

## The implementation of commitments regarding the Polish minority in Lithuania in the Council of Europe's system

Jędrzej Błaszczak<sup>1</sup>

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### Abstract:

*The Polish minority is currently the largest national minority group in Lithuania. The main aim of this paper is to examine the extent of implementation of commitments under the Framework Convention for the Protection of National Minorities. This document is recognised as one of the most important international law frameworks regulating the rights of national minority members. In this paper, three selected areas in which discrimination of the Polish minority has occurred will be summarised: access to education, to the media, and linguistic rights. The expiration of the law on national minorities in 2010 will be discussed as a crucial factor contributing to the increasing discrimination of Poles in Lithuania. Moreover, this study will be referring to the recommendations of the Council of Europe Advisory Committee.*

### Keywords:

**national minority, Council of Europe, international law, Lithuania**

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## Introduction

The paper concentrates on the rights of persons belonging to the Polish national minority in Lithuania. The analysis covers the implementation of standards for the protection and observance of national minorities' rights in the Council of Europe system. Each of the aspects discussed in the article begins with the presentation of the facts, followed by comparing it with the legal commitments to which Lithuania is bound under the Framework Convention for the Protection of National Minorities (FCNM). Due to the complexity of the problem, it is impossible to cover all issues. Therefore, the work focuses on three fundamental rights for every minority, which are crucially related to the preservation of national identity: the right to education, the right to the media, and selected linguistic rights.

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<sup>1</sup> Jędrzej Błaszczak (ORCID 0000-0002-1962-5305) – Faculty of Law and Administration, University of Silesia in Katowice; e-mail: jedrzej.blaszczak@gmail.com.

The study's main objective is to assess the extent to which the rights of persons belonging to national minorities in Lithuania are implemented and whether the adopted international obligations under the FCNM have a significant impact on citizens' protection. The second research objective, resulting from the primary one, is to examine the situation of people declaring that they belong to the Polish nation due to the legislative changes that have taken place in recent years.

The case of the Polish minority in Lithuania was described from various perspectives. Despite many studies on the Polish diaspora in Lithuania, few works focus on this issue from the perspective of international law. The FCNM is the most comprehensive international law act focusing on national minorities' rights and states' obligations (Janusz 2011: 447). The methodology covers the analysis of Lithuanian legal acts as well as reports, resolutions, recommendations, and opinions of international organizations. This stage will focus on the analysis of legal acts at the level of national legislation and FCNM. In the context of linguistic rights, the achievements of Lithuanian judicature were presented because, as shown below, it was under this law that the strict order of primacy of the Lithuanian language in this country was formed.

The paper is completed by reports from Lithuanian NGOs on the issues discussed and a comparative method that includes the implementation of obligations under domestic legislation and international law. An essential element of the article is to compare the facts and current legislation and national courts' judgments regarding international standards implementation. The analysis is based on documents issued by the Council of Europe's bodies - the Committee of Ministers, or the Advisory Committee operating at the Committee of Ministers composed by 18 independent experts. In order to present the Lithuanian perspective as well, the author uses the comments of the Lithuanian government to the opinion of the Advisory Committee.

### **The number of the Polish minority in Lithuania**

Lithuania is a relatively small European country where minorities represent a high percentage of the population (around 16%), causing the ethnic structure to be significantly diverse. Persons belonging to national minorities mainly inhabit the capital city and regions nearby (Barwiński and Leśniewska 2014: 500). During the last general census conducted in 2011, the largest minority was the Polish 6,6% (accounting for some 213,000 people out of 3 million). Russian nationality was declared by 5.4% (175,000) of the population (Kuzborska 2012: 162). Nearly 100,000 Poles live in Vilnius, representing over 16.5% of the

city's inhabitants (Lis 2018: 231). According to the data provided by the general census, the areas with the highest percentage of Polish population are regions Šalčininkai (80% inhabitants), Vilnius (64%), Svencionys (28%), and Trakų (33%) - the territories that belonged to Poland before World War II. Poles constitute the vast majority both in the Vilnius and Šalčininkai regions and the local government administration. (Kowalski 2013: 231).

