

Human Rights and Diversity in Compulsory Education

A brief legal commentary



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Introduction¹

This commentary is addressed to all those who have an interest in the legal foundations for protecting the human rights in compulsory education of minority-language pupils, including migrant and refugee pupils and pupils belonging to minority groups.

An increase in the flow of refugees has put additional pressure on national educational systems for realising the potential of every child, since “an increasing social diversity presents enormous challenges for the state in terms of its commitment to providing an appropriate education for all” (Harris 2007, at i). Factors such as ethnicity, disability, and material deprivation are associated with inequality, social exclusion, and the risk of low educational attainment. Diversity also reflects divergent cultural values and norms. In responding to the challenges posed by diversity, public education authorities need to take into account also minority rights.

When a child arrives in another country, he or she can encounter various challenges in education and social life. Compulsory education becomes a venue where the family (or that of the country of origin) traditions, beliefs, values, or identities confront the practices of the wider society. Such interaction can result in significant tensions for parents, children, and teachers alike (Harris 2007, at 15), whether they relate to parental prohibitions on attending mixed-sex sport activities or other extra-curricular activities or prohibitions on singing Christmas songs, etc. The need to balance various rights and interests originates not solely in tensions between the child and the parent’s rights in education, but also in the interest of promoting cultural values of the host country and the rights of the minority group to preserve their own culture and values (Harris 2007, at 15). This commentary, thus, focuses on the promotion of human rights and *diversity in compulsory education*. It, however, does not aim to provide pedagogical solutions for accommodating the rights of minority-language pupils in education.

The principle of *equality and non-discrimination* in realizing human rights connects human rights in education with the idea of *diversity*, albeit there is no universally shared definition of diversity. The reference to diversity in the context of compulsory education can, however, be found in *the UN Convention on the Rights of the Child*. Article 29 of this Convention tells how the rights of an individual child should be implemented vis-à-vis the official goals of education. In particular, education should aim at developing the child’s personality and cultural identity, promoting respect for the national values of the country the child may originate from, on the

¹ This contribution is a part of the project NPLA-2020/10023, To language through culture: methodological support for migrant pupils in Finland, Sweden, and Norway.

one hand, and instilling respect for human rights and for cultures different from the child's own, on the other hand.

Article 29 provides that:

1. *State Parties agree that the education of the child shall be directed to:*
 - (a) *The development of the child's personality, talents, and mental and physical abilities to their fullest potential;*
 - (b) *The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*
 - (c) *The development of respect for the child's parents, his or her own cultural identity, language, and values, the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;*
 - (d) *The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national, and religious groups, and persons of indigenous origin;*
 - (e) *The development of respect for the natural environment.*
2. *No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.*

Diversity in education, generally speaking, means that the rights of everyone should be *reasonably accommodated* in the process of teaching and schooling. The international human rights treaties obligate states in the sphere of education to respect the autonomy of distinct groups by protecting cultural rights and religious freedoms *within a pluralistic society*. In particular, minority associations have the right to establish their own educational institutions or religious schools (UNESCO Convention against Discrimination in Education, Article 5, 1 (c)). Implementing this right in practice is subject to state licensing (aimed at making sure that the school meets social needs and legal requirements). This right is, however, not absolute and depends on concrete social needs and the discretion of the state. In the so-called Belgian linguistic case, the European Court of Human Rights proclaimed that states do not have a general obligation to create a public education system or to subsidize private schools (*Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium*, Appls. no 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, judgment of 23 July 1968).

Diversity in compulsory education embodies diverse cultural values and norms (Harris 2007, at i). To resolve diversity challenges, public authorities are, nevertheless, constrained by individual or group human rights. This is a classical challenge of accommodating minority

rights, which, according to the United Nations, is part of the general human rights framework (CCPR General Comment 23: Article 27 (Rights of Minorities), para. 8). Directing extra resources to disadvantaged groups which are subject to the greatest risk of social exclusion does not mean diminishing general human rights but instead, supporting those who are in a vulnerable position in the name of achieving a sustainable society that had become more diverse (Harris 2007, at 2).

Thus, the key values are equality and diversity, and nothing should encroach on these values. Promoting values concerned with respect for others enable pluralistic societies to live peacefully and cohesively (Harris 2007, at 5). At the same time, members of minorities also have to learn to limit their right to use their own language, culture, or religion within the public education sector. He maintains that the idea of multiculturalism relates to the “means” of the minority integration not to “whether” they integrate (Harris 2007, at 368–369, quoting Kymlicka 1995, at 78). This means that immigrant, refugee, or minority groups enjoy rights enabling them to preserve their cultural distinctiveness whilst at the same time being members of a diverse community.

This study consists of four sections, together with the present introduction and a bibliography with a list of sources. Section one presents an overview of the principles of accommodating diversity in education, as they are guaranteed by key international human rights treaties related to the right to education, those being the UN Convention on the Rights of the Child (CRC) and the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and reflected in the jurisprudence of the European Court of Human Rights (ECtHR). The next three sections focus on national legal regulation in Finland, Sweden, and Norway. These sections highlight the keynotes in the relevant official documents and — wherever applicable — decisions by courts of law or the ombudsmen, and the reports regarding constitutionality review by the Constitutional Law Committee of the Parliament of Finland which interpret the principles of accommodating diversity and human rights in multilingual education. Each section starts with a brief summary of the following themes: the specificities of the legal regulation of multilingual education in a state; an outline of the relevant constitutional provisions; an account of the rules prescribed by relevant acts of parliament; governmental ordinances, and the curricula. Potential cases dealing with balancing various rights are further reviewed, based on the review of constitutionality and other interpretations or decisions of national bodies.

1. Children's Rights in Compulsory Education: UN Convention on the Rights of the Child and the European Convention on Human Rights

Human rights within the United Nations and the Council of Europe guarantee a number of rights, related to compulsory education. Below is the account of the rights associated with compulsory education with a brief explanation of how these rights are exercised by children in compulsory education.

1.1 The right to education

The right to education is guaranteed by UN CRC Article 28 and ECHR Article 2 of Protocol 1. The child holds the right to education, which should be realized based on the principle of equality of opportunity through free and compulsory primary education (UN CRC Article 28, para. 1).

The state should also respect the parent's right to ensure that the child's schooling is "in conformity with their own religious and philosophical convictions" (ECHR Article 2, para. 2, of Protocol 1). The word "respect" in Article 2 of Protocol 1 means more than "acknowledge" or "take into account"; it implies some positive obligation on the part of the state (ECtHR, *Perovy v. Russia*, Appl. No. 47429/09, judgment of 12 October 2020, para. 56, *Lautsi and Others v. Italy*, Appl. No. 30814/06, judgment of 18 March 2011, para. 61). The overall meaning of the word "conviction" is not synonymous with "opinions" and "ideas". It means that parental views should attain a certain level of "cogency, seriousness, cohesion, and importance" (ECtHR, *Valsamis v. Greece*, Appl. No. 21787/93, judgment of 18 December 1996, paras. 25 and 27).

In the case of *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (Appl. No. 5095/71; 5920/72; 5926/72, judgment of 7 December 1976), the European Court of Human Rights clarified the scope of parental rights with respect to their children's education under Article 2 of Protocol 1 of the ECHR. The Court found that the parent's rights in question are not violated by compulsory sex education classes at school when the purpose of such education serves a legitimate interest in reducing the rate of unwanted pregnancies rather than indoctrination and that the information provided was based on established facts rather than beliefs or ideology. In particular in paragraph 52 of this case, the ECtHR remarked that the rights of the parents are "an adjunct" of the "dominating" fundamental right of children to education (See also ECtHR, *Campbell and Cosans v. the United Kingdom*, Appls. no. 7511/76; 7743/76, judgment of 25 February 1982, para. 40). In paragraph 52, the Court explained: "It is in the discharge of a natural duty towards their children — parents being primarily responsible for the 'education and teaching' of their children — that parents may require the State to

respect their religious and philosophical convictions". This right, thus, corresponds to an obligation closely linked to the right to education. This is because the state is responsible for providing the right to education, and the curriculum falls within the competence of the state, which should ensure that material in the curriculum is "conveyed in an objective, critical and pluralistic manner" (para. 53), in order to avoid any indoctrination that might be considered inimical to parents' religious and philosophical convictions. The said rules do not even "permit parents to object to the inclusion of such teaching or education in the school curriculum, for otherwise, all institutionalized teaching would run the risk of proving impracticable" (para. 53). However, there are cases when the parents' philosophical convictions need to be considered, so that their children would have an opportunity to be exempt from certain classes, e.g., religious education, which is reviewed later on.

