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THE RIGHT TO MOTHER TONGUE EDUCATION FOR INDIGENOUS PEOPLES: AN OVERVIEW OF INTERNATIONAL AND REGIONAL STANDARDS

Abstract

Language is an essential element of indigenous culture and identity. Meanwhile, indigenous languages are endangered or nearly extinct. It is argued that ensuring that native communities receive education in their mother tongue is key to conserve and revitalize indigenous cultures and linguistic heritage. This paper reviews the normative guidelines regarding the right to be taught in one's own language set out in international and regional human rights law. It is argued that although there is currently no binding, universally accepted obligation to provide education for indigenous peoples in their native languages, a binding measure might soon emerge. Additionally, it is argued that the protection of indigenous heritage and cultural diversity requires re-evaluation of the current standards and that the right of native peoples to mother tongue-based education should be strongly endorsed by the international community.

KEYWORDS

indigenous education, indigenous language, mother tongue education, right to education, rights of indigenous peoples

SŁOWA KLUCZOWE

edukacja ludności tubylczej, język tubylczy, nauka w języku ojczystym, prawo do nauki, prawa ludności tubylczej

1. INTRODUCTION

Language is a primary tool of everyday communication and a significant factor in shaping one's identity. It is an essential instrument not only for individuals' personal development, integrity and growth, but it is also crucial for communities as a vehicle for fostering cultures. The preservation of language is especially paramount to indigenous peoples and their children worldwide.

Members of indigenous and tribal communities have historically experienced severe oppression in education; they have been subjected to assimilationist education which brought insurmountable suffering upon generations of native people. As a result, oftentimes indigenous languages are not being transmitted at all, due to the unwanted forced integration. To this day, indigenous peoples encounter severe disadvantages due to (but by no means not only) lack of access to the appropriate language of instruction.¹

It is argued that ensuring that education is provided to native communities in their mother tongue is key to conserve and revitalize their cultures and language, therefore, it should be strongly endorsed by international human rights law and adequately implemented in each state.

This paper aims to contribute to the current research by evaluating and assessing the international and European human rights instruments, and by reviewing the normative standards of education provided to indigenous peoples in their native languages.² The study's objective is to reconstruct the guidelines for mother tongue-based education based on the available rules of binding and non-binding nature, thus filling the gap in the scholarship.³

Although there is currently no binding obligation for states to provide access to schools with indigenous minorities' language of instruction, a new standard is slowly emerging and the necessity to provide education in the mother tongue

¹ See e.g. A. Olsen Harper, Sh. Thompson, *Structural Oppressions Facing Indigenous Students in Canadian Education*, 'Fourth World Journal' 2017, Vol. 15(2), pp. 41–66.

² It is recognized that procedural and institutional measures are equally important as the substantive law, however, for reasons of limited space, this matter is left to be resolved by future research.

³ For reasons of limited space, the discussion of the European Union law falls outside the scope of this paper.

is becoming widely recognized as indispensable for individual development, but also as a much needed factor to enjoy indigenous cultures.

2. RIGHTS OF INDIGENOUS PEOPLES IN INTERNATIONAL LAW

Each vulnerable group has different areas of concerns and for indigenous peoples⁴ it is primary the preservation of their unique culture, identity, and language.⁵ It is difficult to provide an exact number of indigenous people (worldwide and in each country), but it is claimed that they make up less than 6% of the world's population but speak around 4,000 languages, which is an overwhelming majority of the world's languages.⁶ Despite that, many indigenous languages are in threat of dying, as the number of native speakers is shrinking rapidly.⁷ Therefore, although it is appreciated that indigenous peoples have a distinct and special status and are vastly different from other minorities, this paper refers to natives as minorities, because indigenous communities are predominantly numerically smaller and in a non-dominant position in comparison with the rest of the population.⁸

The roots of indigenous education are prehistoric; native communities have managed to develop their own methods of disseminating knowledge and cultural values. However, their educational heritage has been largely superseded due to serious attempts to assimilate the indigenous into the mainstream culture. That is why, it is vital to ensure and support native communities' control in public and free education in accordance with the self-determination principle.⁹

To this day, native people experience stigma and language barriers in the school environment. Policies that have been adopted by nation-states often dis-

⁴ Indigenous is understood as local, original or native to a geographic region, however, the precise definition has been interpreted from various viewpoints; W. J. Jacob, Sh. Y. Cheng, M. K. Porter, *Global Review of Indigenous Education: Issues of Identity, Culture, and Language*, (in:) *idem* (eds), *Indigenous Education: Language, Culture and Identity*, Dordrecht 2015, pp. 1–35.

⁵ S. J. Anaya, *Indigenous Peoples in International Law*, Oxford: Oxford University Press 2004; P. Thornberry, *International Law and the Rights of Minorities*, Oxford: Clarendon Press 1991.

⁶ The United Nations Permanent Forum on Indigenous Issues, *Together We Achieve*, <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/04/Indigenous-Languages.pdf> (accessed 04.12.2022).

⁷ It is estimated that every two weeks, one indigenous language becomes extinct; see The United Nations, *Indigenous Peoples' Right to Education*, https://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/Backgrounder_Indigenous_Day_2016.pdf (accessed 04.12.2022).

⁸ The United Nations, *Indigenous Peoples and Ethnic Minorities: Marginalization is the Norm*, (in:) *Promoting Inclusion through Social Protection*, Report on the World Social Situation, September 2018.

⁹ S.-H. Lee et al., *Self-Determination and Access to the General Education Curriculum*, 'The Journal of Special Education' 2008, Vol. 42(2), pp. 91–107.

regard the indigenous perspective. Although there are some successful attempts at adopting an intercultural and bilingual educational model, the implementation of an appropriate language of instruction in Europe is still unsatisfactory.¹⁰ This study generally considers an indigenous language as a ‘mother tongue’; however, it is recognized that due to language annihilation, many indigenous peoples have been primarily exposed to the official state language and cannot speak their native tongue or their ability to use their language is limited.¹¹

Reiterating the UNESCO World Conference conclusion, the international community as well as individual states should be constantly reminded that ‘[a]ll cultures form part of the common heritage of mankind. The cultural identity of a people is renewed and enriched through contact with the traditions and values of others.’¹² In line with that proclamation, efforts to raise the threshold of human rights of vulnerable groups and their linguistic rights in education are indeed being made by the international community. Recently, indigenous peoples have been considered invaluable in contributing to the United Nations 2030 Agenda for Sustainable Development. Notably, the Agenda promises in Goal 4 (target 4.5) that indigenous peoples and children in vulnerable situations should be provided with equal access to all levels of education.¹³ This is certainly promising, as undoubtedly the role of international law is of utmost importance for indigenous peoples, who have successfully turned to supranational organizations whenever states have neglected their claims, as observed by Will Kymlicka.¹⁴

The pivotal provision that grants protection to indigenous peoples in terms of culture is Article 27 of the International Covenant on Civil and Political Rights (ICCPR).¹⁵ The UN Human Rights Committee in its General Comment No. 23 addresses Article 27 by confirming that it imposes specific obligation on States parties which should ensure the survival and development of cultural and social identity of linguistic minorities ‘thus enriching the fabric of society as a whole’¹⁶. As argued by Joshua Castellino, the provision grants four aspects: the right to

¹⁰ W. J. Jacob, Sh. Y. Cheng, M. K. Porter, 2015, *op. cit.*

¹¹ W. J. Jacob, *Strategies for Overcoming Linguistic Genocide: How to Avoid Macroaggressions and Microaggressions that Lead toward Indigenous Language Annihilation*, (in:) W. J. Jacob, Sh. Y. Cheng, M. K. Porter (eds), *Indigenous Education: Language, Culture and Identity*, Dordrecht 2015, pp. 127–138.