### **The substantive provisions of the Convention**

The Framework Convention for the Protection of National Minorities (Dz.U. 2002 nr 22 poz. 209) is the first multilateral European treaty dedicated to the protection of national minorities in general (Pawlikowski 2011:285). Although this document is not recognized as „hard treaty law,” State Parties must respect it with equal validity (Thornberry 2001). The Convention firmly states that it “does not imply the recognition of collective rights” and emphasizes the protection of “persons belonging to” national minorities. It came into force February 1, 1998, and includes among other things:

The Convention sets out obligations for States Parties. The most important of them are:

- free choice of nationality (art. 3);
- the right to maintain and develop their culture (art. 5);
- possibility of creating and using their media (art. 9);
- a vast catalog of linguistic rights:
  - a) right to use the native language in the private and public sphere (art. 10 par. 1),
  - b) use of language between persons belonging to minorities and administrative bodies (art. 10 par. 2),
  - c) use of the first name and surname in the native language (art. 11 par. 1),
  - d) right to display signs, inscriptions and other information in a minority language (art. 11 par. 2),
  - e) right to display traditional local names, street names and other topographic markings in a minority language (art. 11 par. 3).
- ensuring access to textbooks and adequate teacher education (art. 12 par. 2);
- the right to learn and teach in the native language (art. 14);

- the right to equal access to educational opportunities (art. 14 par. 3; Leśniewska-Napierała 2015: 152; Janusz 2011: 445).

The Convention also sets out the obligations of the States Parties, the most important of which include: ensuring equal treatment (art. 4 par. 1), recognition of positive discrimination (art. 4 par. 2 and 3), and prohibition of the forced assimilation of persons belonging to minorities (art. 5 par. 2) (Janusz 2011: 447).

Each state has the right to freely determine the provisions included in the Convention, adapting them to its territory's specificity. Usually, it causes some difficulties in implementing these rights because the authorities delay the fulfillment of the act's commitments. Moreover, based on the Convention, there is no domestic nor international body to which national minorities members, whose rights are violated, may report to (Gilbert 1996).

The Convention does not provide a definition of national minorities, which may cause difficulties in granting this status to various national groups. Despite those flaws, the act undoubtedly impacts the legislation positively in countries that have decided to ratify it and is an exemplar that national laws should follow. Some states decide to conclude bilateral agreements and commit themselves to directly implementing the provisions (Treaty Hungary and Slovakia 1995). In the content of the FCNM, the terminology is crucial. In the Convention, the term „national minority” is used, but when individual rights are indicated, they are defined as the rights of persons belonging to minorities (Janusz 2011: 444). This act provides protection for persons belonging to national minorities who may exercise these rights individually or jointly with others (Chrościcka 2013).

Pursuant to this document, the national governments are obliged to periodically provide relevant information to fulfill the Convention's provisions. The government report should refer point by point to the implementation of the rights. Based on the submitted report, the Advisory Committee shall deliver opinions to which the authorities can comment in detail each amendment to the report (Natanek 2018). Documentation shall be submitted to the Committee of Ministers that makes recommendations, conclusions and finally the assessment of the assumed obligations. Non-governmental organizations play an essential role in creating the control procedure that provides information independently of government sources. It gives a complete view of any irregularities occurring (Petricuslc 2005).

In addition to the FCNM, the mechanisms for protecting minority rights also include the European Charter for Regional or Minority Languages (ECRML). It focuses mainly on protecting and promoting national minority languages (Dz.U. 2009 nr 137 poz. 1121). States that have ratified this treaty are requested to direct their policies and legislation to the tasks aimed at securing national minorities' languages and ensuring their use in the private and public sphere (Sobczak 2009: 39). Mandatory ratification of the Charter covers only Part II, which defines its objectives and principles. Part III concerns measures to promote regional or minority languages in public life. States Parties undertake to comply compliance with a minimum of 35 points or paragraphs, including one article focusing on the judiciary, media, cross-border cooperation, economic activity, and three from articles on education and cultural activities (Sagan-Bielawa 2016: 9). It is important to remember that unlike the Convention, the Charter can be applied directly, while the obligations under the Framework Convention require implementation into national law (Janusz 2011: 447). The FCNM and the ECRML are the most important legal acts in the Council of Europe's system, creating a complementary protection system of minority rights.