The provisions of ECHR Article 2 of Protocol 1 apply not only to the contents of education but also to its form, or the manner in which teaching is provided. It is applied to such situations as, e.g., organizing various events or processions outside the school, even on a holiday. On the one hand, the European Court of Human Rights has found that a pupil cannot be suspended for not taking part in a parade outside the school. On the other hand, the Court considers, e.g., important national parades or other events serving the public interest where the military can be present as serving peaceful objectives. The parents retain all the rights to advise children about such events, guiding the children on paths compatible with their own religious or philosophical convictions (*Efstathiou v. Greece*, Appl. No. 24095/94, judgment of 18 December 1996, para. 32; *Valsamis v. Greece*, para. 31).

To sum up, parents traditionally had a choice as to *whether* to educate their children, whereas nowadays they can be said to have an (increasingly circumscribed) *choice as to how* their children should be educated (Monk 2009, at 144). In particular, in the case of *Wunderlich v. Germany* (Appl. No. 18925/15, judgment of 10 January 2019), the European Court of Human Rights ruled that the enforcement of compulsory school attendance in order to ensure the children's integration into society is a valid reason for the partial withdrawal of parental authority. In sum, parental neglect of their child's educational and social development justifies state intervention.

1.2 The right to freedom of expression

The right to freedom of expression is guaranteed by UN CRC Article 13, and ECHR Article 10. This right means that everyone can hold, express and impart views as well as seek, receive and impart information. The child holds the right to freedom of expression. Nevertheless, the exercise of freedom of expression can be restricted, based on the law, respecting the rights or reputation of others and protecting national security, public order, public health, or morals. In the case of *the Sunday Times v. the United Kingdom* (Appl. No. 6538/74, judgment of 26 April 1979), the European Court of Human Rights established that in any borderline case, the

individual freedom of expression must be favourably balanced against the state's claim of overriding interest.

Implementation of the child's freedom of expression should be read in conjunction with UN CRC Article 5 about the responsibilities and duties of parents to provide appropriate guidance to children, which takes into account their evolving capacities. This emphasizes the important role of parents in providing direction and guidance until children are able to exercise that responsibility for themselves (Lansdown and Vaghri 2022, at 66). Moreover, these guidelines should also be extended to protect children from reactive and other actions that can result from the expression of views by the child, including with respect to the Internet.

When it comes to freedom of expression in the area of education, the European Court of Human Rights has issued a number of judgments that interpret the scope of the right to freedom of expression and explicitly prohibit *hate speech*.²

Commenting on the freedom of expression of school teachers in *Vogt v. Germany* (Appl. No. 17851/91, judgment of 26 September 1995, para. 53), the European Court of Human Rights ruled that compelling school teachers to resign from political party membership is interfering with freedom of expression because one has to differentiate using freedom of expression in the private sector (membership in associations) and in public professional duties (teaching or imparting objective information).

Commenting on distributing at schools material containing prejudicial statements against certain minority groups, the Court found such actions as an abuse of freedom of expression in *Vejdeland and Others v. Sweden* (Appl. No. 1813/07, judgment of 9 February 2012). In this case, a group of people distributed leaflets from the "National Youth" organisation containing pejorative statements against homosexuals, defending their actions with the intent to stimulate debate at schools to make the contents of education objective. Although the Court had not found these statements a direct call to hateful acts, it justified imposing fines for this action.

1.3 The right to freedom of thought, conscience, and religion

The right to freedom of thought, conscience, and religion is guaranteed by UN CRC Article 14, which provides that every child has a right to adhere to his or her ideas, opinions, or beliefs. The child has the right to keep these thoughts private. Nobody can force the child to reveal these thoughts, nor stop the child from holding them.

² The United Nations Strategy and Plan of Action on Hate Speech (2019) defines hate speech as "*any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor.*" (emphasis added)

Freedom of conscience means that every child has the right to choose whether to do or not to do something for moral or ethical reasons, such as, e.g., to be or not to be a vegan or vegetarian or to be or not to be a conscientious objector, etc. As applied to compulsory schooling, the curriculum can incorporate teaching subjects or give material regarding possible options for conscientious choice — albeit in an objective and critical manner, free of indoctrination.

When it comes to freedom of religion, the child is free to subscribe to any religion or no religion at all. However, the parents have the right and duty to provide direction to the child in the exercise of this right, taking into account the evolving capacities of the child (UN CRC, Article 14, para. 2). This means that parents can help children make decisions concerning religion, but cannot force a child to adopt or to follow a certain religion.

When applied to the area of compulsory education concerning integrated religious education at school, this right should again be read in conjunction with the basic principles of implementing the right to education. As mentioned earlier, the curriculum is subject to the guidelines prescribed by the state. Nevertheless, curriculum material should be conveyed in an objective and critical manner (as mentioned in *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, para. 53), precluding any possibility of indoctrination. This is also applied to “imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind” (Ibid.).

Certain issues may arise, viz., lesson material about religion, since such material should be presented in an unbiased manner which precludes dogmatic judgments. Again, this is a question of finding concrete pedagogical solutions on how to organize such teaching, which is not an easy task.

The state’s obligation to implement the right to compulsory education means that the state ensures that no child suffers discrimination because of his or her religion or other beliefs and no child should be humiliated, bullied, or ill-treated at school — including by classmates, teachers, or other staff. This obligation covers education in both private and public schools, as explained in the ECtHR case of *O’Keeffe v. Ireland* (Appl. No. 35810/09, judgment of 28 January 2014).

Concerning the possibility of *exemption from religious education*, probably the only fixed rule for now is that the classes or activities that the parents regard as incompatible with their religious convictions do not violate ECHR Article 2 of Protocol 1 *insofar as they do not include religious practices*. At the same time, the European Court of Human Rights recognizes the difficulty in differentiation between teaching and activities. The Court considers that such differentiation is “complicated to operate in practice but also seems likely to have substantially diminished the effectiveness of the right to a partial exemption as such. Besides,

on a purely practical level, parents might have misapprehensions about asking teachers to take on the extra burden of differentiated teaching” (*Folgerø and Others v. Norway*, Appl. No. 15472/02, judgment of 29 June 2007, paras. 95–100). However, mere attendance of a one-off short religious ceremony organized by parents at school without an aim of indoctrination was found by the Court as not affecting the child (*Perovy v. Russia*, Appl. No. 47429/09, judgment of 12 October 2020).

The Court took the view that the inclusion of compulsory philosophy of life classes without any possibility of exemption remains at the discretion of the states. The principal position of the European Court of Human Rights is that when ethics courses in schools aim at covering a variety of ethical topics in an impartial and pluralistic way, without prioritizing one belief over another, or omitting (challenging) other beliefs, in particular the Christian faith, it does not violate the right to respect for parents’ religious and philosophical convictions (*Appel-Irrgang and Others v. Germany*, Appl. No. 45216/07, judgment of 6 October 2009).

The presence of crucifixes in state-school classrooms is not a violation of ECHR Article 2 of Protocol 1. A sign symbolizing Christianity, the crucifix is “an essentially passive symbol”, representing the majority religion of certain countries in the school environment. Its influence on pupils cannot be comparable to didactic talks or participation in religious activities (*Lautsi and Others v. Italy*, Appl. No. 30814/06, judgment of 18 March 2011, paras. 71–76).

A possibility of *partial exemption* from attending religious education classes — those parts that entail religious practices — and an option of taking part in alternative activities can be granted in certain cases. For example, participating in “prayers, the singing of hymns, church services, and school plays” *could be* replaced by other alternative activities (*Folgerø and Others v. Norway*, paras. 95–100). The latter option is, however, subject to criticism because during the alternative activities, children are anyway exposed to information that is not in conformity with their or their family’s religious convictions (*Ibid.*).

A *possibility* of full exemption from religious education classes is also possible, albeit depending on both qualitative and quantitative factors related to the contents and the mode of teaching. There can be cases when refusing to grant full exemption from “Christianity, religion, and philosophy” in primary school violates ECHR Article 2 of Protocol 1 (*Folgerø and Others v. Norway*). Thus, full exemption is possible when the law claims that:

- a. the aim of the religious education classes is in “promoting understanding, respect and the ability to maintain a dialogue between people with different perceptions of beliefs and convictions” and giving the pupils “*Christian and moral upbringing*”,
- b. the amount of material on Christianity significantly exceeds material about other religions, and

- c. the obligation of parents to request an exemption by elucidating their religious convictions can prove to be a “heavy burden to them”.

