to ensure that elected members of regional and local governmental bodies can use also the language of the national minority during activities relating to these bodies.<sup>\*54</sup> The respective factors to keep in mind are the size of the minority group and the respective state function or the importance of the interest at stake. Accordingly de Varennes expresses concern about the exclusion from elected office of citizens who are members of a minority because of the linguistic preferences of the government taking into account the importance of the political activity in a democratic state.<sup>\*55</sup> Similarly the supervisory Committee of the ICERD in its Concluding Observations on Estonia has emphasised the importance of the fact that political bodies of towns with a majority of Russian-speaking inhabitants could conduct their work also in Russian.<sup>\*56</sup>

Providing translation of the work of the council could be the measure to guarantee and promote effective participation in the work of the local government council. The Local Government Organisation Act<sup>\*57</sup> includes a general clause that the Council has the right to compensate its members for expenses incurred in the performance of their duties in the council. The Commissioner of the CBSS in its survey of the Working Conditions of Elected Members of Local Authorities recommends that states should encourage municipal councils to guarantee elected members who speak other mother tongues equal opportunities compared to other elected members of the council. For this the municipal councils are encouraged to provide translation, interpretation or other assistance if it is necessary to meet the needs of those elected members.<sup>\*58</sup>

## 4.2. The use of minority languages in communication with public authorities

Section 51 of the Constitution stipulates in addition to everyone's right to address state agencies, local governments, and their officials in Estonian and to receive responses in Estonian also the right to receive responses from state agencies, local governments, and their officials in the language of the national minority in localities where at least one half of the permanent residents belong to the national minority. This is specified in § 8 of the Language Act. This section sets forth that if an application or other document submitted to a state agency or local government is in a foreign language, the agency has the right to require the person to submit the translation of the document into Estonian, except in local governments where at least one half of the permanent residents belong to a national minority. In the cases provided by law, this agency has the right to require notarisation of the translation.

This guarantee for the use of the minority language constitutes limitation to the state's power to adopt any official language(s) it chooses, as there may be situations where it would be unreasonable and therefore discriminatory not to allow the use of other languages in the provision of public services or in the sphere of public administration in addition to the state language.<sup>\*59</sup> As it is argued, "this right [is] particularly significant for persons belonging to linguistic minorities since it both ensures that they are able to understand the policies that affect them, and that they may express their own views and become actively involved in civil life." This applies mainly to areas "where minorities are 'traditionally' present or are concentrated in 'substantial numbers' and where there is a sufficient demand".<sup>\*60</sup>

The respective obligation in the Framework Convention on the Protection of National Minorities establishes that "in areas inhabited by persons belonging to national minorities traditionally or in substantial

<sup>52</sup> The Oslo Recommendations Regarding the Linguistic Rights of National Minorities (Note 23).

<sup>53</sup> K. Henrard. The Interrelationship between Individual Human Rights, Minority Rights and the Right to Self-Determination and Its Importance for the Adequate Protection of Linguistic Minorities. – The Global Review of Ethnopolitics, September 2001, vol. 1, No. 1, p. 46.

<sup>54</sup> The Oslo Recommendations Regarding the Linguistic Rights of National Minorities (Note 23), p. 15.

<sup>55</sup> F. de Varennes. Political Exclusion of Minorities in Asia and Europe: A Few Comparisons (Summary of the presentation at the Workshop "Politische Repräsentation und Partizipation Nationaler Minderheiten", organised by the European Academy of Bolzano/Bozen on 19 February 1998). Available at: <http://www.eurac.edu/Press/Academia/15/Artikel6.asp>.

<sup>56</sup> Committee on the Elimination of Racial Discrimination. Concluding Observations on Estonia, U.N. Doc. CERD/C/61/CO/4 (adopted 22.8.2002), § 359. Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/A.57.18.para.344-366.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.57.18.para.344-366.En?Opendocument)

<sup>57</sup> Kohaliku omavalitsuse korralduse seadus (Local Government Organisation Act). – Riigi Teataja (the State Gazette) I 1993, 37, 558; 2001, 82, 489 (in Estonian).

<sup>58</sup> Working Conditions of Elected Members of Local Authorities in CBSS Member States, March 1998 (Note 50).

<sup>59</sup> S. Holt, J. Packer. OSCE Developments and Linguistic Minorities. – MOST Journal on Multicultural Societies, 2001, vol. 3, No. 2 (section 2.6). Available at: <http://www.unesco.org/most/v13n2packer.htm>.

<sup>60</sup> *Ibid*, (sections 2.6–2.10).

numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions, which would make it possible to use the minority language in relations between those persons and the administrative authorities".<sup>61</sup> The Convention does not provide specifically the size of the minority group. However, in light of the comparative state practice the Estonian requirement of a 50% threshold may be too high under the Framework Convention.<sup>62</sup> Similar concern has been expressed also by the Advisory Committee on the Framework Convention for the Protection of National Minorities in opinion about Estonia.<sup>63</sup> At the same time, the Advisory Committee welcomes the practice that *de facto* the use of the Russian language in contacts with administrative authorities is widely accepted in a number of areas inhabited by a substantial number of persons belonging to national minorities.<sup>64</sup>

### 4.3. The language of public signs

One of the reasons why the Government has refused to grant permission to use minority language as an internal local working language is that public signs and advertisements were mostly in Russian. Section 23 (1) of the Language Act stipulates that public signs, signposts, announcements, notices and advertisements have to be in Estonian, except in local governments, where it is allowed to add interpretation in the language of the national minority. The supervising authorities of the implementation of the Language Act have interpreted the provision strictly as allowing only the use of Estonian language and prohibiting others. At the same time they have also brought attention to the practical problems such a requirement can cause as in certain circumstances public interest might mandate the use of other languages, such as in cases of the spreading of infectious diseases, *etc.*<sup>65</sup>

