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La CEDU su insegnante serbo licenziato per non aver tenuto lezioni in croato
(CEDU, sez. I, sent. 17 dicembre 2020, ric. n. 73544/14)

La Corte Edu si pronuncia sul caso del sig. Novakovic, un insegnante di etnia serba, il quale lamentava un ingiusto licenziamento, subito nel 1999, per aver tenuto le sue lezioni in serbo anziché in croato, come previsto dalla legislazione nazionale di riferimento. Il ricorrente aveva vissuto e lavorato in Croazia per la maggior parte della sua vita professionale e al momento del suo licenziamento lavorava in una scuola media nell'Est Slavonia, in un'area che dopo la guerra era stata reintegrata pacificamente nel territorio croato. Le autorità avevano ritenuto impossibile che il Novakovic imparasse il croato, al punto da farne lingua di insegnamento, avendo già 55 anni all'epoca dei fatti. Il ricorrente ha contestato il suo licenziamento innanzi ai giudici nazionali, adendo anche la Corte Costituzionale, ma invano. Di qui la scelta di rivolgersi alla Corte Edu, denunciando la violazione dell'art. 8 (diritto alla vita privata), dell'art. 14 (divieto di discriminazione) e dell'articolo 1 del Protocollo n. 12 (divieto generale di discriminazione), lamentando l'arbitrarietà del suo licenziamento, fondato su una discriminazione in ragione della sua età ed etnia. In primo luogo, la Corte ha valutato ed ammesso l'applicabilità dell'art.8 Cedu al caso di specie, in quanto le ragioni del licenziamento (utilizzo del serbo nel lavoro quotidiano e presunta incapacità di modificare la sua lingua di insegnamento a causa dell'età) afferiscono certamente alla vita privata del ricorrente: la lingua attiene all'identità etnica, l'età all'identità fisica di una persona. Il Governo aveva sostenuto che il licenziamento del ricorrente fosse stato necessario per tutelare il diritto degli alunni ad un'istruzione in lingua croata. La Corte, pur non mettendo in discussione l'importanza di tale motivazione nel contesto della Slavonia orientale in quel momento storico, ha osservato che non era stata presa in considerazione alcuna alternativa al licenziamento, in modo da consentire al ricorrente di uniformare il suo insegnamento alla legislazione in vigore. In particolare, la scuola non aveva esplorato la possibilità di una formazione specifica, escludendo che il ricorrente potesse migliorare le proprie competenze linguistiche, esclusivamente in ragione dell'età e degli anni di servizio. Inoltre, né la scuola, né i tribunali nazionali avevano mai fornito una spiegazione dettagliata e convincente del motivo per cui l'età del ricorrente avrebbe comportato un impedimento insormontabile a seguire una formazione aggiuntiva che gli consentisse di insegnare in lingua croata, soprattutto in considerazione dell'innegabile assonanza delle due lingue interessate, nonché del fatto che il ricorrente aveva vissuto e lavorato in Croazia per la maggior parte della sua vita professionale. Peraltro, i Giudici di Strasburgo hanno stigmatizzato la circostanza che l'ispezione da cui era scaturito il licenziamento di Novakovic, fosse stata eseguita solo nei confronti di insegnanti di origine etnica serba.
Di qui la dichiarazione, con sei voti contro uno, dell'avvenuta violazione dell'art. 8 (diritto al rispetto della vita privata) della Convenzione, ritenendo assorbiti gli altri motivi di ricorso.

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MILE NOVAKOVIĆ v. CROATIA

(*Application no. 73544/14*)

JUDGMENT

STRASBOURG

17 December 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mile Novaković v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Krzysztof Wojtyczek, *President*,

Ksenija Turković,

Linos-Alexandre Sicilianos,

Alena Poláčková,

Erik Wennerström,

Raffaele Sabato,

Lorraine Schembri Orland, *judges*,

and Renata Degener, *Deputy Section Registrar*,

Having regard to:

the application against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Mr Mile Novaković ("the applicant"), on 17 November 2014;

the decision to give notice to the Croatian Government ("the Government") of the complaints concerning the right to respect for private life and discrimination and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 10 November 2020,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applicant worked as a secondary school teacher in Eastern Slavonia and was dismissed for failing to use the standard Croatian language when teaching. The authorities held that the applicant could not be expected to learn Croatian, given that he was fifty-five years old at the time. The applicant complains that his dismissal was arbitrary and that he was discriminated against on the basis of his age and his Serbian ethnic origin.

THE FACTS

2. The applicant was born in 1944 and lived in Darda. He was initially represented by Ms B. Paprić and subsequently by Mr H. Krivić, both lawyers practising in Osijek. On 11 December 2019 the applicant's legal representative informed the Court that the applicant had died on 2 June 2019 and that his widow, Ms Ljubica Novaković, and their two children, Ms Biljana Vuković and Mr Dejan Novaković, had stated that they would like the applicant's case to proceed.
3. The Government were represented by their Agent, Ms Š. Stažnik.
4. The facts of the case, as submitted by the parties, may be summarised as follows.
5. The applicant was of Serbian ethnic origin and studied in Serbia. He worked as a teacher in Croatia from 1971 onwards.
6. From 1 July 1998 onwards the applicant was employed on the basis of a contract of indefinite duration as a teacher at the Second Secondary School in the Darda Region ("the School"). The Darda Region is an area in Eastern Slavonia which was peacefully reintegrated after the war into Croatian territory by 15 January 1998.
7. The applicant taught classes attended by students of various ethnic origins, including Croatian and Serbian, some of whom had returned to Darda after they had had to flee in 1991.
8. In the school year 1997/98, while the peaceful reintegration process was still ongoing, the applicant taught at the School in the Serbian language. The following school year, according to the Government, the School began to apply section 4 of the Secondary Education Act (Zakon o srednjem školstvu, see paragraph 24 below), which provided that all classes in the Republic of Croatia were to be held in the Croatian language. It appears that some other larger schools in the region continued to provide separate classes in minority languages, including Serbian.
9. On 19 November 1998, on the basis of an anonymous complaint by students of Croatian origin alleging that the applicant and three other teachers of Serbian origin were not using the standard Croatian language when teaching, an education inspector attended their classes. No teacher of Croatian origin was subject to inspection at that occasion.
10. In a report dated 4 December 1998 the education inspector held that the applicant and another teacher had not been using the standard Croatian language in their classes, whereas two other teachers had been complying with that requirement. The inspector recommended that the applicant be prohibited from teaching classes which were to be provided in the Croatian language.
11. On the basis of those findings, on 7 December 1998 a senior education inspector from the Ministry of Education and Sports (Ministarstvo prosvjete i športa, hereinafter "the Ministry") prohibited the applicant from teaching in classes which were to be provided in the Croatian language. That decision was challenged in administrative proceedings, with the Administrative Court (Upravni sud Republike Hrvatske) ultimately setting it aside in 2006, on the grounds that the