Obligating parents to elucidate their religious or philosophical convictions to the school is considered by the European Court of Human Rights as “an inappropriate means of ensuring respect for their freedom of conviction, especially as, in the absence of any clear text, the school authorities always had the option of refusing such requests” (*Hasan and Eylem Zengin v. Turkey*, Appl. No. 1448/04, judgment of 9 October 2007, paras. 75–76). Moreover, in the case of *Papageorgiou and Others v. Greece* (Appls. No. 4762/18 and 6140/18, judgment of 31 October 2019, para. 88), the Court ruled that parents are not obligated to disclose their convictions. The Court further explained that the school’s requirement to submit a declaration by parents certifying that their children are not of a certain religion for the purposes of exemption from religious education means compelling them to pronounce that they and their children hold, or do not hold, any specific religious beliefs.

1.4 The right of members of minorities to use their own language, enjoy their own culture, and practice religion

The right of children belonging to ethnic, religious or linguistic minorities to use their own language, enjoy their own culture, and practice religion is proclaimed by UN CRC Article 30. The child belonging to ethnic, religious, or linguistic minorities or who is indigenous shall not be denied the right, together with other members of a given group, to enjoy their own culture, to profess and practice their own religion or to use their own language. This means that every child can speak their own language and follow the cultural practices of his or her family, unless these practices cause harm to the child, regardless of whether such practices are protected by their culture.

When applied to compulsory education, the said rule does not mean an unconditional right to speak one’s own language and follow one’s own cultural practices while at school. Respect for minority languages and culture should be implemented in conjunction with the goals of education, stipulated in Article 28 of the UN CRC. These goals, in particular, aim at helping the child to become a member of a wider diverse community where everyone’s rights and interests are observed. Accordingly, the temporary placement of minority language children in a separate class or school on the ground that they lack an adequate command of the language of instruction does not automatically amount to discrimination. This follows from the UNESCO Convention against Discrimination in Education, Article 2, para. 1, which states that the following shall not be deemed to constitute discrimination:

The establishment or maintenance of separate educational systems or institutions ... if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment

of the same quality, and afford the opportunity to take the same or equivalent courses of study.

Such a conclusion has also been reached by the European Court of Human Rights in the case of *Oršuš and Others v. Croatia* (Appl. No. 15766/03, judgment of 17 July 2008, para. 157).

Concerning the compulsory education of refugee children, the 1951 Convention relating to the Status of Refugees proclaimed that access to primary education is the basic minimum standard for the treatment of refugees. Article 22 of this Convention guarantees that refugees should be accorded “the same treatment as is accorded to nationals concerning elementary education”. The UN Convention on the Rights of the Child reinstated this principle as a universal human right of every child in education.

The European Court of Human Rights gives special weight to protecting the right to education of Roma children. The Court has addressed in many cases the difficulties relating to the education of Roma children in a number of European states (*D.H. and Others v. the Czech Republic*, Appl. No. 57325/00, judgment of 13 November 2007, para. 205). This is due to the history of persecution of the Roma, resulting in this group becoming a specific type of disadvantaged and vulnerable minority, requiring special protection in the sphere of education (*Ibid.*, para. 182).

The states within the Council of Europe are increasingly recognising the urgency of protecting identity and lifestyle of minorities for the sake of preserving cultural diversity in modern societies (*D.H. and Others v. the Czech Republic*, para. 181). Moreover, the rights of people belonging to national minorities to use their mother tongue and receive instruction in this language are among the principles safeguarded by the international instruments on this matter, to which the state is a party (*Adám and Others v. Romania*, Appl. No. 81114/17, judgment of 13 October 2020, para. 94). Nevertheless, the individual right to enjoy the minority language, culture and religion in compulsory education can, on occasion, be admittedly seen as subordinate to rights of a group. Thus, there should be a balance ensuring the fair treatment of minorities and the avoidance of any abuse by the majority in a dominant position (*Valsamis v. Greece*, para. 27). The UNESCO Convention against Discrimination in Education, Article 5, in particular, stipulates:

(c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:

(i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty.

Concerning the principal rule of practicing minority languages, the European Court of Human Rights enunciated the rule that highlights the “importance for members of a national minority to study the official language of the State and the corresponding need to assess their command of it” (*Adám and Others v. Romania*, para. 91).

The state should be a neutral arbiter that carefully ensures when the pupils can express their religious beliefs on school premises lest such expression may infringe upon the rights of others. Refusing access to school to girls wearing a veil is not a violation of ECHR Article 2 of Protocol 1 since it does not deprive the parents of their right to guide their children in line with the parents’ own religious or philosophical convictions (*Köse and Others v. Turkey*, Appl. No. 26625/02, judgment of 24 January 2006).

2. Human Rights and Multilingual Education in Finland

2.1 Overview

Compared with many other countries, Finland has “relatively fewer children with immigrant backgrounds” (Arvola et al. 2017, at 295). The legal regulation of compulsory education for minority language pupils, including refugee children, is derived from the constitutional right of everyone to compulsory education. Compulsory (or basic) education combines primary and lower secondary education and applies to children aged 6–18. Municipalities, based on the laws and regulations issued by Parliament and the government, organize it. There are private schools in Finland, strictly regulated, and the state covers education costs in these schools. Still, most children go to public schools. There is also a small number of private religious schools in Finland (EARS, Finnish religious education: Based on one’s own religion).

2.2 The Constitution of Finland 731/1999

The Finnish Constitution provides that representative democracy is among the key principles of Finland (section 2). Everyone is equal before the law (section 6). No one shall be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability, or other reason that concerns his or her person (section 6). Freedom of expression, entailing the right to express, disseminate and receive information, opinions, and other communications without prior prevention by anyone is guaranteed (section 12).

The freedom of religion and conscience which entails the right to profess and practice a religion, the right to express one’s convictions, and the right to be a member of, or decline to be a member of a religious community is guaranteed. Nobody is obliged to participate in the practice of any religion against his or her conscience (section 11).

The right and obligation to acquire compulsory education under the Finnish Constitution should not be “precluded by economic hardship” (section 16). “Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development” (section 6).

Public authorities guarantee the observance of basic and human rights (section 22).

2.3 Basic Education Act 628/1998

2.3.1 Religious education

The Basic Education Act provides that religious education is provided, in accordance with the religion of the majority. A pupil, not belonging to the majority religion may attend these classes, upon notification from the parent or other caregiver (section 13).

There is a possibility of providing religious education to pupils of other religions, if there are three or more such pupils and upon the request of parents (Ibid.).

If a pupil does not belong to any religious community, at the request of the parent, he or she can take courses in religion that “evidently corresponds” to his or her upbringing and cultural background (Ibid.).

There is also a possibility of enrolling in teaching Philosophy of Life³ for pupils not belonging to any religious community, if there are at least three pupils eligible to take it (Ibid.).

To sum up, the main rule provides religious education, according to the religious affiliation of the majority. Pupils with the Evangelical Lutheran and the Orthodox denomination (those being registered religious communities in Finland) will have their own religious education whenever the three-student requirement is met and their parents request it. Pupils belonging to other religions can receive religious education in their own religion when there are a minimum of three pupils of the same religion in the municipality. Albeit there is also an option to choose Philosophy of Life for those who do not belong to a registered religious community, there are scholars who remain vocal about possible issues pertaining to equality concerning these choices. For instance, Martin Scheinin espouses that the legal rule regarding religious education based on the majority religious denomination *obliges* the members of the dominant religion in the state to study “their own religion” (Scheinin 2001, at 516). Issues pertaining to equality are also relevant in connection with the fact that in Finland, the majority of pupils who are of some other religion than the Evangelical Lutheran or Orthodox religion do not belong to any registered religious community (Deputy Ombudsman Decision No. AOA 1705/4/03 of 6 June 2005). Such pupils can choose to be taught Philosophy of Life while those children who belong to the officially registered religious communities are under an obligation to study the religion, which they belong to. See also below, regarding the 2015 case from the Administrative Court of Eastern Finland (which establishes that decisions regarding exemptions from religious education should be made by educational bodies and not fall within the competence of the court). Moreover, if there are three pupils belonging to another religion different from that of the registered communities, the school should organize for

³ We will use the term teaching “Philosophy of Life” through this study referring to classes of secular ethics which are also known as, e.g., Ethics or Life Stance Education.

them courses in their own religion, provided that their parents request it — which leaves a grey area for those pupils whose parents do not agree to such a request.

2.3.2 Languages in education

The language of instruction and the language used in extracurricular teaching shall be Finnish or Swedish (section 10). The language of instruction may also be Saami, Roma or sign language (Ibid.). Pupils living in the Saami home area who are proficient in the Saami language shall be primarily taught in Saami (Ibid.).

2.3.3 Support for minority-language pupils

Certain classes may be given in a language other than the pupils' native languages referred to above, provided that this does not impair the pupils' ability to follow the standard teaching (section 10).