¹² Mexico City Declaration on Cultural Policies, adopted by the UNESCO at the World Conference on Cultural Policies, Mexico City, 26 July–6 August 1982, para. 4.

¹³ Transforming our World: The 2030 Agenda for Sustainable Development, United Nations GA Resolution A/RES/70/1, adopted on 21 October 2015.

¹⁴ W. Kymlicka, *Theorizing Indigenous Rights*, ‘The University of Toronto Law Journal’ 1999, Vol. 49(2), pp. 281–293.

¹⁵ United Nations GA Resolution 2200A (XXI), 16 December 1966, UN Treaty Series, Vol. 999, p. 171.

¹⁶ UN Human Rights Committee, CCPR General Comment No. 23: Article 27 (Rights of Minorities), 8 April 1994, CCPR/C/21/Rev.1/Add.5, para. 9.

identity, physical existence, existence of an identity and separate existence.¹⁷ As for the linguistic aspect of Article 27, the General Comment No. 23 highlights the fact that linguistic minorities have the right 'to use their language among themselves, in private or in public'.¹⁸ The protection stipulated in Article 27 should not be confused with the collective rights of self-determination granted under Article 1 of the ICCPR, which establishes the right to pursue economic, social, and cultural development, which is also directly linked to the discussed topic.¹⁹

The right of cultural freedom – imperative to indigenous peoples' existence – is also provided for in Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).²⁰ The Committee on Economic, Social and Cultural Rights (CESCR) emphasized in its General Comment No. 21 that the right of everyone to take part in cultural life is intrinsically linked to the right to education (Articles 13 and 14) 'through which individuals and communities pass on their values, religion, customs, language and other cultural references'.²¹ According to the General Comment No. 21, indigenous peoples require special protection, acknowledging that language and education are important for minorities and indispensable for their existence and survival.²² Regarding children, states should take all the necessary steps to allow them to achieve the aims of education:

States should recall that the fundamental aim of educational development is the transmission and enrichment of common cultural and moral values in which the individual and society find their identity and worth. Thus, education must be culturally appropriate, include human rights education, enable children to develop their personality and cultural identity and to learn and understand cultural values and practices of the communities to which they belong, as well as those of other communities and societies.²³

¹⁷ J. Castellino, *Order and Justice: National Minorities and the Right to Secession*, 'International Journal on Minority and Group Rights' 1999, Vol. 6(4), p. 405.

¹⁸ UN Human Rights Committee, CCPR General Comment No. 23: Article 27 (Rights of Minorities), para. 5.3.

¹⁹ S. Joseph, M. Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Political Rights*, Oxford: Oxford University Press 2013, p. 832.

²⁰ United Nations GA Resolution 2200A (XXI), 16 December 1966, UN Treaty Series, Vol. 993, p. 3; R. O'Keefe, *The 'Right to Take Part in Cultural Life' under Article 15 of the ICESCR*, 'The International and Comparative Law Quarterly' 1998, Vol. 47(4), pp. 904–923.

²¹ The CESCR points out that the right to take part in cultural life consists in five elements according to a 5-A model: availability, accessibility, acceptability, adaptability, and appropriateness. The model should serve as a framework setting out necessary conditions for the full realization of the right for everyone to take part in cultural life; see UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 21, Right of everyone to take part in cultural life (Art. 15, para. 1(a), of the International Covenant on Economic, Social and Cultural Rights), 21 December 2009, E/C.12/GC/21, para. 2.

²² The CESCR General Comment No. 21 lists also: women, older persons, persons with disabilities, minorities, migrants, and indigenous peoples and persons living in poverty.

²³ *Ibid.*, para. 26.

The Committee further remarks that ‘educational programmes of States parties should respect the cultural specificities of national or ethnic, linguistic and religious minorities’, and even stipulates that those programmes should be ‘conducted on or in their own language’.²⁴ Naturally, this is only a non-binding interpretation of the provision, however, it recognizes that education in children’s own language is of crucial importance and requires attention in international human rights law as it not only helps to safeguard the right to education in general, but also fosters children’s cultural development.²⁵

3. MOTHER TONGUE-BASED EDUCATION: THE INTERNATIONAL STANDARD

State education is a relatively new concept in the human history. It used to be a matter left for families, and religious congregations usually conducted classes. The need for public education was recognized relatively recently, but the idea of compulsory education in government schools became widely adopted and considered beneficial to children’s development.²⁶ However, state schools also have a dark side: they became a critical tool in the forced assimilation agenda in a number of countries. The boarding school experience caused trauma and led to endangering many indigenous languages.²⁷

Today, the discrimination in the school system is far from being settled. Many native students are still overlooked and derided throughout their entire course of education. What is more, it is believed that even the best-intended policies can work to the detriment of indigenous children.²⁸

Studies confirm the native children’s performance is lower and dropout rates are higher. Some indigenous peoples who know very little or not at all the language of instruction are not able to make a successful start in school, because they do not have necessary skills to understand the assigned tasks.²⁹ As pointed out in an expert study by Tove Skutnabb-Kangas and Robert Dunbar, minority children who do not have access to mother tongue-based education are amongst

²⁴ *Ibid.*, para. 27.

²⁵ R. O’Keefe, 1998, *op. cit.*

²⁶ F. de Varennes, *Language, Minorities and Human Rights*, Brill 2021.

²⁷ L. Daniels, *Expressions of Policy Effects: Hearing Memories of Indian Residential Schools*, (in:) T. Strong-Wilson et al. (eds), *Productive Remembering and Social Agency*, Brill 2013, pp. 29–47.

²⁸ W. J. Jacob, Sh. Y. Cheng, M. K. Porter, 2015, *op. cit.*

²⁹ V. Çoşkun, M. Şerif Derince, N. Uçarlar, *Scar of Tongue: Consequences of the Ban on the Use of Mother Tongue in Education and Experiences of Kurdish Students in Turkey*, Yenişehir/Diyarbakir: Disa Publications 2011, p. 81.

the least successful at school and later in life, as they experience mental problems and suffer economic, social, and political marginalization.³⁰ Therefore, discussing this issue is critical.

Under international human rights law, there is currently a broad consensus that the right to education has the status of a fundamental right due to the development of the second-generation human rights.³¹ It is recognized in most of the core international human rights documents, including the UDHR (Article 26)³² and the ICCPR (Articles 13, 14 and 26). Additionally, it is protected in other international instruments, for example, in the Convention on the Elimination of All Forms of Discrimination against Women (Article 10, CEDAW),³³ the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(e)(v), ICERD)³⁴ and the Convention on the Rights of Persons with Disabilities (Article 24, CRPD)³⁵. Moreover, the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted a Convention against Discrimination in Education. Also at the European level, the right to education has been added to Protocol No. 1 to the European Convention on Human Rights (Article 2, ECHR).³⁶ However, to highlight a linguistic aspect of the right to education, some provisions need to be addressed in detail.

3.1. LEGALLY BINDING INTERNATIONAL INSTRUMENTS

The concept of ‘mother tongue education’ can be defined in various ways,³⁷ but for the purpose of this research the notion is based on Sjaak Kroon’s study and is understood as the child’s mother tongue being the language of instruction in

³⁰ T. Skutnabb-Kangas, R. Dunbar, *Indigenous Children’s Education as Linguistic Genocide and a Crime against Humanity? A Global View*, ‘Gáldu Čála. Journal of Indigenous Peoples Rights’ 2010, No. 1, pp. 10–103.

