

Martina Kovačič Kuzmič

University of Primorska, Faculty of Education, Koper
Slovenia

Jurka Lepičnik Vodopivec

University of Primorska, Faculty of Education, Koper
Slovenia

CERTAIN ASPECTS OF THE IMPLEMENTATION OF MINORITY RIGHTS IN THE FIELD OF EDUCATION IN SLOVENIA

Introduction

The protection of national minorities is one of the main priorities of international organisations with which the European Union regulates minority rights in almost all fields, and at the same time it is one of the main issues in the context of human rights protection. The development of this specific set of human rights has become known as 'minority protection' (Komac, 2002).

In Europe there are many minority languages, it is estimated that more than 50 million people belong to minorities and each minority member has been living under a different set of circumstances on national or regional level (Pavšič, 2015). In accordance with the principle of subsidiarity certain matters related to minority languages in education have to be regulated on national and sometimes also on regional level (Research for CULT Committee – Minority languages and education: best practices and pitfalls, European Parliament, 2017).

The article analyses minority rights deriving from the special legal protection of minorities. As Klopčič (2009) reports, the concept of equality and positive discrimination in relation to the protection of national and ethnic minorities has its own specifics. These are particularly evident in the prevalence of the so-called territorial principle and in the historical role of minority protection, which first developed as an independent concept and was included in the international protection of human rights only recently (Klopčič, 2009). We are therefore referring to the legal concept of positive discrimination which indicates the *"temporary different or preferential treatment, accorded by law, of certain categories of people in exercising the rights which are guaranteed to the legal addressees to the same extent and under the same conditions."* (Flander, 2004 in Klopčič, 2009, p. 110–111).

In the Republic of Slovenia the Constitution (Constitution of the Republic of Slovenia. Official Gazette of the Republic of Slovenia, n. 42/1997 - UZS68, 66/2000 - UZ80, 24/2003 - UZ3a, 47, 68, 69/2004 - UZ14, 69/2004 - UZ43, 69/2004 - UZ50, 68/2006 - UZ121,140,143, 47/2013, 47/2013, 75/2016 - UZ70a., hereinafter Constitution), as well as numerous international acts which were ratified by Slovenia, guarantee a special protection of rights, which is one of the main issues in the context of human rights protection. Minorities have been addressing the discrepancies between constitutional provisions and the provisions of other

international acts on the use of minority languages in education and their implementation in practice for many years. On the other hand, there have been a number of initiatives from the representatives of the so-called majority national group who claim that the implementation of certain minority rights interferes with the right of the majority national group to be equal before the law. We are therefore referring to the concept of equality and positive discrimination in relation to the protection of national and ethnic minorities, which has been the subject of many discussions, as well as legal actions on both national and international level. In the article we will focus on the issue of minority rights protection in education and include the concepts of multiculturalism and social justice in relation to the minority and the majority national group.

The purpose of the article is to research how the different approaches to the implementation of minority rights, which follow the concept of positive discrimination, affect social justice in the education system and its participants. By doing this, we want to examine the ways in which minority rights are being implemented in the education system and the reasons for the application of different models of implementations of these minority rights. The article also includes an additional analysis of the different models of implementation of minority rights in the education system.

The minorities' right to education

The right to education is one of the fundamental and inalienable human rights which are guaranteed by the Universal Declaration of Human Rights¹. Its importance is mirrored by the fact that the implementation of this right is at the same time the basis for the implementation of other fundamental human rights. Only people with at least minimum education who know how to write and read can be aware of their rights. Education is a tool that allows people from socially disadvantaged groups to move out of poverty and become active members of society. Political rights, freedom of expression, etc. have meaning only if a person is educated. The right to education is therefore a key instrument for the social and economic development of society. The right to education contributes importantly to the promotion of the essence of human rights – to live with dignity. Since it is linked to other rights, the right to education underlines the importance of unity and the interdependence of all human rights (Coomans, 1988).