The Republic of Lithuania has not ratified the Charter yet, expressing objections to its provisions. As Elżbieta Kuzborska-Pacha writes, the Lithuanian authorities claim that it is illegal according to the Law on State Language. In particular, caveats appear with the obligation to keep documentation only in Lithuanian by all state and local government institutions, enterprises, and offices. Moreover, the controversy concerns Article 10 of the Charter, which provides the possibility of using a minority language by administrative authorities and public services (Kuzborska-Pacha 2019: 114).

### **Legislative deficiencies**

The fundamental act regulating the rights of minorities in Lithuania until 2010 was the Law on National Minorities enacted on November 23, 1989 (Sozański 1998). It regulated all the fundamental rights, such as the right to culture and education in the minority language, freedom of belief, and in areas inhabited by persons belonging to minorities, it allowed the use of information boards in minority languages, as well as the use of the minority language in offices. However, it was never introduced in the absence of relevant implementing acts (Białek 2008). According to its origin, every Lithuanian citizen had the opportunity to freely define his or her ethnic identity (Łodziński 1998).

Currently, the only Lithuanian legal act concerning national minorities' rights is the constitution (Kuzborska 2014). Article 29 „The rights of the human being may not be restricted, nor may he be granted any privileges on the ground of gender, race, nationality, language, origin, social status, belief, convictions, or views” and art. 37 contains the fundamental rights of national minorities „citizens belonging to ethnic communities shall have the right to foster their language, culture, and customs.” (Kuzborska i Kalinauskas 2008). The rights granted to minorities in the Lithuanian Constitution are quite limited and come down to the prohibition of discrimination, without granting any special rights to this group (Białek 2008: 322). Concerning linguistic rights, the Lithuanian Basic Law refers to art. 14 „Lithuanian shall be the State language.” On this basis, the state language's doctrinal protection was created, strongly related to the strengthening of the Lithuanian national identity (Kuzborska 2014: 48). Therefore, the policy pursued and restrictions on the use of a minority language in the public sphere make the language an instrument of power (Kuzborska-Pacha 2019: 423). So far, the submitted bills did not meet the substantive requirements - for instance, they lacked a definition of a national minority, which in practice would cause difficulties in applying this law, or Lithuanian parliamentarians could not reach agreement on crucial issues. Consequently, for ten years, none of the bills has obtained the required majority of 71 deputies. Although the problem has been under discussion for many years, it seems that no significant political force is interested in solving it. Lithuania does not have long-term policies for national minorities, particularly development and integration (Kuzborska-Pacha 2019: 156). Adopting appropriate regulations would enable creating a transparent and balanced strategy for national minorities (Denisenko 2018).

According to the resolution of the Committee of Ministers of March 27, 2019, Lithuania was called upon to pass the Law on National Minorities as soon as possible. It should include regulations on the use of minority languages in dealings with administrative authorities, in private signs and topographical indications, and pertaining to the spelling of surnames and first names in official documents ('Resolution' 2019).

### **The right to education**

Unquestionably, education is one of the most critical factors affecting national identity and language. Through education, young people learn about the culture and history of their native country. The lack of adequate legislation affects national minorities' education, currently is subject to the exact regulations as schools teaching in Lithuanian (Lewandowska 2020).

Lithuania has implemented two controversial educational reforms, significant from the minorities' point of view. In 2009, a reform of financing higher education was carried out, creating „student baskets” for students with the highest results on the maturity examinations. The “basket” covers all tuition-related fees, such as lecturers' and administrative staff salaries, research, and the research base (Wołkonowski 2017: 202). The choice of university is left to the student's discretion. Those students who do not achieve the required results may also enter higher education, but they must cover all expenses themselves.