question of which language the classes at the School were meant to be taught in at the material time had not been conclusively established.

12. By a letter addressed to the Ministry dated 17 December 1998, the principal of the School replied to the findings of the inspector and her conclusions dated 4 December 1998 (see paragraph 10 above), explaining that classes at the School had not been formed according to the ethnic origin of pupils, but that the pupils agreed to have classes together. Twenty-four pupils were of Serbian origin and ten were of Croatian origin; similarly, some teachers were of Serbian origin and some were of Croatian origin. At the end of October 1998 the School had received an oral directive from the competent authority to hold classes only in Croatian, and the inspection had taken place less than a month after that instruction had been received. The principal also requested an instruction as to the deadline by which the teachers should master the standard Croatian language necessary for teaching their classes.

13. Subsequently, relying on the findings of the education inspector and the decision that the applicant should be prohibited from teaching (see paragraphs 10 and 11 above), on 29 March 1999 the School dismissed the applicant from his teaching position owing to personal reasons ("osobno uvjetovani otkaz"). That decision, in so far as relevant, read as follows:

"The employer cannot transfer [the applicant] to another post in the school, because there are no such posts – there is no class which follows lessons in the Serbian language in which [the applicant] could work, bearing in mind his profession.

The school cannot provide [the applicant] with [further] education or training, because given his age (55) and years of service (29), it is not justified to expect [the applicant] to be able to change [his] permanent characteristics and capabilities and learn how to teach in the standard Croatian language."

14. On 6 May 1999 the applicant lodged a civil action with the Beli Manastir Municipal Court (Općinski sud u Belom Manastiru), challenging the decision on his dismissal.

15. On 10 March 2008 the Beli Manastir Municipal Court dismissed the applicant's civil action, upholding the reasons for his dismissal relied upon by the school. It held as follows:

"Given that classes in [the School] were given exclusively in the Croatian language and that it has been shown that the applicant did not teach in Croatian, the court [has] concluded that, when dismissing [the applicant], the defendant had not formed a class in which [the applicant] would have been able to teach in the Serbian language, which justifies [his] dismissal for personal reasons; the fact that [the applicant] had taught in Serbian for 28 years is a circumstance which arguably leads to the conclusion that it was not justified to expect [the School] to provide [the applicant] with additional education and training in the Croatian language, bearing in mind that he was 55 years of age ..."

16. The applicant lodged an appeal with the Osijek County Court (Županijski sud u Osijeku), which was dismissed on 29 January 2009.

17. The applicant then lodged an appeal on points of law with the Supreme Court (Vrhovni sud Republike Hrvatske), which on 13 July 2010 dismissed his appeal on points of law as unfounded.

18. On 31 January 2011 the applicant lodged a constitutional complaint with the Constitutional Court (Ustavni sud Republike Hrvatske), complaining that he had been arbitrarily dismissed for discriminatory reasons on the basis of his Serbian ethnic origin, and that his right to work had been violated, as had his right to equality as a member of a national minority and in the performance of public service.
19. On 6 June 2014 the Constitutional Court dismissed the applicant's constitutional complaint, on the grounds that there was no doubt that the applicant, like any other teacher in Croatia, was required to teach courses in the standard Croatian language, and that his inability to do so had led to his lawful dismissal. The Constitutional Court therefore did not see any arbitrariness or discrimination in the decision to dismiss the applicant.
20. The decision of the Constitutional Court was served on the applicant's representative on 3 July 2014.

RELEVANT LEGAL FRAMEWORK

I. Relevant domestic law

21. The relevant provisions of the Constitution of the Republic of Croatia (Ustav Republike Hrvatske, Official Gazette no. 56/90 with subsequent amendments) read as follows:

Article 14

"All persons in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other status."

Article 15

"1. Equal rights for the members of all national minorities in the Republic of Croatia shall be guaranteed.
2. Equality and protection of the rights of national minorities shall be regulated by a constitutional Act to be enacted under the procedure provided for organic laws."

Article 29 § 1

"Everyone shall be entitled to have his or her rights and obligations, or [a] suspicion or accusation [against him or her in respect] of a criminal offence, decided upon fairly and within a reasonable time by an independent and impartial court established by law."

Article 54

"1. Everyone shall have the right to work and [the right] to freedom of work.
2. Everyone shall be free to choose his or her vocation and occupation, and shall have access to every workplace and post under equal conditions."

22. The relevant provisions of the Labour Act (Zakon o radu, Official Gazette no. 38/95 with subsequent amendments), as in force at the material time, read as follows:

Section 106

"(1) If there is a justified reason, an employer may give notice to terminate an employment contract, subject to the statutory or agreed notice period ('regular dismissal'), in the following cases:
...
- if the employee is not capable of fulfilling his or her employment-related duties because of a permanent characteristic or [lack of] ability ('dismissal for personal reasons');
...
(2) Dismissal for professional or personal reasons is allowed only if the employer cannot employ the employee in another post ['reclassement'].
(3) When deciding on a dismissal for professional or personal reasons, the employer must take into account the employee's age, years of service and maintenance obligations.
(4) Dismissal for professional or personal reasons is allowed only if the employer cannot educate or train the employee to work on other tasks, or if there are circumstances which make it unreasonable to expect to the employer educate or train the employee to work on other tasks ..."