Kern (2009) states that a minority education system is one of the key development factors of national minorities and that it has an important role in the preservation and development of the Slovenian language in the geographical areas of cultural contact. As Kern (2009) continues, in addition to general and professional educational contents, the linguistic and cultural contents in minority schools provide also knowledge about the language and the culture of both the minority and the majority national group – not only because they belong to a minority, but also due to its highlighted role of multilingualism in ethnically diverse and border areas. Kern (2009) concludes its findings by claiming that the purpose of minority schools is not only to provide professional knowledge, but also to protect the identity and the social and demographic development of the minority (Kern, 2009).

In the third paragraph of Article 57 the Constitution imposes the state the obligation to create opportunities for its citizens to pursue adequate education. The Decision of the Constitutional Court, n. RS U-I-94/96 from 22/10/1998 (Official Gazette of the Republic of

¹ Adopted and declared by the General Assembly of the United Nations on 10 December 1948 with resolution 217 A (III).

Slovenia, n. 77/98 and OdlUS VII, 196) interprets this provision as the obligation to guarantee equal opportunities for acquiring a level of primary education which allows individuals to pursue further education after completing primary school, in accordance to their wishes and abilities (Decision of the Constitutional Court, n. RS U-I-94/96 from 22/10/1998 (Official Gazette of the Republic of Slovenia, n. 77/98 and OdlUS VII, 1996).

The concept of minority

In the international community there are no generally accepted definitions of the terms 'minority' and 'minority languages'. Roter (2008) states that the European international community has resolved historical minority issues by protecting minorities (at first religious minorities and with the development of modern states this extended also national minorities). After World War II this international protection developed into a global international system of protection of human rights which is based on the principle of non discrimination and on universal, inalienable human rights. This led to the creation of many politically and legally binding documents by international institutions which provide the basis for the implementation of special human rights that belong to members of minorities who can enjoy them collectively, along with other members of the minority. Roter (2008) concludes that even though minority rights are thoroughly regulated by international documents, international law does not define in any document who exactly is entitled to these rights, or, in other words, who is entitled to this type of legal protection (Roter, 2008).

A significant example of the lack of a unified concept of minority is the document of the Council of Europe *Thematic commentary no. 4: The scope of application of the Framework Convention for the Protection of National Minorities*, where it is concluded that there has never been a universal definition of the term 'minority' (Research for CULT Committee – Minority languages and education: best practices and pitfalls, European Parliament, 2017).

Nevertheless, from the different attempts at defining the term minority by various national and international authors we can conclude that there are certain similarities. Komac (2017) defines national minorities as "*groups of citizens of a country who constitute a group which is numerically inferior to the majority group in the country, they are in a non dominant position, they have special ethnic indicators (language, culture, religion) which they want to preserve, they are citizens of a country where they live as a minority and they have 'long term, tight and ongoing links' with the country, which they want to preserve*".

Attempts at defining the term minority can be found also in numerous international acts and other documents of international organisations. In Article 27 the International Covenant on Civil and Political Rights² states:

"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 the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

In relation to the interpretation of this Article Roter (2008) says that from a legal point of view the issue of identifying the holders of the rights referred to in the Article has not been

² Adopted by the General Assembly of the United Nations on 16 December 1966 with resolution 2200 A (XXI). Entered into force on 23 March 1976 in accordance with Article 49.

resolved. An attempt at creating the definition was provided by the United Nations special rapporteur Francesco Capotorti. In relation to this, Roter (2008) explains that in its famous *Study on the rights of persons belonging to ethnic, religious and linguistic minorities* (1979), Capotorti provided the following definition of the term minority on the basis of the countries' answers regarding their understanding of minorities and minority rights, i.e. their protection under the provisions of Article 27 of the International Covenant on Civil and Political Rights (Roter, 2008):

"In this very context the term 'minority' can refer to: a group numerically inferior to the rest of the population of a State, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language." (Capotorti, 1979, paragraph 568 in Roter, 2008, p.45).

Roter (2008) summarises this by saying that the perception of minorities on an international level developed in such a way that *"the understanding of the people entitled to minority protection largely exceeds the traditional perception of national minorities as historical groups living in a confined territory, who have long-term and tight (through citizenships) links with the country in which their members live."* (Roter, 2008, p. 34).

As you can read in the following chapters, this understanding consequently has an impact on the protection of minorities in practice.