Graduates of Polish schools in 2010-2017 received „student baskets” less frequently. During this period, 8,378 students graduated, and only 2,648 had access to free education. It gives an average of 31.6%, with a national average of 47.3%. Importantly, in the following years, the percentage of students receiving „student's baskets” after graduating from Polish schools decreases. In 2010 it was 35.8%, and in 2016 it was only 27.6%. Only one Polish gymnasium (named after I.J. Kraszewski) achieved better results than the national average (51.3%), and the other two (K. Parczewski in Niemczyn and H. Sienkiewicz in Landwarów) had results slightly lower, 0.4 and 2.1 percentage points respectively. As Jarosław Wołkowski notes, „the decreasing share of student baskets occurs after introducing the unified state examination in Lithuanian in 2013” (Wołkonowski 2017: 213), which indicates that this reform is unfavorable for Polish education in Lithuania.

The second reform was intended to unify the Lithuanian language exam in all schools from 2013. It took place without a proper transition period, even though the difference between Lithuanian and minority students' programs is 800 teaching hours of the Lithuanian. The introduced reform caused massive social protests, which brought a measurable impact. Students from minority schools were allowed to use dictionaries, had the opportunity to make more mistakes, and the duration of the exam was extended for them (Kuzborska-Pacha 2019: 314). Unfortunately, the regulation under which the facilities had been implemented, was appealed to the Lithuanian Supreme Administrative Court. The court ruled that the implemented amendments violate the constitutional principle of equality.

The regulation expired shortly thereafter. Since then, a growing disproportion may be observed between the percentage of students who did not pass their maturity examinations in schools of national minorities and those from Lithuanian schools. In 2018, this proportion was record-breaking. It should be noted, that passing the Lithuanian language exam is obligatory during the application to university. The Education Act also stipulates that some subjects are taught exclusively in Lithuanian, even in schools of national minorities. These subjects include the history and geography of Lithuania, or the subject „basics of patriotic education.” (Górecki 2013: 90; Leśniewska-Napierała 2015: 159).

Many non-governmental organizations in Lithuania work to strengthen the ties between Poles living in the Vilnius region and Poland. Especially noteworthy is the Association of Polish Schools in Lithuania *Macierz Szkolna*, which published a report on Polish education in Lithuania. The report's conclusions show that students of the Polish minority have access to a smaller number of auxiliary materials, and the programs and textbooks in Lithuanian are not adapted to the needs of the first-grade students. Furthermore, the financing of textbooks for the Polish minority is inadequate, as they generate much higher costs. Additionally, Polish schools face a shortage of teachers for primary classes and kindergartens ('Macierz Szkolna' 2019). So far, the Lithuanian authorities have not taken sufficient action to solve the problems presented.

Some young people emigrate to study in Poland. Occasionally they do not come back to Lithuania because they find a job and settle in Poland. Therefore, the number of educated youths among the Polish minority decreases, which may interrupt the process of renewing the Polish national elite in Lithuania (Górecki 2013: 92). Fortunately, Lithuania is home to a subsidiary of Białystok University - the Faculty of Economics and Informatics. It is the only department of a Polish university outside Poland. Since the beginning of its activity, 716 graduates completed studies (Pieszko 2019). The department is financed entirely from the Polish state budget.

### **Polish media in Lithuania**

Poles living in Lithuania have always had access to the press in their native language. The Lithuanian SSR was the only Soviet republic where the Polish-language press was published (Kamilewicz-Rucińska 2017: 111). One of the Polish dailies, *Czerwony Sztandar*, was published in an unattainable circulation of over 50,000. Before the country regained independence, the Polish-language press enhanced the popularity of the language and culture despite the fact that the authorities used the press as a disinformation tool.

After Lithuania regained independence, the Polish press was being represented by several titles with different thematic profiles. Poles have access to various Polish magazines, including the daily *Kurier Wileński*. The newspaper focuses on events for Poles in the region, *Magazyn Wileński* - a social, political, and cultural magazine or the independent quarterly *Znad Wilii*. Regrettably, circulation is decreasing year by year because most people choose free internet journals.