³¹ V. Wisthaler, *The Right to Education for Minorities: An Overview on Existing Recommendations from The Hague to Geneva*, ‘European Yearbook of Minority Issues Online’ 2011, Vol. 8(1), p. 123.

³² Universal Declaration of Human Rights, the United Nations GA Resolution 217 adopted on 10 December 1948, is the first international document to declare education to be a human right.

³³ United Nations GA Resolution 34/180, 18 December 1979, UN Treaty Series, Vol. 1249, p. 13.

³⁴ United Nations GA Resolution 2106 (XX), 21 December 1965, UN Treaty Series, Vol. 660, p. 195.

³⁵ United Nations GA Resolution A/RES/61/106, 13 December 2006.

³⁶ Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11, 14 and 15, supplemented by Protocols 1, 4, 6, 7, 12, 13, and 16, Council of Europe, Rome, 4 November 1950.

³⁷ See: T. Skutnabb-Kangas, *The Role of Mother Tongues in the Education of Indigenous, Tribal, Minority and Minoritized Children: What Can be Done to Avoid Crimes against Humanity?* (in:) P. W. Orelus (ed.), *Affirming Language Diversity in Schools and Society. Beyond Linguistic Apartheid*, New York: Routledge 2014, pp. 215–249; Ch. Stoop, *Children’s Rights to Mother-*

schools.³⁸ There is a vast amount of literature on the right to education, especially in respect of minorities and indigenous rights.³⁹ Additionally, a growing body of literature has examined the importance of education in mother tongue from sociological, linguistic, and psychological viewpoints.⁴⁰ However, very few studies have been published on the scope of the right to education in mother tongue for native communities.⁴¹

The mother tongue-based education became an international concern some years before World War II. The matter was addressed directly for the first time in the international arena by the Permanent Court of International Justice (PCIJ), the predecessor of the International Court of Justice, in the Advisory Opinion No. 26 regarding minority schools in Albania.⁴²

At present, this matter is largely neglected in the binding international law documents. The ICESCR does not require states to grant the right to mother tongue education to linguistic minorities. There is no linguistic aspect in Article 13, and the education in mother tongue is not even mentioned by the CESC in its General Comment No. 13 on education. Nonetheless, according to general rules of interpretation, this provision undoubtedly also applies to indigenous peoples, who can set up their own schools outside the state system. Additionally, parents belonging to minorities can decide to send their children to a school of their choice.⁴³

Tongue Education in a Multilingual World: A Comparative Analysis between South Africa and Germany, PER/PELJ 2017, Vol. 20, pp. 1–35.

³⁸ S. Kroon, *Mother Tongue and Mother Tongue Education*, (in:) J. Bourne, E. Reid (eds), *Language Education*, London: Kogan Page 2003, p. 4. See also T. Skutnabb-Kangas, 2014, *op. cit.*

³⁹ See e.g.: S. S. Åkermark, *Minority Education – Torn in Contradictions?* ‘European Yearbook of Minority Issues’ 2012, Vol. 9(1), pp. 223–247; T. Skutnabb-Kangas, *Multilingualism and the Education of Minority Children*, ‘Estudios Fronterizos’ 1989, Vol. 8(18–19), pp. 36–67.

⁴⁰ See e.g.: S. Kiefer, K. Sallamaa (eds), *European Identities in Mother Tongue Education*, Linz: Pädagogische Akademie des Bundes in ÖÖ 2005; A. Chen, *The Philosophy of Language Rights*, ‘Language Sciences’ 1998, Vol. 20(1), pp. 45–54; Ch. Horst, *The Right to Mother Tongue Education*, (in:) S. Kiefer, K. Sallamaa (eds), *European Identities in Mother Tongue Education*, Linz: Pädagogische Akademie des Bundes in ÖÖ 2005, p. 12.

⁴¹ See e.g.: W. J. Jacob, 2015, *op. cit.*; V. Wisthaler, 2011, *op. cit.*

⁴² The PCIJ confirmed that minorities have the right to set up their own schools but also to use their own language of instruction. This case demonstrates that there is a long-standing belief in the international community that receiving education in mother tongue is not only reasonable and justifiable but also paramount to national and linguistic minorities, especially in private institutions; PCIJ, Thirty Fourth Session, *Minority Schools in Albania*, Advisory Opinion No. 26, 6 April 1935, Series A/B, No. 64.

⁴³ However, some researchers further argue that the interpretation of Article 13(1) in conjunction with Article 13(2) allows one to conclude that members of linguistic minorities have the right to receive education aimed at the full development of their personality and sense of dignity, which implies the right of everyone to receive education in their mother tongue; see Ł. Szoszkiewicz, *Linguistic Human Rights in Education*, ‘Adam Mickiewicz University Law Review’ 2017, Vol. 7.

Similarly, the UN Committee on the Rights of the Child (CRC) does not directly address this issue; it is missing even in the General Comment No. 1 on the aims of education.⁴⁴ However, in the General Comment No. 17 on the right of the child to rest, leisure, play, recreational activities, and the arts (Article 31), the Committee addresses Article 30 and notes that children from linguistic minorities ‘should be encouraged to enjoy and participate in their own cultures. States should respect the cultural specificities of children from minority communities as well as children of indigenous origin, and ensure that they are afforded equal rights with children from majority communities to participate in cultural and artistic activities reflecting their own language, religion, and culture.’⁴⁵

Still, it is the UNESCO Convention against Discrimination in Education that for the first time mentions *expressis verbis* the right to education for minorities. The most relevant provision for linguistic minorities regarding the mother tongue education is laid down in Article 5, which directly stipulates that the use of a minority language in education is essential. The UNESCO Convention can generally be considered a success, since it attaches great importance to providing full and equal opportunities in education for all, while acknowledging the responsibilities of the state.⁴⁶ However, studies point out that it has not brought significant changes regarding the standard of mother tongue education for minorities.⁴⁷ For this reason, despite the fact that the document explicitly addresses the aspect of language in education in Article 5, the full potential of this international convention does not seem to have been realized.

The International Labour Organization (ILO) has also greatly contributed to the indigenous peoples’ rights. The ILO Indigenous and Tribal Peoples Convention No. 169 of 1989 (ILO C169) replaced the earlier, much more paternalistic convention of 1957.⁴⁸ The latest instrument confirms that indigenous peoples should receive education on an equal footing with the rest of the population (Article 26). States should also develop and implement education programmes in cooperation with native communities and ensure their involvement, as well as support their own educational institutions (Article 27).

Most importantly, the ILO C169 stipulates, under Article 28, that native children should be taught to read and write in their own indigenous language or the language most commonly used by the group to which they belong. If it is not prac-

⁴⁴ UN Committee on the Rights of the Child (CRC), General Comment No. 1 (2001), Article 29(1): The aims of education, 17 April 2001, CRC/GC/2001/1, para. 11.

⁴⁵ UN Committee on the Rights of the Child (CRC), General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (Art. 31), 17 April 2013, CRC/C/GC/17, para. 28.

⁴⁶ K. Singh, *UNESCO’s Convention against Discrimination in Education (1960): Key Pillar of the Education for All*, ‘International Journal for Education Law and Policy’ 2008, Vol. 4.

⁴⁷ V. Wisthaler, 2011, *op. cit.*, p. 126.