Pupils whose mother tongue is Roma, sign language or some other language that is the pupil's native language have the right to additional mother tongue education (section 12).

2.3.4 Instruction for newly-arrived pupils in separate groups or classes

There is also a possibility of education in separate groups or classes for immigrant pupils in remedial instruction preparing the pupils for basic education (section 5). Such preparatory education corresponds to a one-year syllabus (section 9).

2.3.5 Education organized by minority associations

The government may authorize a registered association for providing compulsory education, provided that a specific educational or cultural need or an agreement exists between the education provider and the local authority in whose area the education is provided (section 7). An authorization may be granted, *inter alia*, to provide education in a foreign language, education according to a particular ideology or education for students other than children of compulsory school age on the grounds of regional or national educational and cultural needs, even though the education provider has not concluded an agreement referred to above (Ibid.).

This means that registered public associations can apply for an educational license to achieve a balance between specific language education and the risk of segregating certain groups, contingent on governmental discretion on granting such licenses. A case requiring a significant social demand for special language education can result from a significant number of minority language speakers living in a concentrated area.

2.4 Act on Compulsory Education 1214/2020

This Act extended the compulsory education age from the previous age of 16 to the present 18 years of age.

2.5 Act on the Freedom of Religion 453/2003

The Act on the Freedom of Religion 453/2003 stipulates that persons who have custody of a child have the right to make joint decisions determining the religious affiliation of the child (section 3). Pupils who are 15 years of age may join a religious community or leave one with the written consent of the persons who have custody of the child (Ibid.). Those who have attained the age of 12 years may join a religious community or be notified as having left one only with their own written consent (Ibid.).

Religious communities registered officially include the Evangelical Lutheran Church of Finland, the Orthodox Church of Finland, and any other religious community that is registered, as stipulated by the Act on the Freedom of Religion (section 2).

There can be also teaching in one's own religion within the framework of compulsory education where students are divided into groups according to their and their families' views.

2.6 Ordinances

The Government Decree on Basic Education 852/1998 stipulates provisions on the number of teaching hours, student assessment, legal protection, and authorization to provide education. It also reinstates that traditional celebrations in Finnish schools are part of teaching and school activities, which require compulsory attendance. For example, the school's Christmas celebration is a part of education, which should, nevertheless, be organized in such a way which is religiously and ideologically neutral.

The Government Decree on the General National Objectives and Distribution of Lesson Hours in Basic Education 422/2012 divides lesson hours into three separate phases (grades 1–2, 3–6, and 7–9). It enables each education provider to draft local curricula and annual plans, in accordance with the Basic Education Act and national curricula. It, *inter alia*, emphasizes that the aim of teaching is to support “growth towards respect for differences, as well as responsibility, cooperation and activities that promote respect and trust between groups of people, peoples, ideologies, religions and cultures” (section 2).

The 2018 instructions of the Board of Education regarding the teaching of religion provide, *inter alia*, that material about various religions and visits to religious places of worship are allowed if they are “pedagogically justified”. School celebrations are an integral part of compulsory education and are mandatory. School celebrations may include religious themes and religion observances which, as holiday traditions, are a part of Finnish culture. The

instructions clearly state that hymns are a form of religious practice. Yet school celebration cannot be considered as practicing religion. If necessary, with the consent of the parents or other guardians, the pupils can be provided alternative activities if the guardian does not want that the pupil takes part in all the activities included in the school celebration. The education organizer decides whether religious events, such as church services and religious opening ceremonies or such religious services as, e.g., food prayers, will be organized in connection with compulsory education and which alternative activities can be organized for those who cannot participate in these activities. In 2022, the Board of Education issued one more instruction drawing on the procedure of religious education, teaching Philosophy of Life and organizing joint celebrations in preschool and compulsory education (2022 Instructions of the Board of Education regarding the Religious Education and Philosophy of Life Education). In this instruction, the Board of Education reinstates the principles of teaching, outlined by the reports by the Constitutional Law Committee of Parliament and the statements by the Parliamentary Ombudsman (see below).

2.7 Curriculums

The education of minority language children and refugee children follows the 2014 National Core Curriculum for Basic Education. On the basis of this national core curriculum, local curriculums should introduce religious education for grades 1–6. Teaching religion includes knowledge of holy books, religious narratives, rituals, and traditions. These also include hymns, spiritual songs, and church music.

The Curriculum emphasizes that opportunities should be provided for teaching different religions and also ethics or life philosophies. It defines the goals and core contents of each discipline as well as the objectives for the learning environment. It outlines the objective and contents of both religious education and teaching of Philosophy of Life. It stipulates, *inter alia*, that school culture should be aware of different languages and valorize cultural diversity and at the same time enhance cultural competence, epitomizing the aims of education and reflecting the other competencies needed in all areas of life.

In 2015, a specific National Core Curriculum of Instruction Preparing Immigrants for Basic Education was introduced for those children who do not have sufficient Finnish or Swedish language skills to study at the basic educational level. It is meant for newly arrived immigrant pupils and focuses on improving their reading and writing skills. It stresses that the contents of education should also support the development of pupils' cultural identities and social integration, as well as the ability to manage everyday situations and social integration. This curriculum emphasizes that learning one's own native language encourages pupils' learning skills and strengthens cultural identity.

2.8 Interpretations

2.8.1 Constitutional Law Committee of Parliament

The role of the Constitutional Law Committee of the Parliament in Finland is to, *inter alia*, “issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties” (Constitution of Finland, section 74).

Report 12/1982 vp: In this report, the parliamentary Constitutional Law Committee emphasized that freedom of religion applies to every citizen and is not dependent on membership in a religious community, because persons who belong to a religious community cannot be forced to participate in religious practices.

Report 10/2002 vp: This report maintains that knowledge about religion also includes learning about the forms and ways of practicing religion. Learning prayers, hymns and religious ordinances is, thus, a part of religious education. Moreover, education should generally respect individual beliefs, the rights of the child, and the guardian’s right to be responsible for the child’s development.

Report 2/2014 vp: Schools can also organize an alternative and meaningful activity to cover those teaching areas which entail religious practices. Such alternative activities should, apart from their religious content, adhere to the same material and objectives as the activities they replace. The school ensures that participation or non-participation in any religious activities does not cause the student being stigmatized or otherwise suffer adverse consequences. The school ensures that information about religious events and services and alternative activities reaches parents in sufficient time. The schools should take into account the key principles emerging from the practice of the European Court of Human Rights, such as the prohibition of indoctrination or the demand for neutrality with regard to religious teaching, as well as religious tolerance and pluralism.

2.8.2 Administrative Court of Eastern Finland

Decision No. 15/0141/4 of 29 April 2015, Dnr. 11681/14/1301: In its 2015 Decision, the Administrative Court of Eastern Finland held that matters of exemption from religious education of a pupil belonging to the officially registered religious community in Finland remain within the mandate of the school authorities and not of the courts.

The child of the appellant belonged to the Orthodox Church and participated in the Orthodox religious teaching in primary school. Later, the child wished to participate in Philosophy of Life classes and not in religious education, on grounds that this would better correspond to his and his parents’ beliefs. The appellant claimed that religious education in primary school included a lot of religious practices, such as making the sign of the cross, kissing an icon, praying on

one's knees, and kissing the ground. The child experienced such teaching as "alien to him and contrary to his sphere of thought". However, the pupil's request for a transfer to the Philosophy of Life class was denied.

Thus, the parent addressed the court, insisting that the obligation to participate in religious education for those who belong to the church under the Basic Education Act, section 13, was in violation of the constitutional freedom of religion, equality, children's rights, and the European Convention on Human Rights. The school principal reported that the nature of the school's teaching of the Orthodox religion corresponds to the instructions given by the Board of Education. The Court found that the teaching of the Orthodox religion is not fundamentally about the practice of religion, as noted by section 11 of the Finnish Constitution, and the teaching of religion must be separate from the practice of religion. The Court also found that the obligation to participate in religious education according to one's religious denomination is not a violation of the freedom of religion, and thus the provision of the Basic Education Act does not have to be examined as being in conflict with the constitution. Lastly, the Administrative Court of Eastern Finland considered that it is not in its jurisdiction to evaluate and monitor the contents of teaching and to change the decision of the school authorities.