Section 112

"1. If the employer is terminating an employment contract in [a] case where this Act provides for the existence of a justified reason, [the burden] is on the employer to prove the existence of such a justified reason for terminating [the contract]."

23. The relevant provisions of the Constitutional Act on the Rights on National Minorities (Ustavni zakon o pravima nacionalnih manjina, Official Gazette no. 155/02 with subsequent amendments) provide as follows:

Article 10

"Members of national minorities have the right to freely use their language and script in private as well as in public... in accordance with the [relevant] law."

Article 11

"1. Members of national minorities have the right to be educated in their language and script.
2. Care and education of members of national minorities is provided for in preschool institutions, elementary and secondary schools... with classes in the language and script which they use, under the conditions and in the manner prescribed by law on care and education in language and script of national minorities..."

24. The relevant provisions of the Secondary Education Act (Zakon o srednjem školstvu, Official Gazette no. 19/92 with subsequent amendments) read as follows:

Section 4

"1. Secondary school classes shall be held in the Croatian language and using Latin script."

Section 5

"Secondary education of children belonging to national minorities shall be realised in accordance with the provisions of the Act on care and education in the language and script of national minorities, the provisions of this Act and other legal texts."

25. The Act on care and education in the language and script of national minorities (Zakon o odgoju i obrazovanju na jeziku i pismu nacionalnih manjina, Official Gazette no. 51/00 with subsequent amendments) provides for the right of members of national minorities to be provided education in their own languages, either by forming special schools or special classes. In the school year 2018/2019 there were 44 schools in Croatia providing education fully in the language of national minorities, 4 schools performing bilingual curriculum and 180 schools which provided special classes of language and culture of national minorities.
26. Section 17 of the Act on Educational Inspection (Zakon o prosvjetnoj inspekciji, Official Gazette nos. 50/95 and 73/97), in force at the material time, read as follows:

"2. Based on the findings of a professional pedagogical supervisor or another person ..., the inspector may:
- order the teacher ... to [correct] established failures, mistakes or errors in his or her work,
- prohibit the teacher ... from performing educational activities."

II. Relevant domestic practice

27. In judgment Gž-1518/2005-2, the Bjelovar County Court (Županijski sud u Bjelovaru) held as follows:

"... the plaintiff was employed as a bartender in a hospitality establishment [bar] owned by the defendant at the bus station in B. ... the defendant decided to cease the operation of the [bar] at the bus station in B. ..., rented that [bar to somebody else] and terminated the employment contracts of all employees ... The court cannot accept the plaintiff's argument: that the defendant failed to take into account his family and personal circumstances despite [the defendant's] obligation to do so because, had [the defendant] done that, [the defendant] would have realised that he [the plaintiff] would be left without any means of subsistence and that, at the age of 52, he would have no further possibilities of finding new employment. ... section 106(3) of the Labour Act provides that when deciding to terminate an employment contract for professional reasons, the employer must take into account the length of employment, age and maintenance obligations of the employee; however, the employer must also take into account [those factors] when, owing to organisational reasons, the need for all employees to perform a certain type of task has ceased, in other words, when the number of persons performing certain tasks is reduced. In the present case, the defendant ceased operating

secondary hospitality services [the bar] and the need for all employees to perform all tasks in that regard ceased, in which case the employer had an obligation to consider the possibility of training the employees for another post, as provided for in section 106(4) of the Labour Act, which the defendant, as the employer, did, but there were no available posts in which the plaintiff could be employed; the only possibility was to train him to be a [bus] driver, which, taking into account the fact that the plaintiff is 52 years old and that, in addition to a category D driving licence, the post also required a certain number of years of work experience, it was indeed not justified to expect the defendant to train the plaintiff to work in such a post ..."

III. Relevant international material

28. The Council of Europe's Framework Convention for the Protection of National Minorities, which entered into force in respect of Croatia on 1 February 1998, provides as follows:

Article 5

"1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage."

29. In its First Report on Croatia CRI (49) 98, adopted on 9 November 1999, the European Commission Against Racism and Intolerance (ECRI) stated as follows:

"H. School Education
...
21. ECRI notes with interest the reintegration of the education system in Eastern Slavonia into the Croatian school system and the collaboration between the Croatian authorities and the representatives of the Serb community. This allowed the adoption of a curriculum for Serb majority schools in time for the 1997-1998 school year and the conclusion of agreements, notably as concerns the appointment of Serbian teachers and school directors, the supply of bilingual textbooks and the use of the Serbian language. Some problems in the implementation of these agreements have been noted. ECRI considers that continued joint efforts to find solutions to cultural and educational problems, particularly in this region, will enhance the establishment of a harmonious cohabitation between the Croatian and Serbian communities.
I. Employment
22. The catastrophic economic situation in Western Slavonia and the Knin region makes life very difficult for all inhabitants, whether they be Serbian or Croatian. However, Serbs and other minorities are reported to be disproportionately affected by unemployment as well as by layoffs and dismissals, and the few jobs that become available are reported to be more likely to be offered to Croats than to Serbs. ECRI feels that firm measures are needed to address these problems and that all possible efforts should be made to ensure that the existing anti-discrimination employment legislation is efficiently implemented in practice.

23. ECRI underlines the importance of a diverse ethnic composition of the body of civil servants. Recruitment among members of minority groups should therefore be encouraged. In this respect, ECRI expresses concern at reports of dismissal of non-Croatian civil servants, notably judicial officers, allegedly based on ethnicity, and urges the authorities to investigate these cases and provide effective mechanism of redress where appropriate."