Polish television programs broadcast on Lithuanian public television have limited access to airtime. For example, in 1991, the broadcasting time of



Polish programs was 2750 minutes/year, and in the years 2012-2017, it was only 555 minutes/year, plus about 780 minutes/year of reruns ('EFHR' 2018: 19). They are also shifted to bands with lower viewership. Their airing time has been changed to the early morning hours on working days, causing a drop in viewership. One solution may be the extension of the broadcasting of Polish public television. In 2018, broadcasting of TVP channels began in Lithuania. A year later, TVP Wilno was launched, the first public television channel directed only to the Polish minority in Lithuania.

The national minority media in Lithuania have limited funding. Representatives of the Polish minority indicate that the Polish media do not sufficiently participate in the state budget's annual financing. To obtain funding, they must apply to the Lithuanian Press, Radio, and Television Support Fund. It is the institution whose task is to distribute funds to the media. Then the applications are assessed by five expert groups. Finally, the Fund Council takes the ultimate decision on the allocation of funds. Minority media applications have so far been examined on the same terms as Lithuanian media.

A separate fund explicitly created for national minorities' media is included in the Advisory Committee report's recommendations. According to the announcement of the Ministry of Finance of Lithuania and the Lithuanian government, a separate fund will be allocated from 2021 for media projects of national minorities. The report's authors pay attention to the funds' short-term nature, making it challenging to plan the budget ('ACFC' 2019: 8). It is worth stressing that the funds received by the Polish media are increased every year.

### **The spelling of names and surnames in the judicature**

There is a constitutional doctrine of protection of the Lithuanian language, which permeates various public life spheres. It is evident in the case of the spelling of names and surnames and the language of public inscriptions, as well as providing information in the languages of national minorities. Persons belonging to national minorities, including Lithuanian citizens who marry foreigners, must face the fundamental issue of the spelling of names and surnames because Registry Offices do not accept applications for surnames in their original form. It is not possible to use non-Lithuanian letters in law (W, Q, X), and even combinations of two letters that do not appear in Lithuanian words (RZ, NN, CZ, SZ, TT). The main problem is the lack of an act regulating the spelling issues and the Constitutional Court's (CC RL) restrictive jurisprudence.

The judgment of the CC RL of 21 October 1999, stated that „the name and surname of a citizen in the passport should be written in the state language; otherwise, the state language’s constitutional status would be negated.” This judgment was followed by others. On November 6, 2009, the Constitutional Court allowed the name and surname to be written in the original form, but it would have an auxiliary form. For the third time, on February 27, 2014, the Constitutional Court ruled that non-Lithuanian names and surnames might be written not only with Lithuanian letters, but also characters from other Latin alphabets, which shall comply with the Lithuanian language tradition and do not violate the identity of the state language. Moreover, the legislator has the option of specifying the writing of names and surnames in documents in a different way, but this should be done in accordance with the constitutional protection of the Lithuanian language, which also requires an assessment of potential threats to this language (Kuzborska-Pacha 2019: 386).

In the Advisory Opinion commentary, the Lithuanian government emphasized that at present, the spelling of names and surnames is not legally regulated in domestic law, and this issue is subject to human rights protection. According to the comment, any person who requests the original spelling of their name and surname should be entitled to do so (‘GVT’ 2018: 9).

### **Topographical indications in the language of the national minority**

The problem of bilingual topographic nomenclature was an issue regulated in the Law on National Minorities. Despite the lack of executive acts, due to local authorities’ involvement from the Šalčininkai and Vilnius municipalities, bilingual signs were noticeable on the streets of these regions. The situation changed after the Lithuanian Supreme Administrative Court’s judgment in 2009, which ruled that bilingual topographic indications may violate the provisions of the Law on the State Language. Another judgment of the Supreme Administrative Court ordered the administration of the Vilnius municipality to remove all topographic signs in Polish and Russian (Kuzborska-Pacha 2019). This status remains to this day.

