



24.10.2012

NOTICE TO MEMBERS

Subject: Petition 0358/2011 by Tomasz Snarski (Polish), on the amendment of the Lithuanian Education Act and the resulting limitation of the school subjects taught in Polish

1. Summary of petition 0358/2011

The petitioner refers to the amendment of the Lithuanian Education Act, which will restrict the right of the Polish national minority to teaching in Polish. As well as for compulsory Lithuanian language instruction, the state language has to be used in the teaching of history and geography, among other subjects, and the change will result in the closure of Polish schools if they do not fulfil the requirement for a particular number of pupils. The petitioner considers this action by Lithuania to be in breach of a number of international agreements and conventions, including the 1966 International Covenant on Civil and Political Rights, the European Convention on Human Rights, the European Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. The petitioner therefore calls on the European Parliament to ensure protection of the rights of the Polish minority in Lithuania and to examine whether the new Lithuanian Education Act complies with the principle of non-discrimination on the basis of nationality.

2. Admissibility

Petition 0358/2011 was declared admissible on 8 July 2011. Information requested from Commission under Rule 202(6).

3. Commission reply for petition 0358/2011 and 0942/2011, received on 16 December 2011

The petitioners allege that the recent amendments to the Lithuanian Education Act restrict the linguistic rights of the Polish minority in Lithuania, which they deem a breach of a number of international agreements and conventions.

The Commission would like to point out that under Article 165 of the Treaty on the Functioning of the European Union, Member States are primarily responsible for the content of the teaching and the organisation of their education systems, as well as their language policy. In this respect, it must be kept in mind that the legal instruments referred to by the petitioner are outside the legal framework of the European Union.

Articles 21 and 22 of the Charter of Fundamental Rights of the European Union prohibit discrimination based on membership of a national minority and provide for the respect by the Union of cultural, religious and linguistic diversity. However, such provisions are only addressed to the Member States when they are implementing Union law; it is therefore in such cases only that the Commission can seek to enforce compliance with the said provisions through infringement proceedings under Article 258 of the Treaty on the Functioning of the European Union.

The Commission would add that, at European level, the protection of rights to the preservation of national identity, language and culture is covered by the Council of Europe Framework Convention for the Protection of National Minorities of 1 February 1995, to which the Republic of Lithuania is a Contracting Party. In this respect, the Commission would draw attention to the provisions of Articles 25 and 26 of the said Convention, which provide for overseeing the application of the Convention by the Committee of Ministers, assisted by an advisory committee for the purposes of evaluating the adequacy of the measures taken by Parties to give effect to the principles set out in the Convention.

4. Commission reply (REV.), received on 24 October 2012

Contending that the situation of the Polish minority in Lithuania is steadily getting worse, the petitioner mainly alleges that the linguistic, educational and cultural rights of Lithuanian citizens of Polish origin, derived from their status as a recognized national minority, are not respected in contradiction with the relevant provisions of the International Covenant on Civil and Political Rights, the Framework Convention on the Protection of National Minorities, the European Convention on Human Rights and its protocols, and the European Charter for Regional or Minority Languages. The petitioner maintains in this respect that persons belonging to the Polish minority in Lithuania are deprived of their right to use and have officially recognised their surname and first name in their mother tongue, as well as of the right to have traditional local names, street names and other topographical indications intended for the public displayed also in their mother tongue. The petitioner also contends that recent amendments to the Lithuanian Education Act place Lithuanian citizens belonging to the Polish minority at a disadvantage.

In the Treaties on which the European Union is based¹, the Commission has no general powers to intervene with Member States in the area of fundamental rights. It can do so only if an issue of European law is involved. According to its Article 51(1), the Charter applies to

¹ Treaty on European Union and Treaty on the functioning of the European Union.

Member States only when they are implementing European Union law. Moreover, Article 6(1) of the Treaty of the European Union states that, “[t]he provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.”

On the basis of the information provided in the petition, it does not appear that the matter to which the petitioner refers is related to the implementation of European Union law. For this reason, it is not possible for the European Commission to follow up on the issues raised in the petition.