2.8.3 Deputy Parliamentary Ombudsman

Decision No. AOA 1705/4/03 of 6 June 2005: This decision dealt with the Deputy Ombudsman issuing a number of statements regarding religious education at school. It states that all elements of teaching in the curriculum relating to religious practices must be "pedagogically justified" (para. 3.2.2). It also emphasizes that the singing of a single hymn, which is a part of the school holiday tradition, does not change the nature of this tradition and cannot be considered a religious practice (para. 3.2.3). Concerning the issue of requiring parental statements supporting the need for exemption from religious practices at school it is sufficient for the parent/guardian to state the reason for exemption, based on matters of conscience, with no need to offer any further explanation (para. 3.2.4). Concerning a balance between the teacher's own convictions and the official duty to teach religious education, the decisions should be made on a case-by-case basis (para. 3.2.5). This decision reinstated the obligation to participate in religious education for those belonging to certain religious denominations (para. 3.2.6). The provisions of the Basic Education Act (section 13) also stipulate an obligation for the municipality to arrange teaching other than Evangelical Lutheran and the Orthodox religious education if the parents of at least three pupils from other religious communities request it (Ibid.). The pupil whose religion is being taught as a discipline, cannot choose to study Philosophy of Life (Ibid.).

Decision No. 2469/4/14 of 18 November 2015: In this decision, the Deputy Ombudsman confirmed that attending, e.g., church services during Christmas school celebrations is an acceptable — yet voluntary — practice, as long as the participants have been informed about it in advance. Participation in singing hymns at school should be voluntary, preceded by prior

informing the parents and children, and taking into account the child's own opinion about participation in this practice (para. 4.2). On the one hand, singing hymns is included in the national curriculum for basic education and reflects the historical and cultural traditions in Finland, belonging to some school celebrations. This implies that, e.g., a study trip to a place of worship, related to teaching, where you become acquainted with the place of worship or follow a religious ceremony without participating in it, is not a religious occasion but part of the curriculum. Yet, by focusing on this aspect of religious teaching, participation in hymn singing "has an inverse effect on other aspects of the goals of religious teaching" (Ibid.). More particularly, the hymn is a song suitable for group singing but with spiritual content. Singing hymns can be considered simultaneously a "proclamation, teaching, pastoral care, prayer and communion experiencing" (Ibid.). All teaching and other activities related to religious education must be "pedagogically justified and in accordance with the curriculum" (Ibid.).

Decision No. EOAK/2186/2018 of 5 November 2019: The school Christmas celebration as part of the curriculum cannot be designed to promote religion, even if alternative activities are planned to replace it. For example, the school Christmas celebration held in the church where carols are sung, the Christmas gospel is expounded, and the priest gives a speech that includes religious elements "to a significant extent" can be regarded as practicing religion. The decisive elements in this case were the contents of the ceremony, which include significant elements of religious practice, yet not the church as a place of worship *per se*.

This decision also proclaims that directing religious services through the school's central radio station, regardless of whether the pupils and the staff want to receive this program at their place of study or workplace, is not allowed. This is because such a program cannot be considered to protect or guarantee the right to freedom of religion.

2.8.4 Legislative proposal on face-covering clothing

A petitionary motion (*Toimenpidealoite*) TPA 18 2018 aiming at prohibiting wearing of scarves (which do not fully cover the face) was submitted to Parliament by a group of MPs in 2018. This proposal, however, applied to preschool education, not regular schools. Parliament never finished the consideration of the motion before the elections for a new Parliament in April 2019 and the petition thus lapsed.

3. Human Rights and Multilingual Education in Sweden

3.1 Overview

More than two million immigrants in Sweden (2 090 503 individuals) comprise 20 % of the total population (10 452 326 individuals) (SCB 2021). Sweden remains among Europe's top recipients of humanitarian migrants, both in terms of total number and as a percentage of the population (OECD 2016, at 3). Legal regulation of compulsory education for minority language pupils, including refugee children, is derived from the constitutional right of citizens and non-citizens to obtain compulsory education. Compulsory education comprises elementary school (*lågstadiet*) for years 1–3, middle school (*mellanstadiet*) for years 4–6, and lower secondary school (*högstadiet*) for years 7–9 and applies to children aged 6–17. Municipalities organize and fund compulsory education, which is provided for by public schools and independent schools. The independent schools may differ from the municipal schools with regard to religious beliefs or pedagogical approaches (NCM, Compulsory schools in Sweden). There are also, albeit not many, private tuition-based schools in Sweden. The majority of schools in Sweden with a registered confessional orientation are Christian. Yet there are about a dozen schools with other denominations (Nya regler för skolor med konfessionell inriktning 2019, at 404). All these schools are based on laws and regulations issued by Parliament and the government.

3.2 Constitution: *The Instrument of Government, 1974*

All children, following the Instrument of Government, are covered by compulsory schooling and are entitled to a free basic education in the public educational system (Chapter 2 Fundamental Rights and Freedoms, Part 1, Article 18).

The Instrument of Government guarantees protection from discrimination, based on belonging to a minority group by reason of ethnic origin, colour, or other similar factors or on account of sexual orientation (Chapter 2 Fundamental Rights and Freedoms, Part 1, Article 12). Protection from discrimination also covers protection from unfavourable treatment on grounds of gender (Chapter 2 Fundamental Rights and Freedoms, Part 1, Article 13).

The Instrument of Government guarantees to everyone freedom of expression, implying “the freedom to communicate information and express thoughts, opinions, and sentiments, whether orally, pictorially, in writing, or in any other way” (Chapter 2 Fundamental Rights and Freedoms, Part 1, Article 1).

The Instrument of Government also guarantees freedom of information or “the freedom to procure and receive information and otherwise acquaint oneself with the utterances of others” (Ibid.).

Freedom of worship is also guaranteed, meaning “the freedom to practise one’s religion alone or in the company of others” (Ibid.).

3.3 Education Act 2010:800

The schools should draft their own curricula, based on the principles of the Education Act (Chapter 1, section 11).

3.3.1 Religious education

The Swedish Education Act stipulates the foundations of the curriculum contents. It includes the subjects that are to be taught in compulsory school, which, *inter alia*, include religious studies and Swedish as a second language (Chapter 10, section 4).

The compulsory school subject in religious education, entitled “Knowledge in Christianity”, should be impartial in relation to different religions and worldviews. Education at both public school and at an independent school shall be non-denominational (Chapter 1, sections 6–7). Education with a confessional focus shall be based on a scientific foundation (Chapter 1, section 7(b)). Participation in confessional courses or activities should always be voluntary. The school must ensure that guardians and children or students are aware of this (Ibid.).

Any confessional activity should be differentiated from other activities in the curriculum (Ibid.). If, in exceptional cases, it is not possible to detach a confessional activity from teaching without losing the purpose of the latter, the confessional activity may be preserved (Ibid.). If a child does not want to participate in an activity that includes a confessional activity, the child shall be offered to take part in an equivalent activity (Ibid.).

The said provisions of the Education Act imply that the confessional activity in education involves adherence to a particular faith or religious practice. It is, thus, not mere acquiring of knowledge about a particular religion or practice. Religious education is, hence, not confessional insofar as it does not include worship or preaching, but is based on a purely educational interest.

The Swedish Education Act distinguishes between religious education in public schools and in so-called independent schools. Public schools cannot arrange any events, including confessional activities, within compulsory education (Chapter 1, section 6). In the case of independent preschools with a confessional focus, confessional activities may only occur to a limited extent, provided the school has informed the children’s guardians in writing about it (Chapter 1, section 7(c)). In other words, there is a difference in approach between religious education provided in public and independent schools. Insofar as education refers not only to teaching but also to other activities, in both public and independent schools, the teaching itself should not contain confessional activities. In independent schools, the education in general,

including other activities, may have a confessional orientation (Chapter 1, section 7) — yet participation in religious activities must always be voluntary.

3.3.2 Languages in education

Every pupil has the right to additional mother tongue teaching (Chapter 10, section 4). The government or such invested authority may issue regulations on mother tongue teaching. Such provisions may provide that mother tongue teaching shall be offered in a language only if a certain number of pupils wish to receive such instruction in that language (Chapter 10, section 7).

3.3.3 Support for minority-language pupils

Moreover, mother tongue instruction is offered to pupils whose guardian speaks a language other than Swedish as a mother tongue if this language is the pupil's daily language at home and if the pupil has a basic knowledge of the language in question (Chapter 10, section 7). A pupil belonging to one of the national minorities must be offered mother tongue instruction in the pupil's national minority language (*Ibid.*). Chapter 3, section 12(i) guarantees a newly arrived student who has been admitted to a public school the right to receive study guidance in his or her mother tongue unless it is manifestly unnecessary. The study guidance may be in the student's strongest school language if it is different from the mother tongue. Knowledge of newly arrived pupils is subject to needs assessment (Chapter 3, section 12(c)). Such assessment should be done expeditiously, so that a decision can be made on the pupil's placement in the grade and class which is appropriate to the pupil's age, prior knowledge and other personal circumstances (Chapter 3, sections 12(d) and 12(e)).