Historical and political basis for the regulation of the status of minorities

In order to facilitate the understanding of the following content of the article this chapter summarises the historical reasons which contributed to the development of a legal basis for the regulation of the protection of minorities and presents the most important legal acts relating to the topic.

According to Klopčič (2009) the development of the international protection of national minorities has been inextricably linked to the issues of political interest of the single countries, international institutions and organisations, as well as groups and minorities themselves since the very beginning. The author (2009) continues by stating that precisely due to its political dimension the process of developing the legal protection of national minorities represents also a clash between expert findings and political interests and *"an area for the implementation of different concepts and ideologically loaded terms of 'state', 'nation', 'identity', as well as of the term 'national' minority itself"*. (Klopčič, 2009, p. 111).

The author (2009) also concludes that the modern regulation of the protection of minorities in Europe derives from the positive role of minorities, and underlines how important the regulation of the protection of national minorities is for peace and stability in Europe and for cultural diversity, which includes all nations and minorities in Europe. The result of this mentality can be seen in the normative actions of European international institutions, in the case law of the European Court of Human Rights and in the internal regulations of European states, which provided the basis for the development of the legal standards of the principles of respect of human rights and non discrimination, and of the international consensus on the protection of national minorities (Klopčič, 2009).

In accordance with Slovenia's report to the Council of Europe regarding the implementation of the provisions of the Framework Convention for the Protection of National Minorities³ (Second report submitted by Slovenia pursuant to article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, 2004), which we will analyse in more detail in the following paragraphs, the Italian and the Hungarian national communities are typical minority communities. This means that the implementation of a set of special minority rights is primarily linked to the geographical area which has been traditionally populated by the members of minority communities, therefore to the term ethnically diverse area, which indicates the areas in single municipalities where the members of the Italian or the Hungarian ethnic minority are settled (Second report submitted by Slovenia pursuant to article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, 2004).

With the ratification of international acts Slovenia introduced into its domestic law all the general rules regarding the protection of ethnic and national minorities which were adopted by the Council of Europe (Benedetti, 2009). The author (2009) also states that in addition to that, the status of minorities has been defined by many sectoral laws, decrees and statutes of municipalities with ethnically diverse geographical areas, by other legal acts, international treaties and agreements, and by international conventions which were ratified by the Republic of Slovenia (Benedetti, 2009).

These include the Framework Convention for the Protection of National Minorities of the Council of Europe and the European Charter for Regional or Minority Languages which Slovenia ratified in 1998 and has entered into force on 1 July 1998. As Benedetti (2009) reports, the Framework Convention for the Protection of National Minorities is the first multilateral treaty on the protection of minorities which is legally binding. This convention explicitly states that it is an integral part of the international protection of human rights, and as such falls within the scope of international co-operation. An important document for the protection of minorities is also the European Charter for Regional or Minority Languages of the Council of Europe which was adopted on 5 November 1992 in Strasbourg, whereas Slovenia ratified it with the Act Ratifying the European Charter for Regional and Minority Languages (Official Gazette of the Republic of Slovenia-MP, n. 17-84/2000 - MELRJ) on 19 July 2000.

In order to understand the historical basis of the regulation of the status of minorities in Slovenia we have to go further back in time, in the period of the regulation of relations with neighbouring countries, which were formed after the declaration of the Socialist Federal Republic of Yugoslavia⁴. A treaty which is particularly important for the Italian national community is the Treaty of Osimo⁵ from 1977. It is a bilateral treaty between the former SFRY and the Italian Republic. After the declaration of independence, the Republic of Slovenia undertook to further respect the treaty with the act on succession. The Treaty of Osimo includes also the main provisions of the Special Statute annexed to the Memorandum of Understanding

³ The Framework Convention for the Protection of National Minorities was ratified by the National Assembly of the Republic of Slovenia on its session on 25 February 1998, with the adoption of the Act Ratifying the Framework Convention for the Protection of National Minorities (Official Gazette of the Republic of Slovenia-MP, n. 4-6/1998 - MKUNM).

⁴ Socialist Federal Republic of Yugoslavia, abbreviated SFRY or shortly Yugoslavia (1963–1992).