In such cases, it is for Member States, including their judicial authorities, to ensure that fundamental rights are effectively respected and protected in accordance with their national legislation and international human rights obligations.

The Commission also recalls that it has no general powers as regards minorities. In particular, the Commission has no competence over matters concerning the definition of what is a national minority, the recognition of the status of minorities or their self-determination and autonomy. Those matters fall under the responsibility of the Member States.

Within the scope of European Union law, the Commission ensures that Member States, when implementing this law, respect fundamental rights, including the principle of non-discrimination provided in Article 21 of the Charter. Furthermore, EU legislation and financing programmes contribute to address certain difficulties which are likely to affect persons belonging to minorities, such as discrimination and incitement to violence or hatred based on race or national or ethnic origin.

With regard to the alleged breach of the provisions of Council Directive 2000/43/EC, the Commission would recall that the provisions of Article 3 of the said Directive restrict its scope of application for the field of education to the powers conferred upon the Union. Therefore national provisions regulating aspects of the content of the educational curriculum provided or the linguistic rights of national minorities fall outside the scope of Directive 2000/43/EC. The Commission equally notes in this respect that the Court has arrived at the same conclusion in its preliminary ruling in *Runevič-Vardyn and Wardyn* (Case C-391/09, 12 May 2011, paragraph 47) with regard to the right to use a name in a minority language. Moreover, with regard to the petitioner's allegations concerning a potential violation of Article 20(2) or 21 TFEU, the Commission notes that in the aforementioned case (paragraph 70), the Court has concluded that the absence of a right to use one's name in a minority language is not liable to deter a citizen of the Union from exercising the rights of movement recognised in Article 21 TFEU and, therefore, does not constitute a restriction.

The Commission finally notes that it is equally alleged in the annexes to the petition that the Union should be active and not passive in combating ethnic discrimination, as provided under Article 10 TFEU. In this respect, the Commission must underline that the said Article clearly limits the scope of the Union's aim in combating discrimination to the definition and implementation of its own policies and activities. This provision cannot therefore constitute a legal basis for pursuing that aim outside the Union's competence.

The Commission would nevertheless refer the petitioner to the existing framework within the Council of Europe's Framework Convention for the Protection of National Minorities¹, the first legally binding multilateral instrument devoted to the protection of national minorities in

¹ <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>

general (paragraph 10 of the Explanatory Report to the Convention¹), to which both the Republic of Poland and the Republic of Lithuania are Parties. Pursuant to Article 24(1) of the Convention, the Committee of Ministers of the Council of Europe is entrusted with the task of monitoring the implementation of the Convention by the Contracting Parties. In evaluating the adequacy of the measures taken by the Parties to give effect to the principles set out in this Convention, the Committee is assisted in this task by an advisory committee (Article 26(1) of the Convention), the members of which have recognised expertise in the field of the protection of national minorities. The Commission notes that in this respect Lithuania has submitted so far three reports on the situation of its national minorities, the last one having been received by the Committee of Ministers of the Council of Europe on 21 September 2011². The advisory committee has not yet adopted an opinion with regard to this third report, but a second opinion on Lithuania, adopted on 28 February 2008, is publicly available on the Council of Europe's website³.

The Commission also notes that, in recent visits to Lithuania and Poland, the OSCE Commissioner on National minorities has "urged both Governments to address national minority issues in their own countries, while also working on improving their bilateral relations, including by reviving mechanisms such as the joint education experts' group"⁴. Furthermore, the Commission notes that the High Commissioner is working with both countries to investigate and make recommendations relating to the situation of the Polish minority in Lithuania and the Lithuanian minority in Poland.

¹ <http://conventions.coe.int/Treaty/EN/Reports/Html/157.htm>

² http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_3rd_SR_Lithuania_rev_en.pdf

³ http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_2nd_OP_Lithuania_en.pdf

⁴ <http://www.osce.org/hcnm/89402>