3.3.4 The Sámi school

The Sámi school provides an education with a Sámi focus that otherwise corresponds to the education in grades 1–6 in compulsory education (Chapter 13, section 2). The Sámi education shall correspond to the education of other pupils in comprehensive school (Chapter 10, section 7(b)). Schools and the Sámi School Board can agree whether to provide Sámi education for pupils who complete part of their compulsory schooling in the Sámi school (Chapter 10, section 7(a)). Sámi teaching refers to teaching Sámi subjects and teaching in Sámi, in addition to mother tongue teaching in Sámi (*Ibid.*). The Sámi school also offers mother tongue instruction if the pupil's guardian speaks a language other than Swedish as a mother tongue, provided this language is the pupil's daily language at home and the pupil has basic knowledge of the language (Chapter 13, section 7). A pupil belonging to one of the national minorities must be offered mother tongue instruction in the pupil's national minority language (*Ibid.*).

3.4 Language Act 2009:600

The Swedish Language Act indicates that the national minority languages are Finnish, Yiddish, Meänkieli, Romany Chib and Sámi (section 7). The public authorities have a special responsibility to protect and promote the national minority languages (section 8).

3.5 Discrimination Act 2008:567

The Discrimination Act aims at countering discrimination and promoting equal rights and opportunities, regardless of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age (Chapter 1, section 1). The Equality Ombudsman must monitor that the Act is complied with and must ensure that all persons and organisations covered by the Act comply with it voluntarily (Chapter 4, section 1). It states, in particular, that the education provider is responsible for implementing active measures for promoting equal rights and opportunities at school (Chapter 3, sections 15–20).

3.6 Ordinances

School ordinance by the Government (2011:185) operationalizes the provisions of the Education Act and regulates the rules of providing compulsory schooling, such as the legal basis of compulsory schooling, learning times, the rights and duties of pupils, providing of education, remote and in-class teaching, grading, special needs education, Sámi school, or the responsibilities of schools.

3.7 Curriculums

Since 1 July 2022, new curricula and syllabuses apply to compulsory education. These are reviewed below.

3.7.1 Curriculum for compulsory education, preschool class and after-school recreation centre – Lgr22

The Curriculum stipulates that education should underpin respect for human rights and democratic values on which Swedish society rests. It should promote respect for every individual and for the common environment. Education should convey quality as a value. According to the value inherent in Christian tradition and Western humanism, education should provide individuals with a sense of justice, generosity, tolerance and responsibility. However, the curriculum emphasizes that teaching at school should be non-denominational. The Curriculum notes that the school must promote understanding of, and empathizing with, other people. The education should be open and respect people's differences. The school should be a common social and cultural meeting place that has both an opportunity and a responsibility to enhance this ability of everyone who works there.

After the completion of primary school, the pupils are expected, among other things, to acquire knowledge of the national minorities (Jews, Roma, the Sámi indigenous people, Swedish Finns and Tornedalings) and their culture, language, religion and history and be able to interact with other people, based on a knowledge of similarities and differences in living conditions, culture, language, religion and history.

The purpose of *religious education* is to provide the pupils with knowledge about religion and worldview in Swedish society and in different parts of the world. Pupils should gain an understanding of how people with different religious traditions express their religion in different ways. The pupils should be given the opportunity to reflect on what religion and worldview can mean for people's identity.

Teaching of religion must provide students with the prerequisites to develop: a knowledge of religions and other belief systems and their interpretations; the ability to critically examine issues relating to the relationship between religion and society; and the ability to engage with ethics, moral issues and life issues from an objective perspective.

3.7.2 The mother tongue curricula

The mother tongue curricula are represented by several documents, all of which emphasize that teaching mother tongue as a subject should provide pupils with the prerequisites to develop the following: the ability to formulate and hold communication in speech and writing, to recognize and adhere to linguistic norms; the ability to use the language for different purposes, with different recipients and in different contexts; to acquire an understanding of the mother tongue in speech and writing; to acquire knowledge of social, historical and cultural phenomena in environments where language is used; and to acquire knowledge of the origin, development and contemporary status of the language.

There are four curricula specializing in the mother tongue as a national minority language in Finnish, Yiddish, Meänkieli, and Romani. Moreover, there is a separate general curriculum of teaching mother tongues, which are different from the national minority languages.

Curriculum Mother tongues other than the national minority languages provides, *inter alia*, that teaching should provide pupils with the prerequisites for developing their cultural identity and becoming multilingual. Pupils should be given opportunities to develop their knowledge of the cultures and areas where their mother tongue is spoken. The teaching should also contribute to students developing a comparative approach to cultures and languages.

The teaching of mother tongue as a subject should give the pupils — in addition to the skills relevant for all mother tongue teaching — the prerequisites for developing the ability to read and analyse fiction and other texts for various purposes, the ability to use one's mother tongue

as a means of language development and learning, and the ability to access knowledge of traditions, cultural phenomena and social issues in areas where the mother tongue is spoken. Mother tongue curricula in a national minority language emphasize that national minority languages should aim at educating the pupils to develop knowledge of and about the language as well as knowledge of the minority culture. Moreover, the students will be given the opportunity to develop their multilingual skills, their understanding of the outside world, and their cultural identity. Furthermore, pupils will be given the opportunity to develop knowledge of the history, culture and traditions of the national minority. Pupils should also be given the opportunity to develop knowledge of the national minority's music, literature and other cultural forms of expression. Furthermore, pupils should be given the opportunity to develop knowledge of the origin, development, and contemporary status of the national minority language.

3.7.3 The Sámi National Curriculum Lsam22

The Sámi National Curriculum Lsam22 addresses those pupils of Sámi origin whose parents chose the Sámi school instead of the ordinary school for classes 1–6, according to the Education Act. It provides, *inter alia*, Sámi pupils with the opportunity to become functionally bilingual by the end of school year six, the final year of the Sámi school. Functional bilingualism means that pupils are supposed to function in Swedish and in Sámi social and cultural contexts as well as in different labour markets and educational contexts.

3.8 Interpretations

3.8.1 Equality Ombudsman

Supervision of Skurup municipality, TIL 2020/5: The Ombudsman reviewed the decision of the municipal council in Skurup municipality of 16 December 2019 which prohibited wearing headscarves, burqas, niqabs and other articles of clothing hiding pupils' and staff members' faces in the municipality's preschools and primary schools.

The Ombudsman reviewed whether such clothing regulations were discriminatory with respect to the workplace and in the field of education. The Ombudsman found that except for individual cases where religious clothing affects a pupil's or an employee's ability to complete an educational task, the prohibition of wearing such clothing amounts to discrimination related to religion or other beliefs. The municipality's clothing policy is incompatible with Chapter 2, sections 1 and 5 of the Discrimination Act.

Supervision regarding language use in primary school, Dnr. TIL 2018/6: The parents of three children alleged that the linguistic rights of their children at school were violated because, the children were not allowed to speak Finnish during the school physical education classes, a school trip to the forest, and during the school leisure activities.

In a Swedish-language class, 50 % of the teaching was done in Swedish and 50 % in Finnish language. Thus, both Swedish-speaking and Finnish-speaking pupils receive instruction in both languages which either of them do not master. During such classes as handcrafts or physical education, the children were placed with pupils from other classes who spoke Swedish. Leisure activities were arranged in groups, divided so that the pupils from the Swedish-Finnish class could meet also other pupils. The school has neither a guideline nor a special approach concerning language use other than that allowing the pupils to speak Finnish during lessons, during breaks and during their free time. However, in classes taught in Swedish language, all the material should be presented in Swedish. All pupils from the Swedish-Finnish class can be subject to immediate and temporary sanctions if teaching is disrupted by, e.g., speaking Swedish during the Finnish-language teaching of subjects. During the breaks, the pupils can speak Finnish to each other. Yet there are certain situations when some material should be accessible to everybody, and then the pupils can be asked to speak Swedish.

The Ombudsman remarked that based on the Language Act, the state should protect national minority languages. Such protection can, nevertheless, not run counter to the language policy, which is sensitive to situations when a certain common language should be used in communication — which, in the absence of any ethnic connotation, is not per se considered discriminatory. The Ombudsman thus concluded that language policy that is applied in some situations to counteract the exclusion of children may be considered to have a justified purpose. That school staff under certain conditions can ask all pupils to speak one language that everyone understands in order to avoid individual pupils being left out also appears to be both appropriate and necessary. The same applies to requirements for the use of a common language where this is required in a teaching situation or for a certain joint activity to be carried out. Thus, no discrimination was found in the practices of the school in this case.