⁵ The Osimo Treaty is an international legal act which was signed on 10 November 1975 by the Socialist Federal Republic of Yugoslavia and the Italian Republic in the town of Osimo, near Ancona, and entered into force with the ratification by both parliaments on 11 October 1977.

of London⁶ from 1954. The fundamental act of the Hungarian national community in Slovenia and of the Slovenian minority in Hungary is the international Agreement on Guaranteeing Special Rights to the Slovenian Minority Living in the Republic of Hungary and the Hungarian National Community in the Republic of Slovenia (Act Ratifying the Agreement on Guaranteeing Special Rights to the Slovenian Minority Living in the Republic of Hungary and the Hungarian National Community in the Republic of Slovenia, Official Gazette of the Republic of Slovenia-MP, n. 6-34/1993).

On the basis of the above-mentioned facts we can conclude that the legal basis for the protection of minorities in the Republic of Slovenia was developed and integrated in accordance with political and social changes, and it is necessary to underline that the special rights of both minorities which are recognised by the constitution are distinctively linked to the geographical area of settlement of the two minorities, which is the reason for the development of two different models of protection of minorities in the field of education.

The development of two models of minority education

Slovenia offers a unique insight into two models of bilingual education which are implemented in the two ethnically diverse geographical areas, the Slovene Istria and Prekmurje. The common aspect of both models is that primary and secondary school students of the minority and the majority ethnic group learn both languages – the majority and the minority language – throughout primary and secondary school (*Znanstveni svet, Medkulturna vzgoja v šoli: izhodišča in smernice, 2013 (Scientific Council: Intercultural education in school: Basis and Guidelines)*). In ethnically diverse areas of the Slovene Istria the education of the members of the Italian national community is carried out in Italian, with Slovenian being a compulsory subject, whereas in the other schools of the region Italian is a compulsory subject in primary and secondary school. In the ethnically diverse area of settlement of the Hungarian national community bilingual education is regulated by law and the education of all students is carried out in both languages. Due to this the syllabus is adapted as it includes also Hungarian as the first language or as the second language (Ministry of Education, Science and Sport, general information).

In the article's introduction we mentioned the constitution as the basis for the protection of minorities in the Republic of Slovenia. In Article 64 the Constitution grants to the members of the Italian and of the Hungarian national community the right to education in their language and the right to cooperate in the establishment and the development of education and schooling. The provisions of Article 64 establishes that bilingual schooling is mandatory and authorizes the legislature to determine the geographical areas in which it is mandatory. In other words, the constitution imposes upon the legislature to organise bilingual schooling, while only allowing it to determine the geographical areas in which it should be mandatory. The basis for the identification of the geographical areas where bilingual schooling should be mandatory is the fact that it is a special right of the Italian and the Hungarian national community (Decision of the Constitutional Court, n. RS U-I-94/96 from 22/10/1998, Official Gazette of the Republic of Slovenia, n. 77/98 and OdlUS VII, 196).

⁶ The London Memorandum, also Memorandum of Understanding of London, is an international agreement which was signed by the representatives of Italy, Yugoslavia, the United Kingdom and USA on 5 October 1954.

The reasons for the development and the implementation of two different education models are the consequence of different historical circumstances, social and demographic structures and international treaties, which have already been referred to in the previous chapter. The education model of the Italian minority derives from the Special Statute annexed to the Memorandum of Understanding of London from 1954, which set out the standard for the protection of the Slovenian minority in Italy and of the Italian minority in Slovenia (Novak Lukanovič, 2014), and whose essential provisions are included also in the Osimo Treaty from 1977. On the other hand, Prekmurje's bilingual education system has been implemented since 1959. People living in ethnically diverse areas of settlement of the Hungarian minority have the possibility to learn Hungarian and Slovenian simultaneously, as both languages are subjects and languages of instruction at the same time and bilingual education is compulsory for both the majority and the minority group. Unlike the education model of the Italian national community, the model in Prekmurje developed as a result of political decisions which did not originate from international treaties, but had a scientific basis (Novak Lukanovič, 2014). The Pomurje Hungarian Self-Governing National Community Lendava states that bilingual schooling was established in 1959. In the period before this there were Hungarian schools in Prekmurje and a similar system existed in the Coastal region. From 1945 to 1959 a Slovenian and a Hungarian primary school operated separately. At the time the historical circumstances prevented students of Hungarian nationality to continue education in secondary and tertiary schools in Hungary, whereas the schools in Vojvodina, Serbia, were too far away. As a result of this, the majority of parents enrolled their children in Slovenian schools, while Hungarian schools lost their students. The bilingual model was adopted as the solution for preventing the collapse of ethnic schooling in Prekmurje (Decision of the Constitutional Court, n. RS U-I-94/96 from 22/10/1998, Official Gazette of the Republic of Slovenia, n. 77/98 and OdlUS VII, 196).