As stated above, the right to freedom of expression protects, in addition to the content of the speech, the language as the medium of communication too. Also the Framework Convention sets forth the right to display signs in the minority language. The Advisory Committee of the Framework Convention has similarly expressed its concern about the requirement that public signs have to be in Estonian, particularly the practice to interpret the provision as prohibiting electoral advertisement posted in a language of the national minority.<sup>66</sup> However, comments by the government on the matter conclude that the state does not interfere with the right of the person to display information of a private nature visible to the public unless it is necessary in the public interests.<sup>67</sup>

Nevertheless, the requirement of the exclusive use of the majority language is contradictory to the findings of the UN Human Rights Committee in the case *Ballantyne et al v. Canada*, where the Committee found that it is not permitted to prohibit the use of a freely chosen language, although in some circumstances, if such a requirement is justified, it is allowed to require additional interpretation in the official language. This means that "[t]he state could never prohibit the use of a language, but it could, on the basis of a legitimate public interest, prescribe the additional use of the official language of the State".<sup>68</sup>

Furthermore, according to article 11 (3) of the Framework Convention the state should display traditional local names, street names and other topographical indications intended for the public also in the minority language in such areas, which are traditionally inhabited by a substantial number of persons belonging to a national minority.

<sup>61</sup> Similar obligation is expressed also in the Oslo Recommendations Regarding the Linguistic Rights of National Minorities (Note 23), p. 14.

<sup>62</sup> For example, in Finland the region is considered as bilingual if at least 8% of the population speaks another language, in Slovakia the requirement is 20%, in Romania 20%, in Spain 20%, in Canada 5%. See the examples in S. Holt, J. Packer (Note 59), (section 2.12); F. De Varennes. To speak or not to speak. The Rights of Persons Belonging to Linguistic Minorities. Working Paper prepared for the UN Subcommittee on the rights of minorities (1997), pp 30-31. – Available at: <http://www.unesco.org/most/ln2pol3.htm>.

<sup>63</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities. Opinion on Estonia, No. ACFC/INF/OP/I(2002)005, 14 September 2001, p. 11, § 40. Available at: [http://www.coe.int/T/E/human%5Frights/minorities/2%2E%5FFRAMEWORK%5FCONVENTION%5F%28MONITORING%29%2E%5FMonitoring%5Fmechanism/4%2E%5FOpinions%5FoF%5Fthe%5FAAdvisory%5FCommittee/1\\_Country\\_specific\\_opinions/ACFC\\_INF\\_OP\\_I\(2002\)005%20E%20Opinion%20Estonia.asp#TopOfPage](http://www.coe.int/T/E/human%5Frights/minorities/2%2E%5FFRAMEWORK%5FCONVENTION%5F%28MONITORING%29%2E%5FMonitoring%5Fmechanism/4%2E%5FOpinions%5FoF%5Fthe%5FAAdvisory%5FCommittee/1_Country_specific_opinions/ACFC_INF_OP_I(2002)005%20E%20Opinion%20Estonia.asp#TopOfPage)

<sup>64</sup> *Ibid.*, § 41.

<sup>65</sup> I. Tomusk. Keeleseaduse täitmise järelevalve valupunkte (The Problems of the Supervision of the Implementation of the Language Act). – Sirp, 6 July 2001 (in Estonian); See the presentation of M. Stalnuhhin, keeleseaduse muutmise seaduse eelnõu (830 SE) esimene lugemine (Note 44).

<sup>66</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, p. 15, § 56.

<sup>67</sup> Comments of the Estonian Government on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Estonia, No. GVT/COM/INF/OP/I(2002)005, 20 February 2002, p. 9, § 43. Available at: [http://www.coe.int/T/E/human%5Frights/minorities/2%2E%5FFRAMEWORK%5FCONVENTION%5F%28MONITORING%29%2E%5FMonitoring%5Fmechanism/5\\_Comments\\_by\\_the\\_states\\_concerned/GVT-COM-INF-OP-I\(2002\)005%20E%20Estonia.asp#TopOfPage](http://www.coe.int/T/E/human%5Frights/minorities/2%2E%5FFRAMEWORK%5FCONVENTION%5F%28MONITORING%29%2E%5FMonitoring%5Fmechanism/5_Comments_by_the_states_concerned/GVT-COM-INF-OP-I(2002)005%20E%20Estonia.asp#TopOfPage).

<sup>68</sup> See the comment in the Oslo Recommendations Regarding the Linguistic Rights of National Minorities (Note 23).

## 5. Conclusions

The article aimed to consider the guarantees for the use of the minority languages under international law and address the issues of concern under domestic legislation. Several of the minority language guarantees deriving from international law instruments, but also the guarantees under the Constitution of Estonia have not been enforced in domestic practice.

Different aspects of the language regulation could be invoked under the international instruments dealing specifically with minority rights, but could be addressed also under general human rights, such as the right to freedom of expression, political participation rights or the principle of non-discrimination. Especially the requirement of the substantive equality could be used as regards many of the issues related to the use of the minority languages. This would further clarify the scope of the obligations under the principle, as at the moment the principle has been stated in declaratory terms and the nature and scope of the required measures is to a great extent still open-ended.

Nevertheless, the ability to establish universal or even regional generally binding international obligations is limited, as concrete measures depend on the concrete circumstances of each case. Therefore, the state has the primary obligation to implement the general guidelines enshrined in international instruments to guarantee the effective protection of the minority rights under national law.