30. In its Second Report on Croatia CRI (2001) 34, adopted on 15 December 1999, the European Commission Against Racism and Intolerance stated as follows:

"I. Employment
44. As ECRI noted in its first report, the catastrophic economic situation and high levels of unemployment in Western and Eastern Slavonia and the Knin region make life very difficult for all inhabitants, no matter what their ethnic background. However, members of minority groups continue to be disproportionately affected by such unemployment. Furthermore, a very large percentage of the Roma/Gypsy community in the Republic of Croatia is unable to find employment. ECRI believes that indirect and direct discrimination frequently play a large part in explaining this phenomenon. ECRI reiterates its belief that firm measures are needed to address these problems and that all possible efforts should be made to ensure that the existing anti-discrimination legislation in this field is efficiently implemented in practice.
45. Members of minority groups continue to be significantly under-represented within the public sector at national and local level, including such areas as public administration, the judiciary, the police force, medical practice and national education. This situation reflects not only difficulties in obtaining employment, but also the dismissal of members of minority groups from the public sector over the last decade. ECRI reiterates its belief that recruitment among members of minority groups should be encouraged. Furthermore ECRI urges the authorities to investigate past cases of dismissal from the public service and to provide effective mechanisms of redress.15 A public service more reflective of the diverse ethnic composition of the country is, ECRI feels, important for the process of confidence-building and reconciliation in the Republic of Croatia."

THE LAW

I. PRELIMINARY issue of whether the late applicant's heirs can pursue the application in his stead

31. The applicant died on 2 June 2019. On 11 December 2019 his wife and children expressed their wish to continue the application on his behalf.
32. The respondent Government objected to that request, claiming that the rights relied on by the applicant – under Articles 8 and 14 of the Convention – were of a non-transferable nature.
33. The Court observes that while it has held that certain rights under the Convention are strictly personal and thus non-transferable, it has done so where a direct victim died before bringing his or her complaint before the Court (see Fairfield v. the United Kingdom (dec.), no. 24790/04, ECHR 2005-VI; Sanles Sanles v. Spain, (dec.), no. 48335/99, 26 October 2000; and Kaburov v. Bulgaria (dec.), no. 9035/06, § 52, 19 June 2012). Conversely, in various cases in which an applicant has died in the course

of Convention proceedings, the Court has taken into account statements from the applicant's heirs or close family members expressing a wish to pursue the application (see, among other authorities, Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, § 97, ECHR 2014, and Bitiyeva and X v. Russia, nos. 57953/00 and 37392/03, § 92, 21 June 2007). The Court considers that the applicant's wife and children, who stated their intention to continue the proceedings, have a legitimate interest in obtaining a finding whether there was a breach of their relative's rights under the Convention (see Igor Shevchenko v. Ukraine, no. 22737/04, § 36, 12 January 2012).

34. Accordingly, the Court finds that the applicant's heirs have standing to continue these proceedings in the applicant's stead and dismisses the Government's objection in that respect. However, the Court's examination will be limited to the question of whether or not the complaints, as originally submitted by the applicant, disclose a violation of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

35. The applicant complained that he had been arbitrarily dismissed from his teaching post, contrary to Article 8, which, in so far as relevant, reads as follows:

Article 8

"1. Everyone has the right to respect for his private ... life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' arguments

36. The Government claimed at the outset that the applicant had failed to exhaust domestic remedies, in that he had never complained, either expressly or in substance, of a violation of his right to respect for private life before the domestic courts. In particular, he had never indicated in the domestic proceedings those elements of his private life which had been unjustly considered relevant when the decision had been made to terminate his employment.

37. Before the ordinary courts, the applicant had maintained that he had been entitled to teach in Serbian, and that the school authorities had failed to comply with the legally prescribed procedure for terminating his employment. In his constitutional complaint, the applicant had raised various complaints, but he had not claimed that the school authorities had unjustly and unlawfully used his age and ethnic origin as reasons for his dismissal. In other words, he had not asserted that the school authorities had used his private life, ethnic origin or age to terminate his employment contract.

38. The Government further claimed the Article 8 was not applicable to the facts of the applicant's case, since he had in no way been dismissed from work for reasons related to his private life. Consequently, there had also been no interference with his Article 8 rights.
39. The applicant disagreed. Although he had not explicitly relied on Article 8 of the Convention or the corresponding provision of the Croatian Constitution, he had clearly complained in this regard in substance, stating that his employment had been arbitrarily and unlawfully terminated as a result of discrimination on the basis of his age and ethnic origin in the absence of valid arguments.

2. The Court's assessment

(a) General principles

(i) Exhaustion of domestic remedies

40. The Court reiterates that under Article 35 § 1 of the Convention, it may only deal with an application after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, for example, Mifsud v. France (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII). The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances. To be effective, a remedy must be capable of resolving directly the impugned state of affairs (see Balogh v. Hungary, no. 47940/99, § 30, 20 July 2004).
41. The rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. At the same time it requires in principle that the complaints intended to be made subsequently at international level should have been aired before domestic authorities, at least in substance and in compliance with the formal requirements laid down in domestic law (see Pajić v. Croatia, no. 68453/13, § 42, 23 February 2016 and the cases referred to therein).