Both Slovenian models of minority education were the subject of numerous studies which focused mainly on the organisation, the didactic process and the syllabi (Novak Lukanovič, 2014), as well as on the question whether the implementation of certain rights of minorities can interfere with the majority group's right of equality before the law.

According to the results of a study which was carried out by Novak Lukanovič (Novak Lukanovič, 2014) and reported in the scientific article Attitudes to bilingual education in Slovenia, students from both ethnically diverse geographical areas in Slovenia (Prekmurje and the Slovene Istria) achieve better results in Slovenian as the first language in comparison to the control groups from two other geographical areas which are not bilingual. From a legal standpoint in the grounds of one of its high profile decisions, which will be presented in more detail in the following paragraphs, the Constitutional Court of the Republic of Slovenia concluded that the national examination of 8th grade students proves that in terms of performance students of bilingual schools are not behind their peers from other parts of Slovenia.

This decision serves as a basis for the discussion about the issue of equality and social justice in education in terms of the relation between the minority and the majority group. The Decision of the Constitutional Court, n. RS U-I-94/96 from 22/10/1998 (Official Gazette of the Republic of Slovenia, n. 77/98 and OdlUS VII, 196,) is based on the process of review of the constitutionality of Article 3 of the Organization and Financing of Education Act (Official

Gazette of the Republic of Slovenia, n. 2/96), which stipulates that in areas of settlement of the members of the Slovenian national group and of the members of the Hungarian national community bilingual kindergartens and schools shall be established. The initiators' opinion was *"that with this type of education Slovenian children are put on an unequal footing in comparison to children from other parts of Slovenia, where the language of instruction for the members of the Slovenian national group is Slovenian."* (Decision of the Constitutional Court, n. RS U-I-94/96 from 22/10/1998, Official Gazette of the Republic of Slovenia, n. 77/98 and OdlUS VII, 196, ground 1). The initiators further argued that in bilingual education children have to study more, which results in them covering less learning content than their peers in monolingual schools. An important shortcoming mentioned by the initiators was also poorer knowledge of Slovenian. The initiators conclude that the education of the members of the Hungarian national community should be organised in the same way as the education of the members of the Italian national community.

The final decision on the constitutional review is that the legal provision in question is not incompatible with the Constitution of the Republic of Slovenia. In the grounds for the decision it is also stated that the constitutional principle of equality (Article 14 of the Constitution of the Republic of Slovenia) should be interpreted reasonably, as serving the purpose of this provision, *"this goal shall be reasonably linked to the subject regulated by the rule and the introduced distinction shall be a suitable tool for achieving this goal."* (Decision of the Constitutional Court, n. RS U-I-94/96 from 22/10/1998, Official Gazette of the Republic of Slovenia, n. 77/98 and OdlUS VII, 196, Abstract). The distinction therefore has to be based on reasonable grounds which arise from the given circumstances. The court thus explains that bilingual education as a special right of an autochthonous national group does not per se interfere with the majority group's right to equality before the law. *"The Constitution does not prevent the legislature to determine, within the limits (the framework) of its competence, the criteria under which it will make a distinction between certain similar circumstances and attribute different legal consequences to them. This discretion which allows the legislature to pursue the goals permitted by the Constitution, is an essential element of the legislative competence."* (Decision of the Constitutional Court, n. RS U-I-94/96 from 22/10/1998, Official Gazette of the Republic of Slovenia, n. 77/98 and Decision of the Constitutional Court OdlUS VII, 196, Abstract). The Court concludes its decision by stating that the initiators of the review failed to prove that in terms of the quality of the acquired knowledge students of bilingual schools are at a disadvantage or even discriminated in comparison to other students. *"The differences between students in relation to these circumstances are not necessarily or not at all linked to the fact that a person attends a bilingual school. Bilingual schools – although they require also the compulsory learning of the minority language – do not interfere with the right of Slovenian children to use their language and writing."* (Decision of the Constitutional Court, n. RS U-I-94/96 from 22/10/1998, Official Gazette of the Republic of Slovenia, n. 77/98 and OdlUS VII, 196, Abstract).