⁴⁸ See more in S. May, Sh. Aikman, *Indigenous Education: Addressing Current Issues and Developments*, ‘Comparative Education’ 2003, Vol. 39(2), pp. 139–145.

ticable, authorities should undertake consultation with those peoples regarding the adoption of measures to achieve this goal. Since the Convention is binding, the potential of this document is compelling. Regrettably, to this day only a few countries have ratified it, therefore, the impact of this document is limited.⁴⁹

3.2. INTERNATIONAL REGULATORY FRAMEWORKS

At the same time, the topic of mother tongue-based education has been a subject of number of the UN soft-law documents. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Minorities Declaration) is aimed at promoting the realization of the rights of minorities, in particular their identity, and encourages states to strengthen the legislative measures protecting them. The central element of the Declaration is Article 4(3), which provides that ‘states should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.’ This provision is unique and far-reaching. It provides for an alternative for states to ensure education in minorities’ language of instruction or at least safeguards the possibility to learn the language. Therefore, states should at least provide education *of* the language, if not *in* the language.⁵⁰

Addressing that provision, the Commentary on the Minorities Declaration in the Secretary-General’s Note acknowledges the fact that language is an important carrier of identity, and states should promote it. Importantly, it is highlighted that states should provide education in the mother tongue, especially at the pre-school and primary school level, when ‘the language of the minority is a territorial language traditionally spoken and used by many in a region of the country’.⁵¹ Further recommendations stipulate that the official language of the state should be introduced gradually in later stages of education. In the Commentary it is recognized that when a minority is not concentrated in a particular territory, the solution to mother tongue education is more difficult, nonetheless minorities should always learn their language.⁵² What is noteworthy, it is indicated that, depending on the

⁴⁹ Indigenous and Tribal Peoples Convention (No. 169), adopted by the International Labour Organization on 27 June 1989.

⁵⁰ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, United Nations GA Resolution A/RES/47/135, 18 December 1992.

⁵¹ UN Subcommission on the Promotion and Protection of Human Rights, Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 4 April 2005, E/CN.4/Sub.2/AC.5/2005/2, para. 61.

⁵² *Ibid.*, para. 63.

resources of the state, even when the minority is dispersed, the state should be obliged to fund the teaching of the language.⁵³

Arguably, the biggest achievement for native communities was the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, proclaimed by the General Assembly in 2007 by a majority of 143 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions.⁵⁴ Article 14 of that resolution explicitly provides that indigenous peoples ‘have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.’ The linguistic aspect of education, especially for children, is recognized as central to indigenous peoples’ rights, including the principle of non-discrimination. Although undoubtedly impactful and encouraging, the influence of the UN Declaration on the Rights of Indigenous Peoples is moderated by the fact that it is of a non-binding nature and thus cannot adequately fulfil the needs of native communities in regard to mother tongue education.

Lastly, the organization that plays a major role in promoting indigenous educational rights is the UNESCO. Its Universal Declaration on Cultural Diversity supports education in mother tongue and argues in favour of bilingual education. The document emphasizes the importance of ‘[s]afeguarding the linguistic heritage of humanity and giving support to expression, creation and dissemination in the greatest possible number of languages.’ (Annex, para. 5).⁵⁵ Additionally, linguistic diversity is encouraged ‘while respecting the mother tongue – at all levels of education, wherever possible, and fostering the learning of several languages from the earliest age.’ (Annex, para. 6). The commentary issued by the UNESCO addressing the Declaration mentions multiple challenges of providing mother tongue education.⁵⁶ Accordingly, in line with the principles of linguistic pluralism and cultural diversity, it states that ‘curricula must – from the earliest years of schooling, in order to capitalize on a child’s extraordinary capacity for language learning – cater for the array of mother tongues spoken within national boundaries, and introduce the other languages needed to improve standards of communication at the national and then international levels.’⁵⁷ It is suggested that states should not only aim at mother tongue education but also endeavour to pro-

⁵³ *Ibid.*, para. 64.

⁵⁴ United Nations Declaration on the Rights of Indigenous Peoples, United Nations GA Resolution A/RES/61/295, adopted on 13 September 2007.

⁵⁵ The declaration was adopted in Paris on 2 November 2001; cf. UNESCO Universal Declaration on Cultural Diversity: A vision, a conceptual platform, a pool of ideas for implementation, a new paradigm. A document for the World Summit on sustainable Development, Johannesburg 26 August–4 September 2002, Cultural Diversity Series No. 1, <http://unesdoc.unesco.org/images/0012/001271/127162e.pdf> (accessed 04.12.2022).

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, p. 28.

vide bilingual education. This far-reaching and promising goal is in line with the UNESCO Declaration's overall multicultural approach.⁵⁸ Moreover, the UNESCO Declaration lays down the standard that minorities should be free to establish their own schools where the language of instruction would be their mother tongue.

This position is further emphasized in the 2008 UNESCO Outcomes and Trends in Inclusive Education at Regional and Interregional Levels. The document advocates government-supported education policies that are aimed at providing equal learning opportunities for all, which includes bilingual education.

Nevertheless, despite the state obligation to provide free primary education aimed at the full development of a person, there is no requirement stemming from international treaties to set up schools with minorities' mother tongue as the language of instruction, even though minority children would benefit greatly from such measure. In sum up, according to the binding international norms, states are not obliged to provide mother tongue-based education, despite the fact that undoubtedly it would aid children's development and strengthen their potential. The standard set in soft law is more encouraging. Each declaration argues for mother tongue education for minorities, yet the overall evaluation of the documents, including the lack of implementation mechanisms, may point to their ineffectiveness.⁵⁹ On the other hand, the impact of the standards stemming from non-binding measures cannot be diminished.⁶⁰

However, as it can be seen from the Special Rapporteurs' reports, currently states do not widely adhere to the suggested soft-law postulates, and they usually do not provide minorities in public schools with education in their mother tongue. As a result, it can be concluded that at the international level the universal standard regarding minorities and indigenous peoples' right to education in their mother tongue is not satisfactory, despite some measures discussed above.⁶¹

⁵⁸ A. Fuentes, *Cultural Diversity and Indigenous Peoples' Land Claims: Argumentative Dynamics and Jurisprudential Approach in the Americas*, PhD thesis, University of Trento 2012, p. 128.

⁵⁹ P. Hilpold, *UN Standard-Setting in the Field of Minority Rights*, 'International Journal on Minority and Group Rights' 2007, Vol. 14(2–3), p. 188.

⁶⁰ A. Fuentes, *Expanding the Boundaries of International Human Rights Law. The Systemic Approach of the Inter-American Court of Human Rights*, 'European Society of International Law Conference Paper Series' September 2017, Vol. 10(3), Paper No. 13/2017, p. 9.

⁶¹ Report of the Special Rapporteur on the Right to Education: The promotion of equality of opportunity in education, UN GA, A/HRC/17/29, 18 April 2011, para. 63.

4. EUROPEAN STANDARD ON MOTHER TONGUE-BASED EDUCATION

Indigenous peoples in Europe share similar struggles to the rest of native communities, however, because the colonization process took place a long time ago, the inhabitants of European countries are often absent from the mainstream, regional discourse. As argued by Rainer Grote, global organizations play a bigger role in the protection of indigenous groups and the regional level is largely inadequate.⁶² Meanwhile, indigenous peoples ‘stand at the very crux of what it means to belong in “Europe”’.⁶³

Currently, reference to European indigenous peoples is usually limited to the Saami people of Finland, Norway, Sweden and Russia, the Inuit, who live in Greenland and many groups that live in Russia. Importantly, neither Finland, Sweden nor Russia have ratified the ILO C169 discussed above. On the other hand, Norway and Denmark have ratified the Convention, however, as discussed by Grote, they have seemingly interpreted its provisions in a narrow way, stripping the native communities from all of its benefits.⁶⁴

The policies that have been adopted by the nation-states are already discussed in depth in the literature.⁶⁵ Therefore, the following section focuses on the issue of mother-tongue education for indigenous peoples from the macro-perspective.