(ii) Applicability of Article 8

42. The concept of "private life" is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can therefore embrace multiple aspects of the person's physical and social identity. Article 8 protects in addition a right to personal development, and the right to establish and develop relationships with other human beings and the outside world (see S. and Marper v. the United Kingdom [GC], nos. 30562/04 and 30566/04, § 66, ECHR 2008; Gillberg, cited above, § 66; and Bărbulescu v. Romania [GC], no. 61496/08, § 70, ECHR 2017 (extracts), with further references therein).
43. The Court recently revisited its case-law concerning the scope of Article 8 of the Convention in employment-related disputes between an individual and a State (see Denisov v. Ukraine [GC], no. 76639/11, §§ 100-117, 25 September 2018). In that case, the Court confirmed that employment-related disputes were not per se excluded from the scope of "private life" within the meaning of Article 8 of the Convention. It also clarified that there were two ways in which a private-life issue would usually arise in such a dispute: either because of the underlying reasons for the impugned

measure (in that event the Court employs the reason-based approach) or – in certain cases – because of the consequences for private life (in that event the Court employs the consequence-based approach – see Denisov, cited above, § 115). Lastly, the Court confirmed that when a consequence-based approach was at stake, a certain threshold of severity must be attained and that the applicant has to present evidence substantiating consequences of the impugned measure. (see Denisov, cited above, § 116).

44. Lastly, the Court reiterates that in employment-related disputes the questions of applicability and the existence of "interference" are inextricably linked (see Denisov, cited above, § 92). As the question of applicability is an issue of the Court's jurisdiction ratione materiae, the general rule of dealing with applications should be respected and the relevant analysis should be carried out at the admissibility stage, unless there is a particular reason to join this question to the merits.

(b) Application to the present case

45. In the absence of any particular reason to the contrary, the Court considers that the issue of applicability of Article 8 of the Convention in the present case falls to be examined at the admissibility stage.

46. The Court further considers that the two preliminary objections raised by the Government in the present case are interconnected, since they both revolve around the issue of whether the applicant's dismissal from work falls within the scope of his right to respect for private life as protected by Article 8 of the Convention. In the circumstances, it therefore considers it opportune to examine firstly the objection relating to the applicability of Article 8, and subsequently the matter of exhaustion of domestic remedies.

47. As regards the applicability of Article 8 of the Convention, the Court is firstly required to determine the way in which a private-life issue may have arisen in the present case: whether such an issue arose because of the underlying reasons for the applicant's dismissal, or because of the consequences for his private life (see J.B. and Others v. Hungary (dec.), nos. 45434/12 and 2 others, § 130, 27 November 2018).

48. In that connection, the Court observes that the direct reason for the applicant's dismissal was the fact that he had used the Serbian language in his daily work as a teacher as well as his alleged inability to adapt his language of instruction to the requirements of his post due to his age. The Court considers that the language used by an individual necessarily forms part of that person's ethnic identity (see in this sense paragraph 28 above), which has already been found to constitute an essential aspect of an individual's private life (see Ciubotaru v. Moldova, no. 27138/04, § 53, 27 April 2010). Moreover, a person's age obviously forms part of a person's physical identity (see J.B. and others, cited above, § 131). Both were underpinning reasons for the impugned measure (see Hudorovič and Others v. Slovenia, nos. 24816/14 and 25140/14, § 115, 10 March 2020). In this context, the Court further attaches importance to the nature of the applicant's dismissal, the so-called "dismissal for personal reasons" (see paragraphs 13 and 22 above).

49. Given that the crucial reason for the applicant's dismissal, i.e. the language he used in instructing students, was a factor so closely related to his Serbian ethnic origin and that the perception that he could no longer change this feature was directly linked to his age, the Court is satisfied that the

underlying reasons for the impugned measure had been sufficiently linked to the applicant's private life (see Denisov, cited above, §§ 106 and 115; and J.B. and others, cited above, § 131) thus justifying the applicability of Article 8 to the facts of the present case under its reasons-based approach (compare Travaš v. Croatia, no. 75581/13, § 56, 4 October 2016).

50. The Court will now turn to the issue of exhaustion of domestic remedies and examine whether the applicant raised, at least in substance, the issues relating to his private life as interpreted by the Court above (see paragraphs 47-49 above). The Court observes in this connection that in his constitutional complaint the applicant indeed never expressly relied on Article 8 of the Convention or Article 35 of the Croatian Constitution. He did, however, complain that he had been unlawfully dismissed from work on the basis of his ethnic origin, and that that had violated his constitutional right to work and prevented him from exercising his professional activity which he had pursued for over twenty-five years (see paragraph 5 above). In view of the link between the applicant's personal characteristics and the reason for his dismissal, as explained above (see paragraphs 48-49 above), the Court is thus satisfied that the applicant raised, at least in substance, an Article 8 complaint before the Constitutional Court (see, mutatis mutandis, Klauz v. Croatia, no. 28963/10, §§ 52-53, 18 July 2013). The applicant thereby provided the national authorities with the opportunity which is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention, namely that of putting right the violations alleged against them (see, for instance, Arps v. Croatia, no. 23444/12, § 20, 25 October 2016).

3. Conclusion

51. It follows from the above that the Government's preliminary objections must be dismissed.

52. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

53. Relying on a previous decision of the Constitutional Court in a comparable case, the applicant maintained that his dismissal had been unlawful, since it had been based on an inspector's decision which had ultimately been quashed in administrative proceedings. He claimed that while an employer could dismiss an employee for personal reasons if there were circumstances which made it unjustified to expect that the employee could be educated or trained for another post, the employer could not conclude, in the absence of any arguments, that the employee could not be further educated because at the time of dismissal he was fifty-five years old and had thirty years of service. The burden of proof lay on the employer.

54. The applicant further claimed that during the relevant inspection he had taught a class in Croatian, but had used the wrong word for "ceiling", something which had been confirmed to him orally by the inspector and by the principal of the School. Under the domestic legislation, the inspector could have set a certain deadline by which he could fix the irregularities she had identified in his work, but instead she had proposed that he be prohibited from working in classes to be taught exclusively in Croatian, that is all of them. Lastly, the applicant submitted that at the material time

he had been teaching a class with eight Serbian students and one Croatian student. In his view, one or two wrong words had not constituted a serious reason which could lead to a breach of others' rights or run contrary to the public interest. Moreover, it should not have been a reason for such a drastic measure as dismissal from work.