Regarding the principle of positive discrimination we should mention also the case-law and legal writings of the European Court of Human Rights which refer to the Belgian case Belgian

Linguistic⁷ and whose grounds state: *"The competent national authorities are frequently confronted with situations and problems which, on account of differences inherent therein, call for different legal solutions; moreover, certain legal inequalities tend only to correct factual inequalities... The Court, following the principles which may be extracted from the legal practice of a large number of democratic States, holds that the principle of equality of treatment is violated if the distinction has no objective and reasonable justification."* (in Klopčič, 2009, p. 115).

Conclusions

In the light of the foregoing, we can conclude that in Slovenia the implementation of minority rights in the field of education is very diverse. This is shown also by historical facts and by the political orientations of the geographical areas of settlement of minorities. Klopčič (2009) also concludes that the protection of minorities as a whole is a complex field which is characterised by numerous contradicting interpretations, therefore, in terms of regulation, we have not yet reached an international consensus on the definition of the term "national minority". Klopčič (2009) also states that we have not yet reached a unified position regarding the importance and the need to adopt special measures for achieving real equality of minority groups in internal regulation (Klopčič, 2009).

The purpose of the article is to shed light on the current state of minority protection in the country, and in order to do this it was necessary to present the historical and other circumstances which contributed to the development of this system. We also tried to define the legal concept of positive discrimination, which is a key instrument in guaranteeing the rights of minorities. We shifted the focus from the general regulation of minority protection to the field of education, where we analysed the peculiarity of the Slovenian minority education which consists of two teaching models. Particularly the bilingual education model which is being implemented in the region of Prekmurje, the geographical area of settlement of the Hungarian national minority, has been the subject of many expert and legal debates and appeals from the majority national group which perceives it as a model leading to violations of the rights of the majority. By analysing expert and legal opinions we concluded that in terms of performance students of bilingual schools are not behind their peers from other parts of Slovenia, as in some cases it is the exact opposite – some studies show that students from ethnically diverse areas in Slovenia (Prekmurje and the Slovene Istria) achieve better results in Slovenian as the first language compared to students coming from other non-bilingual areas in the country. Similarly, the case law confirms *"a consistent commitment to a strict implementation of measures of 'positive discrimination' on the basis of constitutional powers for the regulation of the status of national communities which are recognised by the constitution"* (Klopčič, 2009, p. 122).

⁷ Case of European court of Human Rights, case *Belgian Linguistic*. Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium, n. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64 , 23 July 1968.

Based on the analysis of the research from the field and from case law we therefore conclude that there are no indications, neither from an expert nor from a legal standpoint, that bilingual models of minority education constitute a violation of the rights of the majority and that they have a negative influence on the students' learning outcomes.

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Abstract

The article analyses the implementation of minority rights in the field of education in Slovenia from a historical, legal and educational perspective. The Constitution of the Republic of Slovenia guarantees national minorities a special protection of rights, which is one of the main issues in the context of human rights protection. Minorities have been addressing the discrepancies between constitutional provisions and the provisions of other international acts on the use of minority languages in education and their implementation in practice for many years. On the other hand, there have been a number of initiatives from the representatives of the so-called majority national group, who claim that the implementation of certain minority rights interferes with the majority group's right to be equal before the law. The purpose of the article is to research how the different approaches to the implementation of minority rights, which follow the concept of positive discrimination, affect social justice in the education system and its participants. The main finding of the research is that there are different models of implementation of minority rights and different models of implementation of minority rights in the education system.

Keyword: national minority, human rights, bilingualism, majority national group, equality before the law.