4.1. EUROPEAN COURT OF HUMAN RIGHTS

On the regional, European level, the organization that plays the greatest role in human rights protection is undoubtedly the Council of Europe, and consequently, the European Convention on Human Rights is of utmost importance. Despite the

⁶² R. Grote, *On the Fringes of Europe: Europe's Largely Forgotten Indigenous Peoples*, ‘American Indian Law Review’ 2006, Vol. 31(2), pp. 425–443.

⁶³ W. J. Jacob, Sh. Y. Cheng, M. K. Porter, 2015, *op. cit.*, p. 12.

⁶⁴ *Ibid.*

⁶⁵ See: M. O'Dowd, *The Sámi People in Scandinavia: Government Policies for Indigenous Language Recognition and Support in the Formal Education System*, (in:) W. J. Jacob, Sh. Y. Cheng, M. K. Porter (eds), *Indigenous Education: Language, Culture and Education*, Dordrecht 2015, pp. 187–205; P. Keskitalo, T. Olsen, *Historical and Political Perspectives on Sámi and Inclusive School Systems in Norway*, (in:) M. C. Beaton et al. (eds), *Including the North: A Comparative Study of the Policies on Inclusion and Equity in the Circumpolar North*, Rovaniemi 2019; U. Aikio-Puoskari, *The Ethnic Revival, Language and Education of the Sámi, an Indigenous People, in Three Nordic Countries (Finland, Norway and Sweden)*, (in:) T. Skutnabb-Kangas et al. (eds), *Social Justice through Multilingual Education*, Bristol 2009, pp. 238–262; D. Khanolainen, Y. Nesterova, E. Semenova, *Indigenous Education in Russia: Opportunities for Healing and Revival of the Mari and Karelian Indigenous Groups?* ‘Compare: A Journal of Comparative and International Education’ 2022, Vol. 52(5), pp. 768–785.

great role that the Convention plays in the protection and promotion of human rights in Europe, it is not sufficiently designed to protect indigenous peoples' cultural and linguistic rights, except for the general prohibition of discrimination in Article 14 of the ECHR.⁶⁶

The right to education is secured in Article 2 of Protocol No. 1 of the ECHR, which scope has been shaped by the European Court of Human Rights (ECtHR).⁶⁷ Importantly, there has not been a single case that would specifically address the indigenous educational rights, yet. Nonetheless, the Court has reaffirmed that the provision on the right to education must be interpreted in the context of other rules of international law, such as the ICESCR and the UNESCO Convention against Discrimination in Education.⁶⁸

The general scope of the right to education in one's mother tongue was specified in the famous *Belgian Linguistic Case*. The judgment confirmed that there is no positive obligation for states to provide education in one's own language at any level, even if there is more than one official language.⁶⁹ According to this judgment, there is no right to education in the mother tongue not only for minorities but also for people living in different language speaking regions.⁷⁰

However, in another case concerning Greek Cypriots living in the northern part of the island, the Court found a violation of Article 2 of Protocol No. 1 of the ECHR, since there were no secondary schools available for them providing education in their mother tongue (Greek), after completing a primary school with the Greek language of instruction. The *Cyprus v Turkey* judgment explicitly indicated that in 'certain circumstances, failure to provide education in the mother tongue may, in fact, violate the right to education'.⁷¹ Nonetheless, as pointed out by Kristin Henrard, although the Court does not recognize the general right to education for minorities in their mother tongue, 'it does acknowledge that the

⁶⁶ However, the discrimination is only prohibited in relation to another right guaranteed by the Convention. Therefore, it is not a 'free-standing' provision, which is undeniably a great disadvantage; see E. Fribergh, M. Kjaerum, *Handbook on European Non-Discrimination Law*, European Court of Human Rights, Strasbourg: Council of Europe 2011, p. 17.

⁶⁷ ECtHR judgment of 25 February 1982 in *Campbell and Consans v the United Kingdom*, Application no. 7511/76, para. 33; see also: European Court of Human Rights, Research Division, *Cultural Rights in the Case-Law of the European Court of Human Rights*, https://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf (accessed 04.12.2022).

⁶⁸ European Court of Human Rights, *Cultural Rights in the Case-Law of the European Court of Human Rights*, *op. cit.*

⁶⁹ ECtHR judgment of 23 July 1968 in *Belgian Linguistic Case*, Applications nos 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, para. 3.

⁷⁰ E. Fribergh, M. Kjaerum, 2011, *op. cit.* p. 115.

⁷¹ ECtHR judgment of 10 May 2001, Application no. 25781/94; K. D. Beiter, *The Protection of the Right to Education by International Law*, Leiden, Boston: Martinus Nijhoff Publishers 2006, p. 427.

medium of instruction matters in terms of effective access to education',⁷² as it is explicitly indicated that in 'certain circumstances, failure to provide education in the mother tongue may, in fact, violate the right to education'.⁷³

Another language-related case concerns the suspension of Kurdish students from their university, which was a disciplinary measure administered to them for requesting that their university introduce optional classes in their mother tongue, Kurdish. The Court in case *Irfan Temel and Others v Turkey* also found a violation of Article 2 of Protocol No. 1 of the ECHR.⁷⁴ Moreover, the Court confirmed that states could not interfere with any institutions established by private entities at their own discretion,⁷⁵ thereby confirming international standards stemming from the UN treaties.

The *Catan and Others v Moldova and Russia* judgment stands in clear contrast to the *Belgian Linguistic Case*. It concerned Moldovan applicants living in Transdnistria, who – on the basis of Article 2 of Protocol No. 1 and Article 8 (right to respect for private and family life) alone and in conjunction with Article 14 of the ECHR – complained about the closure of schools with the Moldovan language of instruction and using the Latin alphabet (as opposed to Cyrillic) by separatist authorities. In short, the families had to choose whether to place children in schools available in Transdnistria, where they faced disadvantage of pursuing the education in an artificial language, which was not recognized anywhere else in the world, or to make children travel to schools where they were harassed.⁷⁶

The Court held that these measures were intended to enforce the Russification of the language and culture of the Moldovan community living in Transdnistria and '[g]iven the fundamental importance of primary and secondary education for each child's personal development and future success, it was impermissible to interrupt these children's schooling and force them and their parents to make such difficult choices with the sole purpose of entrenching the separatist ideology'.⁷⁷ In sum, the Court reiterated that there is a right to receive education in one's own language, which demonstrates a change in the Court's jurisprudence.

The ECtHR case law points to the fact that the Strasburg Court is increasingly aware of the importance of mother tongue language of instruction, not only in the

⁷² K. Henrard, *International Perspectives on Minorities' Rights and Mother Tongue Education. Equality, Identity, and Integration*, (in:) T. Skutnabb-Kangas, R. Phillipson (eds), *Language Rights*, London: Routledge 2016, p. 205.

⁷³ K. D. Beiter, 2006, *op. cit.*, p. 427.

⁷⁴ ECtHR judgment of 3 March 2009 in *Irfan Temel and Others v Turkey*, Application no. 36458/02.