55. The Government maintained that the applicant's dismissal had been lawful, in that he had been dismissed as a result of a permanent characteristic which had prevented him from duly fulfilling his employment contract, in line with the relevant provisions of the Labour Act. They also pointed to the relevant practice of higher national courts, which showed that an employer was allowed to take an employee's age and years of service into account as relevant criteria when deciding on the possibility of retraining him (see paragraph 27 above).

56. The Government further claimed that the relevant interference had been necessary to protect the rights of the pupils in question to receive an education in Croatian. The School had had no choice but to dismiss the applicant, who must have been aware of his obligation to teach in Croatian, since it had had no available positions for teachers teaching in Serbian.

2. The Court's assessment

57. In view of the considerations above (see paragraphs 47-49 above) regarding the applicability of Article 8 of the Convention, the Court considers that the applicant's dismissal from work amounted to an interference with his right to respect for his private life.

58. Such interference is only compatible with Article 8 if it is "in accordance with the law" and "necessary in a democratic society" to attain one or more of the aims set out in its second paragraph.

59. It was not disputed that the applicant's dismissal had had a legal basis in domestic law, namely section 106 of the Labour Act (see paragraph 22 above). The quality of that law was not called into question by the parties, and the Court sees no reason to do so. It therefore concludes that the impugned interference was "in accordance with the law".

60. The Court accepts the Government's assertion that the legitimate aim pursued by the impugned interference was primarily the "protection of the rights of others", namely the right of the pupils attending the School to an education in the Croatian language.

61. The Court reiterates that an interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (see, for example, Polyakh and Others v. Ukraine, nos. 58812/15 and 4 others, § 283, 17 October 2019).

62. The Court notes that the applicant was dismissed for teaching his classes in Serbian rather than in Croatian. At the outset, the Court observes that domestic law allows for education in languages of national minorities (see paragraphs 23 and 25 above), in accordance with the relevant international-law standards, which oblige the respondent State to promote, among other things, the preservation of languages of national minorities (see paragraph 28 above). In this connection, the Court notes that the expected language of instruction at the School at the material time does not

appear to have been a clear-cut issue. Indeed, the domestic authorities –administrative and civil courts – had difficulties in establishing in which language the applicant had been expected to teach at the material time. While it is true that under the Secondary Education Act, as a general rule (see paragraph 25 above), all schools were to provide classes in the Croatian language (see paragraph 24 above), in view of the specificity of the peaceful reintegration process in the region (see paragraph 6 above), certain schools in Eastern Slavonia at the material time were providing classes in minority languages, including Serbian (see paragraph 8 above). The Court notes that the Administrative Court was unable to conclusively establish which language the applicant had been expected to teach in (see paragraph 11 above). Furthermore, according to the letter from the then principal of the School and her testimony before the first-instance court, it would appear that an oral directive that all classes should be taught exclusively in the Croatian language had been given to the School only about a month before the relevant inspection took place (see paragraph 12 above). The civil courts ultimately accepted that conclusion (see paragraph 15 above).

63. The Court further notes that the relevant inspection which triggered the applicant's dismissal was performed only with regard to four teachers of Serbian ethnic origin, following an anonymous complaint by pupils of Croatian origin (see paragraph 9 above). As the applicant pointed out, no teachers of Croatian origin were subjected to an inspection in order to establish whether their use of language during their classes was appropriate, or indeed whether they complied with other statutory regulations in the performance of their teaching duties. While it is true that the pupils' complaint was lodged only against teachers of Serbian origin (see paragraph 9 above), in the specific post-war context of the Eastern Slavonia region at the material time, singling out a certain group of persons on the basis of language, which is closely related to their ethnic origin, could justifiably raise an issue of compatibility with the prohibition of discrimination guaranteed by both the Convention and the Constitution of the Republic of Croatia (see, mutatis mutandis, Oršuš and Others v. Croatia [GC], no. 15766/03, § 153, ECHR 2010). In the same vein, the Court notes that in its reports on Croatia, the ECRI observed, inter alia, a number of unjustified dismissals of members of the Serbian national minority, at the same time noting that members of minority groups were significantly underrepresented in national education (see paragraphs 29 and 30 above).

64. The Government maintained that the applicant's dismissal had been a necessary measure to protect the right of pupils to receive an education in the Croatian language. While the Court in no way wishes to undermine the importance of that aim, and its importance in the specific context of the Eastern Slavonia region at the material time, it cannot but note that no alternatives to dismissal which would have allowed the applicant to align his teaching with the legislation in force were ever contemplated in his case.

65. Firstly, the Court notes that section 17(2) of the Education Inspection Act provides for two alternatives in cases where it has been established that a teacher has failed to respect the statutory regulations. On the one hand, an inspector may order the teacher concerned to correct the irregularities in his work within a certain period of time, or, more radically, the teacher may be prohibited from performing his work altogether. The Court discerns nothing in the inspector's decision in the applicant's case which would justify why she chose to apply the stricter measure in respect of him.

66. What is more, in cases of dismissal for personal reasons, pursuant to section 106(4) of the Labour Act, the employer is under an obligation to provide the employee with additional education or training for another post ("reclassement"), unless it can be proved that such education or retraining would be futile (see paragraph 22 above). The Court finds it particularly striking that the possibility of offering additional education or training was simply rejected by the School in the applicant's case, purely on the grounds of his age and years of service. Moreover, neither the School nor any of the domestic courts ever provided a detailed and convincing explanation as to why the applicant's age would have been an insurmountable impediment to him adjusting his teaching plan so that he could teach in the standard Croatian language, although it seems that in such a case the burden of proof was on the employer (see paragraph 22 above).