School denial of pupils' recurring leave for religious reasons, GRA 2016/31. The parents alleged that the school's refusal to grant their children regular leave (every Friday) from the school to attend prayer meetings amounts to discrimination. The Ombudsman established that the refusal has been justified, *inter alia*, by the fact that the pupils' attendance at school is mandatory. The school allows leave from the school, albeit not on a regular basis, irrespective of the reasons for such regular leaves. Moreover, the recurring leaves would not be at times that could seriously hamper a pupil's ability to meet the knowledge requirements for that subject. The Ombudsman did not find discrimination in this case, because the pupil in question had not been treated worse than any other pupil in a comparable situation, nor that the school's action was related to religion or other beliefs.

Although this case related to teaching in upper secondary school, where attendance is not compulsory under the law, the findings are also applicable to compulsory education. This is because the Education Act stipulates that pupils must meet attendance requirement, except in cases where absence would be justified under law and regulations. According to the

Swedish National Agency for Education, absence is justified because of illness or other granted leave (Skolverket, Legal guidance, Absence and leave).

Teacher ridiculed a pupil and questioned her choice to wear a headscarf, Drn. ANM 2014/583: The case revolves around an incident when a teacher made jokes at the expense of a pupil wearing a headscarf in front of the class, and asked questions insinuating that the parents will soon marry off the pupil. As the result, the pupil was avoiding that teacher's class and stopped wearing a headscarf. The Ombudsman considered that this incident included harassment related to religion as well as ethnicity and gender. Since both harassment in school and making visible link between discrimination and Islamophobia are priority areas for the Equality Ombudsman, the Ombudsman pursued the case. However, the case was closed because the parents reached a settlement with the school that acknowledged the harassment, and they received monetary compensation.

School did not do enough to prevent harassment, Ref. Omed 2007/1109: The parents insisted that their two children of Roma origin were subject to systematic harassment in the form of racist slurs, bullying and mistreatment by students at the school. It was established that the municipality had not undertaken sufficient measures to remedy and prevent the harassment to which the children had been subjected. Moreover, the mother tongue-based education to which the children were entitled was denied. This constituted discrimination linked to ethnicity. The Ombudsman pursued charges in court. The district court, however, did not concur that the authorities failed in their duty to investigate the events and take action (Eksjö Tingsrätt, Ref. 91778, Decision of 21 October 2010, Case No. T 1395-09). With respect to repeated bullying, it was established that the educational authorities spent a lot of time investigating the incident, and the school worked actively through various measures to ensure that the school must be completely free from harassment and other abusive treatment. With respect to mother-tongue education, the court found that the Ombudsman had not investigated whether there was a quota of children with such a need, established by law. The Ombudsman's request for leave of appeal was denied by the court of appeal.

4. Human Rights and Multilingual Education in Norway

4.1 Overview

Since 2015, Norway was among the five countries, alongside France, Germany, Sweden, and the United Kingdom, which accepted “approximately two-thirds of all refugees who were resettled to Europe” (Fratzke et al. 2021, at 67). Compulsory education in Norway covers primary (*barneskole*) and lower secondary (*ungdomsskole*) education and includes individuals aged 6 to 16. The right to compulsory education of refugees is derived from the general right and obligation to obtain compulsory education. Compulsory education is predominantly given by public schools. The government can approve independent or private schools insofar as they pursue the following teaching: faith/Philosophy of Life, a religious or established pedagogical approach, international school, education, combined with top-level sports, Norwegian primary education abroad, special education for persons with disabilities, protected craft education or vocational education programmes, and education featuring profile training disciplines. The state covers 85 % of the expenditures of independent schools, which can introduce fees for pupils of 15 % of the total expenditures (Act relating to independent schools, section 6.2). Private schools comprise now around 5 % of all schools, attended mostly for secondary education.

4.2 Constitution

Among the oldest living constitutions in the world, the 1814 Norwegian Constitution guarantees a number of rights relevant to compulsory education in a multilingual environment. This constitution emphasizes that children have the right to human dignity and the right to protection of their personal integrity (Article 104). The authorities should create conditions that facilitate the child’s development, including ensuring that the child is provided with the necessary economic, social and health conditions, preferably within their own family (Ibid.). The constitution guarantees equality of all people under the law as well as a prohibition of disproportionate differential treatment (Article 98). Everyone has the right to education and, in particular, children have the right to receive basic education (Article 109). The Norwegian Constitution is an example of a constitution that stipulates the educational goals that shall safeguard individual abilities and needs and promote respect for democracy, the rule of law and human rights (Ibid.). Freedom of expression and access to information are ensured as well as the obligation of the state to create conditions that facilitate open and enlightened public discourse (Article 100).

4.3 Act relating to Primary and Secondary Education and Training

The 1998 Act relating to Primary and Secondary Education and Training (Education Act) regulates education in public schools.

4.3.1 Languages in education

The languages of instruction are Norwegian (Bokmål or Nynorsk) and Sámi (sections 2.5 and 2.8). When required for at least three pupils of Kven/Norwegian-Finnish ethnicity (Kvens) attending compulsory schools in Troms and Finnmark, the right to receive instruction in Kven or Finnish should be guaranteed (section 2.7). From grade 8 onwards, pupils can decide themselves whether they wish to receive such instruction (Ibid.).

4.3.2 Special support for minority language pupils

Following section 2.8, pupils whose mother tongue is other than Norwegian or Sámi, can benefit from additional rights associated with their language and origin. They are entitled to the remedial instruction in the Norwegian language, meaning a special approach to learning Norwegian as a second language until they are sufficiently proficient in the language to follow the normal instruction of the school. If necessary, such pupils are also entitled to mother tongue instruction, bilingual subject teaching, or both.

4.3.3 Sámi education

Sámi education is a part of compulsory education. Nevertheless, from grade 8 on, pupils can decide for themselves whether they will receive Sámi instruction (section 6.2). In Sámi administrative districts, all children at the primary and lower secondary level have the right to receive education, both in Sámi and through the medium of Sámi (Ibid.). Outside Sámi districts, if at least ten pupils in a municipality wish to receive instruction in and through the medium of Sámi, they have the right to such education as long as there remain at least six pupils in the group (Ibid.). Sámi curricula should be designed to provide education concerning the Sámi peoples and language, as well as Sámi culture and civic life in conjunction with other subjects (section 6.4). Within a framework determined by the Ministry of Education and Research, the Sámi Parliament issues regulations concerning the content of such education. The Sámi Parliament issues regulations on curricula for instruction in the Sámi language in primary and secondary education, and on curricula for specific Sámi subjects in upper secondary education and training (Ibid.).

4.3.4 Instruction for newly-arrived pupils in separate groups or classes

Recently arrived children are usually not included full-time in mainstream education and might attend introductory classes, groups, or schools before they join mainstream classes with other students of the same age (section 2.8). If some or all of the education is to take place in such a group, class or school, this should be stipulated in the decision to provide remedial language education. A decision to provide such education in specially organised facilities may only be made if it is considered to be in the pupil's best interest. Education in a specially organised facility may last for up to two years (Ibid.).

4.3.5 Religious education

Primary and lower secondary education must include, *inter alia*, Christianity, Religion, Philosophy of Life (section 2.3). Christianity, Religion, Philosophy of Life is a required subject that must normally be attended by all pupils. Teaching in this subject should not include worship or preaching (section 2.4). The teaching in Christianity, Religion, Philosophy of Life should provide knowledge of Christianity, other world religions, and philosophies of life, as well as knowledge of the significance of Christianity as a cultural heritage and of ethical and philosophical topics. The classes should promote understanding, respect and the ability to carry out a dialogue between people with differing views concerning beliefs and philosophies of life; it should also present different world religions and philosophies of life in an objective, critical and pluralistic manner. The teaching of the different topics within compulsory education must be founded on the same educational principles (section 2.4).

However, the school should respect the religious and philosophical beliefs of pupils and parents and ensure their right to an equal education (section 2.3a). Based on written notification by parents, pupils should be exempted from attending those parts of the classes that they perceive as belonging to another religion or to another philosophy of life, or that they find objectionable or offensive. Stating the reason for a notification of exemption is not necessary (Ibid.). The school annually conveys rules for exemption to the pupils and the parents of pupils below the age of 15. Pupils who have reached 15 years of age must themselves provide written notification (Ibid.).

Exemption is possible from instruction in the academic content of the various subjects in the curriculum (Ibid.). On notification of exemption, the school should ensure that the exemption is implemented and alternative classes should be provided within the scope of the curriculum (Ibid.).

4.3.6 Prohibition of clothing (partly) covering the face

Section 9.7 of the Act relating to Primary and Secondary Education and Training contains a clear prohibition on wearing face-covering clothing for pupils during classes, examinations, excursions and events organised by the school, or when the school provides help with homework, and sponsors day-care facilities for school children. The prohibition does not apply if such clothing is being worn for reasons of climate, education, health or safety.