⁷⁵ See European Court of Human Rights, Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights, https://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf (accessed 02.12.22).

⁷⁶ ECtHR judgment of 19 October 2012 in *Catan and Others v the Republic of Moldova and Russia*, Applications nos 43370/04, 8252/05 and 18454/06.

⁷⁷ *Ibid.*, para. 144.

primary, but also at the secondary and even at the university levels. Nonetheless, there has been no convincing evidence so far that the Court has recognized that the right to education includes the right of minorities, especially indigenous peoples, to receive mother tongue instruction, despite some conclusions stemming from the above-mentioned judgments.

Nonetheless, because the European Convention on Human Rights is a ‘living instrument’, subject to interpretation, in my opinion, it is likely that the ECtHR will eventually rule in favour of the right to mother tongue education, through e.g. the systemic approach to international human rights law.⁷⁸

4.2. COUNCIL OF EUROPE

The Council of Europe, acknowledging the necessity to strengthen the political pluralism and cultural diversity in Europe, prepared two treaties aimed at enhancing human rights: the Framework Convention for the Protection of National Minorities⁷⁹ and the European Charter for Regional or Minority Languages⁸⁰.

The Framework Convention is a first legally binding document of that nature. Article 14 addresses not only the right to learn a minority language but also the state obligation to endeavour to ensure adequate opportunities to minority groups for being taught their language or in their language. Nonetheless, this provision is subject to multiple restrictions, such as that there needs to be sufficient demand of the substantial number of persons belonging to minorities. In addition, the provision does not require any positive action, especially financial obligations.⁸¹ In sum, although the importance of mother tongue education is noted in the Framework Convention, due to the very wide margin of discretion granted to states, its impact on the right to mother tongue education for minorities is limited.

The first document devoted specifically to minority languages was the Council of Europe’s European Charter for Regional or Minority Languages (ECRML). Its main goal was to strengthen the cultural pluralism in Europe, and although it focuses on the minority language, not on minorities or indigenous peoples them-

⁷⁸ A. Fuentes, 2017, *op. cit.*

⁷⁹ Framework Convention for the Protection of National Minorities, Council of Europe, 1 February 1995 (ETS 157).

⁸⁰ European Charter for Regional or Minority Languages, Council of Europe, 5 November 1992 (ETS 148).

⁸¹ As indicated by the Advisory Committee in the *travaux préparatoires*, Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, Compilation of Opinions of the Advisory Committee relating to Article 14 of the Framework Convention for the Protection of National Minorities 4th Cycle, 2017, <https://rm.coe.int/1680648f95> (accessed 04.12.2022).

selves, it is of great relevance to the protection of distinctive European cultures.⁸² The ECRML is ‘the only internationally binding instrument focused on minority language protection’.⁸³ It has been drawn up despite a popular presumption that if there is no ban on speaking a certain language, there is no need for additional protection.⁸⁴ The Charter aims to protect regional and minority languages, recognizing them as cultural heritage, which is essential for the development of democracy and cultural diversity in Europe.⁸⁵ The Charter was designed to protect the traditionally used languages and preserve them in line with the value of multilingualism and interculturalism.⁸⁶ Through ratification, States parties officially declare they shall actively endorse financially or through other means regional and minority languages, among others in the field of education.⁸⁷

Therefore, the Charter has undoubtedly set new international standards pertaining to cultural diversity and language.⁸⁸ Additionally, it supports one of the pillars of the Council of Europe, i.e. multilingualism, by providing broader protection for regional and minority languages and shaping language policies in the States parties to the Charter.⁸⁹ Nonetheless, the ECRML does not establish any rights for minorities, including the right to mother tongue education, even though those minorities are, in fact, the primary beneficiaries of those language policies.

4.3. ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE

The standards regarding linguistic rights in Europe have been significantly influenced by numerous initiatives of the Organization for Security and Co-operation in Europe.⁹⁰ The document of particular importance is the Hague Rec-

⁸² J.-M. Woehrling, (in:) A. N. López, E. J. R. Vieyetz, I. U. Libarona (eds), *Shaping Language Rights. Commentary on the European Charter for Regional or Minority Languages in Light of the Committee of Experts' Evaluation*, Strasbourg: Council of Europe Publishing 2012, p. 9.

⁸³ T. Soldat-Jaffe, *The European Charter for Regional or Minority Languages: A Magnum Opus or an Incomplete Modus Vivendi?* ‘Journal of Multilingual and Multicultural Development’ 2015, Vol. 36(4), p. 372.

⁸⁴ J.-M. Woehrling, 2012, *op. cit.*, p. 13.

⁸⁵ See Preamble to the European Charter for Regional and Minority Languages.

⁸⁶ *Ibid.*

⁸⁷ P. McDermott, *Language Rights and the Council of Europe: A Failed Response to a Multilingual Continent?* ‘Ethnicities’ 2017, Vol. 17(5), p. 610.

⁸⁸ S. McMonagle, *The European Charter for Regional or Minority Languages: Still Relevant in the Information Age?* ‘Journal on Ethnopolitics and Minority Issues in Europe’ 2012, Vol. 11(2), p. 6.

⁸⁹ Excluding immigrants, cf. A. Kozhemyakov, *The European Charter for Regional Minority Languages: Ten Years of Protecting and Promoting Linguistic and Cultural Diversity*, ‘Museum International’ 2008, Vol. 60(3), p. 34.

⁹⁰ Previously the Conference on Security and Co-operation in Europe (CSCE), renamed the OSCE in 1995.

ommendations Regarding the Education Rights of National Minorities, which contributed immensely to the standard of mother tongue education for minorities, despite the claim that it simply provides a reference for states and compilation of the already existing rights and state obligations.⁹¹ It is particularly highlighted that education in one's native language is important during the early years: in kindergarten and primary school. The Explanatory Note to the Hague Recommendations provides a wider context for and interpretation of the provisions on education in the languages of minorities. Importantly, it is thoroughly explained why multilingualism is the 'most effective way of meeting the objectives of international instruments relating to the protection of national minorities'. The Hague Recommendations also highlight the significant role of teachers, who should not only be bilingual but also have 'a good understanding of the children's cultural and linguistic background'.⁹² Therefore, to achieve the goal, the training of teachers should be adequately facilitated by states.

Although this claim is generally supported by the academia as strengthening 'cognitive and emotional capabilities of the child while simultaneously allowing different languages to reinforce each other',⁹³ some researchers argue otherwise. Bilingual education, in view of some pedagogues, psychologists, sociologists and linguists, inevitably aims at assimilation but also 'causes serious linguistic, mental, psychological, cognitive, educational, social and economic damage'.⁹⁴ Moreover, it may bring numerous learning and literacy problems, and eventually children are 'not being able to develop any language in which to fully express themselves or to follow the curriculum'.⁹⁵ At the same time, it is noted that if the second language is introduced after the persons' mother tongue is fully developed, the risk of possible damage is significantly lower. Therefore, it can be concluded that the OSCE policies regarding bi- or multilingual education can be beneficial to individuals if implemented with due caution.

In sum up, the influence of the Organization for Security and Co-operation in Europe and the OSCE High Commissioner on the standard of mother tongue education for minorities is undisputed. The OSCE recommendations reduce barriers for individuals belonging to minority communities, while emphasizing state obligations.