67. The Government relied on a case decided by a superior national court suggesting that an employer might also have regard to an employee's age in assessing whether it might be reasonable to expect him or her to successfully retrain for another post (see paragraph 27 above). That case concerned a bartender working at a bar located on a bus main station, who had been dismissed owing to his employer ceasing the bar's operation. The only other job he could have been trained for had been that of a professional bus driver, which, as the superior national court explained, required a certain number of years of work experience. While it is not the Court's task to challenge in abstracto the above approach by the domestic courts, it cannot but observe that, when relying on reasons such as age or inability of retraining of an employee, in order to avoid any appearance of arbitrariness, the employer, as well as the competent national authorities, must provide adequate and convincing reasons for any such conclusion.

68. However, in the Court's view, in the circumstances of the applicant's case, the domestic authorities failed to provide such relevant and sufficient reasons as to why the applicant could not be expected to improve his skills in the Croatian language or adapt his vocabulary in class to what appears to have been a newly adopted standard at the School at the material time (see paragraphs 12 and 62 above). Given the undeniable proximity of the two languages concerned, as well as the fact that the applicant had lived and worked in Croatia for most of his professional life (see paragraph 5 above), it is difficult to understand why the option of providing him with additional training in the standard Croatian language was not further explored in the circumstances. Instead, relying solely on his age and years of service, the authorities applied the most severe sanction, thereby interfering with the applicant's rights in a significant manner.

69. Bearing in mind in particular the specific post-war context of the Eastern Slavonia region at the material time, the foregoing considerations are sufficient to enable the Court to conclude that the applicant's dismissal from work did not correspond to a pressing social need, nor was it proportionate to the aim sought to be achieved (see, mutatis mutandis, Şahin Kuş v. Turkey, no. 33160/04, § 52, 7 June 2016).

70. There has accordingly been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14, TAKEN together WITH ARTICLE 8 OF THE CONVENTION, and Article 1 of protocol no. 12 to the convention

71. The applicant complained that he had been discriminated against on the grounds of his age and ethnic origin. He relied on Article 14 of the Convention, read in conjunction with Article 8 of the Convention, and on Article 1 of Protocol No. 12 to the Convention, which read as follows:

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 12

"1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

A. The parties' submissions

72. The Government maintained that the applicant had never complained before the domestic authorities of discrimination on the basis of age. They also pointed out that there had been no difference in treatment based on ethnic origin between the applicant and another identifiable group, since he had been treated in the same way that any other teacher unable to use the standard Croatian language would be treated.
73. The applicant disagreed. He maintained that he had been dismissed from work purely because he was of Serbian origin, and that he had never been given the opportunity to have additional training, owing to his age.

B. The Court's assessment

1. Admissibility

74. The Court notes that in his constitutional complaint the applicant expressly relied on Article 14 of the Constitution, arguing that he had been dismissed as a result of his Serbian ethnic origin (see paragraph 18 above). While observing that discrimination on the basis of age was never raised as such before the Constitutional Court, the Court considers, in the light of the circumstances of the case, that the present complaint is so closely linked to the Article 8 complaint examined above that the outcome must be the same and the Article 14 complaint accordingly declared admissible.

2. Merits

75. The Court notes that in its examination of the applicant's complaint under Article 8 of the Convention it has already had regard to the domestic authorities' reliance on his age and their

decision to inspect the work of only some teachers, based on their ethnic origin (see paragraphs 63 and 66 above).

76. In view of the foregoing, the Court considers that no separate issues under Article 14 of the Convention or Article 1 of Protocol No. 12 to the Convention arise in the present case.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

78. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

79. The Government contested that claim.

80. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

81. The applicant also claimed 6,250 Croatian kunas (HRK – approximately EUR 850) for the costs and expenses incurred before the Court.

82. The Government contested that claim.

83. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 850 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

84. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. Holds, unanimously, that the applicant's heirs have standing to pursue the application in his stead and dismisses the Government's objection in that respect;
2. Declares, unanimously, the application admissible;
3. Holds, by six votes to one, that there has been a violation of Article 8 of the Convention;

4. Holds, by six votes to one, that there is no need to examine separately the complaints under Article 14 taken in conjunction with Article 8 of the Convention and under Article 1 of Protocol No. 12 to the Convention;
5. Holds, by six votes to one,

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 850 (eight hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 17 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener — Deputy Registrar
Krzysztof Wojtyczek — President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Wojtyczek is annexed to this judgment.

K.W.O.
R.D.

DISSENTING OPINION OF JUDGE WOJTYCZEK

1. I respectfully disagree with the view that Article 8 has been violated in the instant case. In my view, the case raises important issues under Article 1 of Protocol No. 12 (relied on by the applicant) and should have been examined under this provision, whereas the threshold for the applicability of Article 8 has not been met.
2. In the brilliant and powerful dissenting opinion appended to the judgment in the case of Erményi v. Hungary (no. 22254/14, 22 November 2016), Judge Kūris argued eloquently:

"The perspective of examining privacy in terms of the right and value protected by Article 8 must be returned to its natural angle. To present it graphically, 8 should indeed be seen as

and not – as increasingly tends to be the case – like the sign of infinity:
∞."

Under the approach prevailing at that time, Article 8 had indeed become a very broad right to happiness, giving rise to associations with the 1776 United States Declaration of Independence (the Preamble) and the 1776 Virginia Declaration of Rights (section 1). Article 8 had also become - and still remains - the default provision used by the Court in order to fill lacunae in the Convention protection by way of judge-made law, quickly expanding well beyond the limits laid down by the wording of this provision as read in the light of the applicable rules of treaty interpretation.
Addressing Judge Kūris's concerns, the Court in its Grand Chamber judgment in the case of Denisov v. Ukraine ([GC], no. 76639/11, 25 September 2018), decided to overrule – tacitly but unequivocally – some of its earlier judgments under Article 8 (for example, Özpınar v. Turkey, no. 20999/04, 19 October 2010, Fernández Martínez v. Spain [GC], no. 56030/07, ECHR 2014 (extracts)) and, in particular, to abandon the principles applied in Oleksandr Volkov v. Ukraine (no. 21722/11, ECHR 2013), instead adopting a new approach, one that was much more restrictive and better reasoned. This new jurisprudential line was expressed in the following terms:

"102. In the cases falling into the above-mentioned category [i.e. employment-related scenarios], the Court applies the concept of "private life" on the basis of two different approaches: (α) identification of the "private life" issue as the reason for the dispute (reason-based approach) and (β) deriving the "private life" issue from the consequences of the impugned measure (consequence-based approach).
(α) Reason-based approach
103. Complaints concerning the exercise of professional functions have been found to fall within the ambit of "private life" when factors relating to private life were regarded as qualifying criteria for the function in question and when the impugned measure was based on reasons encroaching upon the individual's freedom of choice in the sphere of private life."