Thus far, none of the legal acts regulates the possibility of using bilingual signs in the public sphere, which often leads to conflicts between state and local administration. In September 2014, the District Court of the Šalčininkai ruled on a fine for the local government administration director, who refused to remove the plates with bilingual street names from private homes (‘EFHR’ 2018: 43).

In 2016, during the European Day of Languages, the mayor of Vilnius, Remigijus Šimašius, unveiled a plaque in Polish at Warsaw street and a plaque in Russian at Russian Street. It was supposed to be a warm gesture towards national minorities. Together with the State Commission of the Lithuanian Language, the government representative questioned this action, arguing that it was inconsistent with current state language legislation. The matter was brought to the Supreme Administrative Court of Lithuania. After examining the statutory term „public inscriptions”, the court ruled that the nature of the plaques used in this case did not meet the criteria of the Law on the State Language. Moreover, it pointed out that the bilingual plates also contained figurative signs, therefore they cannot be considered as a simple topographic sign (‘Znad Wili’ 2020). Despite the complicated argumentation, it gives hope that in the future, apart from topographic signs in Lithuanian, there will also be plates with the language of national minorities.

The Lithuanian party maintains that street and town names included in the address register cannot be recognized as private signs, therefore they must be written in the state language (‘GVT’ 2018:9). The Advisory Committee noted that the current legislation only partially implements the provisions of Articles 10 and 11 FCNM. The issue of the spelling of names and surnames in identity documents and the use of minority languages in topographical signs are situated, according to the authors of the report, in a legal grey zone (‘ACFC’ 2019: 6). The authors of the document point out that such a situation leads to heated political debates that cause dissent within society.

## Conclusions

The Framework Convention for the Protection of National Minorities is currently recognized as the most complementary act of international law regulating the rights of minorities and the obligations of States Parties (Janusz 2011: 447). There is no doubt that the Lithuanian state does not fulfill most of its obligations. The fundamental problem is the expiration of the law dedicated to national minorities in 2010. Adaptation of such a law would probably solve most of the issues described in the paper. Through careful analysis, it can be concluded that since then some obligations have improved (rights to the media), while others have deteriorated (the matter of topographic signs and the right to education).

The fulfillment of educational obligations (art. 12 and art. 14) should be negatively assessed. The implemented education reforms significantly worsened the right of students to learn in their native languages? The introduction of an obligatory examination in the Lithuanian language without respecting the

curriculum differences in minority schools, teaching subjects only in Lithuanian, and joining Lithuanian and non-Lithuanian classes should also be assessed negatively. Moreover, the state did not provide training for teachers and textbooks for students, which directly violates art. 12 par. 2.

Lithuania has not yet fulfilled one of the essential obligations of the Convention: the use of a minority language between a citizen and an administrative body (art. 10 par. 3), the right to use a name and surname in a minority language (art. 11 par. 1), display of traditional street names and other topographic indications (art. 11 par. 3). It can be argued that a fundamental right such as the use of language in public and private spheres is only partially realized (art. 10 par. 10). The lack of adequate legislation increased the importance of judicature. Therefore, the suitable authorities should regulate this matter by general and abstract norms, not by individual judgments of courts.

The implementation of the rights to own media should be assessed positively. Minorities have the freedom to create printed media, TV stations, and radio stations (art. 9 par. 3). Creating a separate fund for national minorities' media is a change that will undoubtedly have a positive impact on cultural pluralism (art. 9 par. 4).

The analysis shows that the Lithuanian authorities have much work to do to implement international obligations properly. Although the courts rule on the possibility of using the original name and surname in documents, this did not happen through the authorities' actions, but through individuals' efforts to exercise their rights. There has been a significant deterioration in the right to education, which has already led to a considerable disproportion between the results of the examinations of students graduating from Lithuanian and Polish schools. The only positive aspect seems to be the implementation of media rights. The postulates contained in the Advisory Committee's opinion regarding the establishment of a separate fund have been implemented, and the number of Polish media outlets in Lithuania has remained at a similar level for several years.

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