⁹¹ The Hague Recommendations Regarding the Education Rights of National Minorities, OSCE High Commissioner on National Minorities, October 1996. The Oslo Recommendations Regarding the Linguistic Rights of National Minorities were released in 1998. It is confirmed there that the use of minority languages by minorities 'in public or in private' cannot be fulfilled without making a reference to education; see The Oslo Recommendations Regarding the Linguistic Rights of National Minorities and Explanatory Note, OSCE High Commissioner on National Minorities, February 1998.

⁹² The Hague Recommendations, paras 12, 13, 14.

⁹³ S. S. Åkermark, 2012, *op. cit.*, p. 226.

⁹⁴ V. Çoşkun, M. Şerif Derince, N. Uçarlar, 2011, *op. cit.*, p. 90.

⁹⁵ *Ibid.*, p. 91.

5. CONCLUSION

The purpose of this study has been to compare and evaluate the existing normative standards set by both in regional and international organizations in human rights treaties regarding the mother tongue education for indigenous peoples. It is concluded that there exists such human right. The discussion above suggests that although it still cannot be said that there is a legally binding right to the mother tongue education, and that states have the obligation to provide schooling with mother tongue as the language of instruction for minorities and indigenous peoples, there are several indications that imply such human right might soon be established.

It is already recognized that education needs to be free for all, especially at the primary level, which in addition must be compulsory. Moreover, it is repeatedly stressed that education should be aimed at the full development of the person. This paper has aimed to show that such development is only possible when minority children can participate in classes in their own language, especially at the initial stages of their education. Later, as suggested by the Hague Recommendations as well as in the UNESCO Universal Declaration on Cultural Diversity, to facilitate (an acceptable) integration with the society, bilingual education might be encouraged. Despite the fact that bilingual and multilingual education is presumably an excellent idea for indigenous children, the relevant state policy should be pursued with extreme caution to prevent discrimination and assimilation.

What is more, indigenous peoples have the right to establish their own educational institutions. It is, however, repeatedly highlighted in the documents, and confirmed by human rights bodies, that this provision does not impose any financial obligations on states. I strongly believe that a shift in interpretation is needed, and it is high time the scope of this provision was extended to oblige states to provide necessary facilities for minorities' schools. The findings of this study point to the likelihood that such right will be acknowledged in international and regional human rights law.⁹⁶

The findings of this paper underpin the idea that indigenous peoples should have a right to mother tongue education, especially because native languages urgently need revitalization to prevent them from becoming extinct. An effective action is required to protect the linguistic heritage and cultural distinctiveness.

Education is a powerful instrument. As stated by the CESCR, 'the importance of education is not just practical: a well-educated, enlightened and active

⁹⁶ The binding standard can be defined through different means, for instance, by re-evaluation of the current standard in international courts and tribunals, in line with the systemic interpretation. See the discussion in A. Fuentes, 2017, *op. cit.* Nonetheless, the question on how to deal with the gap in this respect, including potential restrictions on the right to education, is a matter to be resolved by future research.

mind, able to wander freely and widely, is one of the joys and rewards of human existence.”⁹⁷ I strongly believe that states should be obligated to support every individual, especially native people, in their journey towards personal wisdom and awareness, as well as the indigenous communities in their quest for fostering their heritage and cultural identity. Such pursuit cannot be realized fully if the fundamental education is not conducted in indigenous minorities’ language of instruction. Therefore, it is necessary to advocate for the mother tongue education which is available and free.

REFERENCES

- Aikio-Puoskari U., *The Ethnic Revival, Language and Education of the Sámi, an Indigenous People, in Three Nordic Countries (Finland, Norway and Sweden)*, (in:) T. Skutnabb-Kangas et al. (eds), *Social Justice through Multilingual Education*, Bristol 2009
- Åkermark S. S., *Minority Education – Torn in Contradictions?* ‘European Yearbook of Minority Issues’ 2012, Vol. 9(1)
- Anaya S. J., *Indigenous Peoples in International Law*, Oxford 2004
- Beiter K. D., *The Protection of the Right to Education by International Law*, Leiden, Boston 2006
- Belgian Linguistic Case*, Applications nos 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, ECtHR judgment of 23 July 1968
- Campbell and Consans v the United Kingdom*, Application no. 7511/76, ECtHR judgment of 25 February 1982
- Castellino J., *Order and Justice: National Minorities and the Right to Secession*, ‘International Journal on Minority and Group Rights’ 1999, Vol. 6(4)
- Catan and Others v the Republic of Moldova and Russia*, Applications nos 43370/04, 8252/05 and 18454/06, ECtHR judgment of 19 October 2012
- Chen A., *The Philosophy of Language Rights*, ‘Language Sciences’ 1998, Vol. 20(1)
- Convention for the Protection of Human Rights and Fundamental Freedoms, as amended and supplemented, Council of Europe, Rome, 4 November 1950
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), United Nations GA Resolution 34/180, 18 December 1979
- Convention on the Rights of Persons with Disabilities (CRPD), United Nations GA Resolution A/RES/61/106, 13 December 2006
- Çoşkun V., Derince M. Şerif, Uçarlar N., *Scar of Tongue: Consequences of the Ban on the Use of Mother Tongue in Education and Experiences of Kurdish Students in Turkey*, Yenişehir/Diyarbakir: Disa Publications 2011

⁹⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1990/10, para. 1.

- Daniels L., *Expressions of Policy Effects: Hearing Memories of Indian Residential Schools*, (in:) T. Strong-Wilson et al. (eds), *Productive Remembering and Social Agency*, Brill 2013
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, United Nations GA Resolution A/RES/47/135, 18 December 1992
- European Charter for Regional or Minority Languages, Council of Europe, 5 November 1992 (ETS 148)
- Framework Convention for the Protection of National Minorities, Council of Europe, 1 February 1995 (ETS 157)
- Fribergh E., Kjaerum M., *Handbook on European Non-Discrimination Law*, European Court of Human Rights, Strasbourg: Council of Europe 2011
- Fuentes A., *Cultural Diversity and Indigenous Peoples' Land Claims: Argumentative Dynamics and Jurisprudential Approach in the Americas*, PhD thesis, University of Trento 2012
- Fuentes A., *Expanding the Boundaries of International Human Rights Law. The Systemic Approach of the Inter-American Court of Human Rights*, 'European Society of International Law. Conference Paper Series' September 2017, Vol. 10(3), Paper No. 13/2017
- Grote R., *On the Fringes of Europe: Europe's Largely Forgotten Indigenous Peoples*, 'American Indian Law Review' 2006, Vol. 31(2)
- Henrard K., *International Perspectives on Minorities' Rights and Mother Tongue Education. Equality, Identity, and Integration*, (in:) T. Skutnabb-Kangas, R. Phillipson (eds), *Language Rights*, London 2016
- Hilpold P., *UN Standard-Setting in the Field of Minority Rights*, 'International Journal on Minority and Group Rights' 2007, Vol. 14(2–3)
- Horst Ch., *The Right to Mother Tongue Education*, (in:) S. Kiefer, K. Sallamaa (eds), *European Identities in Mother Tongue Education*, Linz: Pädagogische Akademie des Bundes in Oberösterreich 2005
- Indigenous and Tribal Peoples Convention (No. 169), International Labour Organization, 27 June 1989 (ILO C169)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), United Nations GA Resolution 2106 (XX), 21 December 1965
- International Covenant on Civil and Political Rights (ICCPR), United Nations GA Resolution 2200A (XXI), 16 December 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR), United Nations GA Resolution 2200A (XXI), 16 December 1966
- Irfan Temel and Others v Turkey*, Application no. 36458/02, ECtHR judgment of 3 March 2009
- Jacob W. J., *Strategies for Overcoming Linguistic Genocide: How to Avoid Macroaggressions and Microaggressions that Lead toward Indigenous Language Annihilation*, (in:) W. J. Jacob, Sh. Y. Cheng, M. K. Porter (eds), *Indigenous Education: Language, Culture and Identity*, Dordrecht 2015
- Jacob W. J., Cheng Sh. Y., Porter M. K., *Global Review of Indigenous Education: Issues of Identity, Culture, and Language*, (in:) W. J. Jacob, Sh. Y. Cheng, M. K. Porter (eds), *Indigenous Education: Language, Culture and Identity*, Dordrecht 2015