It is important to note that the Court, while formulating the reason-based test, used a logical conjunction: (i) factors relating to private life were regarded as qualifying criteria for the function in question, and (ii) the impugned measure was based on reasons encroaching upon the individual's freedom of choice in the sphere of private life.
Furthermore, in a certain sense any qualifying criterion for any function relates in some (more or less remote) way to private life. However, such a broadly construed criterion would be purposeless and inoperative. Therefore, the Denisov test should be understood as referring to factors directly relating to sphere of personal autonomy covered by the notion of private life (see, for example, Yılmaz v. Turkey, no. 36607/06, § 37-41, 4 June 2019).
3. I note that the majority restate in paragraph 42 the usual formula used in Article 8 cases: "The concept of "private life" is a broad term not susceptible to exhaustive definition." I can only reiterate here my methodological and logical reservations concerning this statement, formulated in paragraph 2 of my separate opinion appended to the judgment in the case of R.B. v. Hungary (no. 64602/12, 12 April 2016).
4. In the instant case, the qualifying criteria for the function of teacher are: (i) knowledge of the official national language of the respondent State; and (ii) its use at school for the purpose of

education. These factors do not relate to private life. In particular, the ability to speak a certain language as a criterion for a certain position is not a factor relating to private life.
Moreover, the language of education belongs to the public sphere. The imposition of a certain national language for teaching in school classes, unlike the choice of the language spoken at home or in private conversation at the workplace, is not a matter of the teacher's freedom of choice, and nor does it belong to the sphere of his private life. The impugned measures were not based on reasons encroaching upon the individual's freedom of choice in the sphere of private life. Moreover, the impugned measures were not based on reasons encroaching upon the applicant's right to speak his mother tongue in everyday life.
In my view, the approach adopted in the instant case clearly departs from the principles established in the case of Denisov v. Ukraine. The general principles restated in the instant case in paragraphs 42-44 have not been correctly applied in the subsequent paragraphs of the reasoning.
5. In paragraph 48 the majority highlights the following argument: "The Court considers that the language used by an individual necessarily forms part of that person's ethnic identity (see in this sense paragraph 28 above), which has already been found to constitute an essential aspect of an individual's private life (see Ciubotaru v. Moldova, no. 27138/04, § 53, 27 April 2010)."
It is true that the language preferred by an individual in everyday life necessarily forms part of that person's ethnic identity, but the requirement to speak the State's official language while performing certain tasks in public-service employment cannot be considered as a factor relating (in the meaning of the Denisov test) to one's identity, nor can it be seen as an interference with this identity.
6. In the same paragraph the majority refers to the applicant's "alleged inability to adapt his language of instruction to the requirements of his post due to his age" and states the following:

"Moreover, a person's age obviously forms part of a person's physical identity (see J.B. and Others, cited above, § 131)."

This view, taken from J.B. and Others v. Hungary, was extracted from its context. It is worth quoting in extenso the relevant paragraph:

"131. The direct reason behind the applicants' dismissal was that they had reached the lowered mandatory retirement age applicable to them. Although a person's age is obviously an aspect of his or her physical identity, it is at the same time an objective fact not capable of being influenced by freedom of choice in the sphere of private life. No other factors relating to the applicants' private life, in particular no factors connected directly to their conduct, were contemplated as qualifying criteria for being affected by the impugned measures. In such circumstances, the Court considers it appropriate to follow a consequence-based approach and to examine whether the impugned measures had sufficiently serious negative consequences for the applicants' private life, in particular as regards their "inner circle", their opportunities to establish and develop relationships with others and their reputation" (J.B. and Others v. Hungary (dec.), nos. 45434/12 and 2 others, 27 November 2018).

The Court unequivocally refused here to apply the reason-based approach to measures that were based upon an age criterion. The same paragraph corresponds to the circumstances of the instant

case. It rebuts the view – expressed in paragraph 49 of the instant judgment – that the impugned measure was sufficiently linked to the applicant's private life.

7. I note further that the Framework Convention for the Protection of National Minorities, to which Croatia is a Party, guarantees the following rights in Article 14 § 2:

"In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language."

The right to receive education in one's own language is the right which pertains to the students and their parents. From this students' right it is impossible to derive a teacher's right to choose the language in which he provides education. The State must organise the entire educational system – in compliance with its international obligations – and decide which languages will be used in which schools.

8. In paragraph 63 the majority highlight the following point:

"As the applicant pointed out, no teachers of Croatian origin were subjected to an inspection in order to establish whether their use of language during their classes was appropriate, or indeed whether they complied with other statutory regulations in the performance of their teaching duties."

The question arises in this context whether there really could have been any reasonable doubts – and as result any reasonable grounds to verify –whether the teachers of Croatian origin were actually using the Croatian language.

9. In spite of the above reservation, I consider that the applicant has nonetheless corroborated the allegation that he was discriminated against. However, the alleged discrimination did not occur in the sphere of private life covered by Article 8. On the contrary, it occurred in the sphere of public life, which remains out of the scope of applicability of Article 8. The grievance raised by the applicant under Article 1 of Protocol No. 12 is, in my view, admissible. The application should therefore have been examined under this last provision.

10. To sum up, using Judge Kūris's metaphor: 8 tends again to come askew and transforms into ∞.