4.4 Act relating to Independent Schools

The 2003 Act relating to Independent Schools (the Independent Schools Act) regulates compulsory education in independent or private schools. Pupils in independent primary and lower secondary schools should meet their obligation to receive primary and lower secondary

education (section 3.2). The pupils are divided into classes or basic groups, so that to provide the most optimal opportunity for inclusion and societal participation (section 3.4).

Education should pursue, *inter alia*, the following goals: developing respect for human rights and for the pupil's parents and cultural identity, language, and values; respect for the national values in the country where the pupil lives and respect for cultures different from his or her own; preparing the pupil for a responsible life in a free society in a spirit of understanding, peace, tolerance, equality between genders and friendship between all types and groups of people, ethnic, national and religious groups and indigenous people (section 1.1).

4.4.1 Languages in education

The education is provided in Norwegian or Sámi. However, this requirement does not apply to international schools (section 2.1). The Ministry of Education and Research may issue regulations on exemption from instruction in the secondary form of Norwegian for pupils who are given special language instruction (section 2.3).

4.4.2 Special support for minority language pupils

Pupils who have a different mother tongue from Norwegian or Sámi have the right to remedial instruction in Norwegian until they are sufficiently proficient in Norwegian to follow the normal instruction of the school. If necessary, such pupils are also entitled to mother tongue instruction, bilingual subject teaching, or both (section 3.5).

4.4.3 Instruction for newly-arrived pupils in special groups or classes

For new arrivals, independent schools may organise special instruction in separate groups or classes when there is a decision from the municipality or county municipality concerning such organisation, and that the private school may offer such instruction (section 3.5).

4.4.4 Religious education

The school must run its activity according to curricula approved by the Ministry of Education and Research (section 2.3). The right to exemption from educational activities does not apply to pupils in primary/lower secondary schools established for religious reasons (section 3.12).

4.4.5 Prohibition of clothing (partly) covering the face

Pupils should not wear clothing that partly or fully covers the face during instruction and examinations, excursions and events organised by the school, or when the school provides help with homework, or in day-care facilities for school children (section 3.15). This prohibition does not apply if such clothing is worn for reasons of climate, education, health or safety. Violations of the prohibition are subject to sanctions according to school regulations. Those who teach at the school must not wear clothing that partly or fully covers their face when they

teach, unless such clothing is worn for reasons of climate, education, health or safety. If anyone wears such clothing in violation of the prohibition, the school board must order the person to remove this clothing. Repeated violations of the prohibition may lead to dismissal.

4.5 Act relating to Equality and a Prohibition against Discrimination

The purpose of the 2017 Act relating to Equality and a Prohibition against Discrimination (Equality and Anti-Discrimination Act) is to promote equality and prevent discrimination based on gender, pregnancy, maternity leave or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age or other significant characteristics of a person (section 1). Improving the position of minorities is among the particular purposes of the Act, which should help to dismantle disabling barriers created by society and prevent new ones from being created (Ibid.). “Ethnicity” includes national origin, skin colour and language (section 6). The Act requires teaching aids and teaching provided by schools to realise its purpose (section 27).

4.6 Ordinances

The 2006 Regulations operationalizing the Education Act provide rules regarding the types of curricula to be used in compulsory education and in Sámi education. In particular, in primary and lower secondary schools, the education should be in accordance with the national Core Curriculum (section 1.1). However, pupils in Sámi districts shall receive education in accordance with the special Sámi Curriculum. The same applies to students outside the Sámi district when they receive education in Sámi language. The latter category of pupils shall receive education, in accordance with the national Core Curriculum, and follow the Sámi Curriculum only with regard to education in Sámi language (Ibid.).

4.7 Curriculums

Norway has a national Core Curriculum for primary and secondary education, the special Curriculum for Sámi education, and a number of subject curricula.

The national Core Curriculum embodying the values and principles for primary and secondary education emphasizes that the pupils should learn about the values and traditions that contribute to creating a common consensus in Norway. Christian and humanist traditions are an important part of Norway’s collective cultural heritage and have played a vital role in the development of Norwegian democracy. The Sámi cultural heritage is part of Norway’s cultural heritage. Norway’s shared cultural heritage has developed throughout history and must be perpetuated by present and future generations.

The Curriculum emphasizes that language creates a sense of belonging and cultural awareness. In Norway, the Norwegian and the Sámi languages, South Sámi, Lule Sámi and North Sámi, have equal standing. Knowledge of linguistic diversity in society provides all pupils

with valuable insights into different forms of expression, ideas and traditions. Five groups with a long-standing attachment to Norway have the status as national minorities in accordance with international obligations binding on Norway: Jews, Kvens/Norwegian Finns (people of Finnish descent in northern Norway), Forest Finns (Finnish people, who settled in Norway), Roma (the East European branch of the Romani, Gypsies) and Romani people/Tater (the Romanisel/Sinti, the western branch of the Romani travellers). These groups have contributed to the Norwegian cultural heritage, and the teaching should impart knowledge of these groups. The school shall support the development of each person's identity, increase confidence, and also present common values that are needed to participate in a diverse society. The teaching and training shall give the pupils knowledge and skills to face challenges in accordance with democratic principles. The pupils shall understand problems that arise between implementing the majority rights and the rights of the minority.

4.8 Interpretations

4.8.1 The Equality and Anti-Discrimination Ombud

School discriminated against a student, Case number 14/15: In this case, the school did not give an opportunity for a pupil with a diagnosis of ADHD to attend the school Christmas workshop for grades 5–7 because the said pupil required access to a teacher/assistant in addition to a permanent assistant, and the school did not have such resources. The Ombudsman assessed this action against the (then) Discrimination and Accessibility Act. The school violated the Act when it did not allow students with disabilities to attend Christmas workshops. The Ombudsman concluded that the pupil was subject to discriminatory treatment as a result of disability and went on to examine whether this discriminatory treatment was, nevertheless, permissible to achieve a legitimate purpose. Concerns for the health and safety for both the pupil, teachers and fellow pupils was found such a purpose behind discriminatory treatment. Yet the school should have planned more effectively in advance to ensure that the school had access to an assistant and a special teacher on this day. The Ombudsman pointed out that it was not necessary for the school to refuse this pupil to participate in the Christmas workshop by claiming insufficient resources.

Although the two cases that follow deal with the upper secondary school, their findings can also be relevant to compulsory education.

Hellerud Upper Secondary School has not acted in violation of the prohibition against discrimination on the basis of religion, Case number 12/1914: A group of Muslim students at Hellerud Upper Secondary School had applied for a separate prayer room. Their application was ultimately rejected. The students claimed that not having a separate prayer room puts them in a different position than the majority of Christian students, since most schools allow Christian activities more largely than is otherwise permitted for activities related to other religions. The Ombudsman emphasized that participation in church services during school

hours mainly applies to primary schools, and only once a year, at Christmas time. Participation in these events is voluntary and alternative activities are provided for those who abstain from participation. Thus, in the opinion of the Ombudsman, this cannot be compared to weekly services during school hours. The Ombudsman also considered that the students at Hellerud Upper Secondary School could pray on school grounds in small groups on a daily basis. The school is obligated to facilitate freedom of religion in a non-discriminatory manner, yet has no obligation to take a specific action by, e.g., establishing a prayer room. Such an arrangement would involve something other than allowing students to borrow a room from time to time for religious activities. Thus, the Ombudsman found no violations on the side of Hellerud School.

Danielsen High School did not discriminate because of religion, Case number 16/790. The case revolved around a person who considered a job ad placed by the school as violating the Act on the prohibition of discrimination on the basis of ethnicity, religion and belief (in force at the time) because it specified that the employees had to share the school's Christian beliefs. The question was whether the school is permitted to inquire about a job candidate's religious beliefs and require adherence to certain religious beliefs as a precondition for job eligibility. The Ombudsman found that the basis for requesting information about jobseekers' religion or beliefs stems from the employer's right stipulated by the exemption provision in the Act. Access to this information meant that the advertised vacancies relate to the school's religious or philosophical activities and the teaching of the relevant subjects. The employer had documented that the school's religious values are central to the subjects taught there, and that these values are manifested in the curriculum. The school's curriculum requires a commitment to these values. Hence, in this case, the school had substantiated that a certain religious commitment of a jobseeker is necessary to create a learning environment that promotes a Christian holistic view of life. However, the Ombudsman emphasized that such a requirement cannot be linked to job ads that are not relevant to the implementation of the school's religious purposes, such as, e.g., cleaning positions.

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