- Joseph S., Castan M., *The International Covenant on Civil and Political Rights: Cases, Materials and Political Rights*, Oxford: Oxford University Press 2013
- Keskitalo P., Olsen T., *Historical and Political Perspectives on Sámi and Inclusive School Systems in Norway*, (in:) M. C. Beaton et al. (eds), *Including the North: A Comparative Study of the Policies on Inclusion and Equity in the Circumpolar North*, Rovaniemi 2019
- Khanolainen D., Nesterova Y., Semenova E., *Indigenous Education in Russia: Opportunities for Healing and Revival of the Mari and Karelian Indigenous Groups?* 'Compare: A Journal of Comparative and International Education' 2022, Vol. 52(5)
- Kiefer S., Sallamaa K. (eds), *European Identities in Mother Tongue Education*, Linz: Pädagogische Akademie des Bundes in Oberösterreich 2005
- Kozhemyakov A., *The European Charter for Regional Minority Languages: Ten Years of Protecting and Promoting Linguistic and Cultural Diversity*, 'Museum International' 2008, Vol. 60(3)
- Kroon S., *Mother Tongue and Mother Tongue Education*, (in:) J. Bourne, E. Reid (eds), *Language Education*, London 2003
- Kymlicka W., *Theorizing Indigenous Rights*, 'The University of Toronto Law Journal' 1999, Vol. 49(2)
- Lee S.-H. et al., *Self-Determination and Access to the General Education Curriculum*, 'The Journal of Special Education' 2008, Vol. 42(2)
- May S., Aikman Sh., *Indigenous Education: Addressing Current Issues and Developments*, 'Comparative Education' 2003, Vol. 39(2)
- McDermott P., *Language Rights and the Council of Europe: A Failed Response to a Multilingual Continent?* 'Ethnicities' 2017, Vol. 17(5)
- McMonagle S., *The European Charter for Regional or Minority Languages: Still Relevant in the Information Age?* 'Journal on Ethnopolitics and Minority Issues in Europe' 2012, Vol. 11(2)
- O'Dowd M., *The Sámi People in Scandinavia: Government Policies for Indigenous Language Recognition and Support in the Formal Education System*, (in:) W. J. Jacob, Sh. Y. Cheng, M. K. Porter (eds), *Indigenous Education: Language, Culture and Education*, Dordrecht 2015
- O'Keefe R., *The 'Right to Take Part in Cultural Life' under Article 15 of the ICESCR*, 'The International and Comparative Law Quarterly' 1998, Vol. 47(4)
- Olsen Harper A., Thompson Sh., *Structural Oppressions Facing Indigenous Students in Canadian Education*, 'Fourth World Journal' 2017, Vol. 15(2)
- Singh K., *UNESCO's Convention against Discrimination in Education (1960): Key Pillar of the Education for All*, 'International Journal for Education Law and Policy' 2008, Vol. 4
- Skutnabb-Kangas T., Dunbar R., *Indigenous Children's Education as Linguistic Genocide and a Crime against Humanity? A Global View*, 'Gáldu Čála. Journal of Indigenous Peoples Rights' 2010, No. 1
- Skutnabb-Kangas T., *Multilingualism and the Education of Minority Children*, 'Estudios Fronterizos' 1989, Vol. 8(18–19)

- Skutnabb-Kangas T., *The Role of Mother Tongues in the Education of Indigenous, Tribal, Minority and Minoritized Children: What Can be Done to Avoid Crimes against Humanity?* (in:) P. W. Orelus (ed.), *Affirming Language Diversity in Schools and Society. Beyond Linguistic Apartheid*, New York 2014
- Soldat-Jaffe T., *The European Charter for Regional or Minority Languages: A Magnum Opus or an Incomplete Modus Vivendi?* 'Journal of Multilingual and Multicultural Development' 2015, Vol. 36(4)
- Stoop Ch., *Children's Rights to Mother-Tongue Education in a Multilingual World: A Comparative Analysis between South Africa and Germany*, PER/PELJ 2017, Vol. 20
- Szozskiewicz Ł., *Linguistic Human Rights in Education*, 'Adam Mickiewicz University Law Review' 2017, Vol. 7
- The Hague Recommendations Regarding the Education Rights of National Minorities, OSCE High Commissioner on National Minorities, October 1996
- The Oslo Recommendations Regarding the Linguistic Rights of National Minorities and Explanatory Note, OSCE High Commissioner on National Minorities, February 1998
- The United Nations Permanent Forum on Indigenous Issues, *Together We Achieve*, <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/04/Indigenous-Languages.pdf> (accessed 04.12.2022)
- The United Nations, *Indigenous Peoples and Ethnic Minorities: Marginalization is the Norm*, (in:) *Promoting Inclusion through Social Protection*, Report on the World Social Situation, September 2018
- The United Nations, *Indigenous Peoples' Right to Education*, https://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/Backgrounder_Indigenous_Day_2016.pdf (accessed 04.12.2022)
- Thornberry P., *International Law and the Rights of Minorities*, Oxford 1991
- Transforming our World: The 2030 Agenda for Sustainable Development, United Nations GA Resolution A/RES/70/1, 25 September 2015
- UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1990/10
- UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 21, Right of everyone to take part in cultural life (Art. 15, para. 1(a), of the International Covenant on Economic, Social and Cultural Rights), 21 December 2009, E/C.12/GC/21
- UN Committee on the Rights of the Child (CRC), General Comment No. 1 (2001), Article 29(1): The aims of education, 17 April 2001, CRC/GC/2001/1
- UN Committee on the Rights of the Child (CRC), General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (Art. 31), 17 April 2013, CRC/C/GC/17
- UN Human Rights Committee, CCPR General Comment No. 23: Article 27 (Rights of Minorities), 8 April 1994, CCPR/C/21/Rev.1/Add.5, adopted at the fiftieth session of the HRC
- UNESCO Convention against Discrimination in Education, Paris, 14 December 1960
- UNESCO Mexico City Declaration on Cultural Policies, adopted at the World Conference on Cultural Policies, Mexico City, 26 July–6 August 198

-
- UNESCO Universal Declaration on Cultural Diversity, Paris, 2 November 2001
- Universal Declaration of Human Rights (UDHR), United Nations GA Resolution 217, 10 December 1948
- Varennès J. de, *Language, Minorities and Human Rights*, Brill 2021
- Wisthaler V., *The Right to Education for Minorities: An Overview on Existing Recommendations from The Hague to Geneva*, 'European Yearbook of Minority Issues Online' 2011, Vol. 8(1)
- Woehrling J.-M., (in:) A. N. López, E. J. R. Vieyetez, I. U. Libarona (eds), *Shaping Language Rights. Commentary on the European Charter for Regional or Minority Languages in Light of the Committee of Experts' Evaluation*, Strasbourg: Council of Europe Publishing 2012