

LANGUAGE DISCRIMINATION IN EUROPE

I. Introduction

Although studies involving anti-discrimination law have focused at many sorts of discrimination, much less attention has been given to special discrimination field such as language discrimination. This paper highlights a number of legal declarations and covenants in connection with language discrimination in Europe. (Because of the limits of this paper, we do not have the opportunity to present the treaties and conventions throughly, but to flash some exciting points and cases of the issue.) It does this by analysing the law and a case of European Court of Human Rights from the perspective of language discrimination. This article tries to examine a case before the European Court of Human Rights which show many memorable lessons to learn with regard to language discrimination. The case will be discussed in detail, and according to the topic some other related issue will be mentioned. The implications of the language related parts of the case raise some very fundamental questions on legal aspects of the linguistic discrimination issues which will be studied slightly.

II. The terminology of language discrimination

Issues like discrimination and language related assaults make headlines on an almost daily basis. It calls for more attention to matters of equality and equal treatment. There are many sort of rights connected to discrimination, relevantly the discrimination against the language rights. But how could we characterise the discrimination if it is on the basis of the language or the speaking? As a matter of fact, language discrimination exists if there is prejudicial treatment against a person or a group of people who speak a particular language or dialect. However, people are sometimes subjected to different treatment because their preferred language is associated with a particular group, class or category.

Nevertheless, the negative side of equality is discrimination. According to *Sloat*, there are two kind of discriminations: direct and indirect discrimination. Direct discrimination occurs when a person is treated less favourably than another actual person in a comparable situation is being treated or has been treated in the past, or a hypothetical person would be treated, on the grounds of racial origin, religion or belief, disability, age or sexual orientation. Besides, indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. We may apply these terminologies in the field of language discrimination as well. In this sense, direct language discrimination occurs when a person or a group is treated less favourably on the grounds of language usage, his or her speaking than others. We could speak about indirect language discrimination when an apparently neutral provision, criterion or practice connected to language usage would put persons speaking a language or groups of an ethnic origin or at a particular disadvantage compared with other persons using other language(s). Naturally, we are going to give an example from the practice of the European Court of Human Rights below.

III. Overview: The prohibition of language discrimination under European Human Rights Law

Anti-discrimination and equal treatment are one of the most widely respected principles and human rights in the Western world. It is recognised in the European, American and international conventions as well. Already in the middle of the twentieth century we can read the followings in the 1st and 2nd Articles of the Universal Declaration of Human Rights: 'All human beings are born free and equal in dignity and rights...'. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, *language*, religion, political or other opinion, national or social origin, property, birth or other status.'

Diversity of language is protected and respected by most nations and international organizations who value cultural diversity. Relevant international documents are adopted in Europe which has been taken by the reason of protect language. These are the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights. The listed treaties will be introduced slightly below.

The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was adopted by the General Assembly resolution 47/135 of 18 December 1992. This declaration requires states to protect the existence and identities of minorities. It also calls upon states to encourage the promotion of national or ethnic, cultural, religious and *linguistic identities*. Under Article 2(1) of this declaration, minorities shall have the right to practice their religion, enjoy their culture and use their own language in both public and private settings without any kind of discrimination. Article 3 of this declaration guarantees persons belonging to minorities the right to exercise their rights individually and in community with others without discrimination.

The International Covenant on Economic, Social and Cultural Rights was adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. This treaty is part of the international bill of human rights. It guarantees several rights, including the right to work, the right to social security and the right to education. Under Article 2(2), the rights provided for in the Covenant should be available to all without discrimination on the ground of "race, colour, sex, *language*, religion, political or other opinion, national or social origin, property, birth or other status."

The International Covenant on Civil and Political Rights was adopted and opened for signature, ratification and accession by the same General Assembly resolution as the above-mentioned International Covenant on Economic, Social and Cultural Rights in 1966. This treaty guarantees a range of civil and political rights including the freedom of expression, the right to a fair trial, the freedom of belief and the right to privacy. Article 2 provides that the rights enshrined in the Covenant shall be available to all persons without distinction on the grounds of "race, colour, sex, *language*, religion, political or other opinion, national or social origin, property, birth or other status". Article 26 of the Covenant guarantees a general right to equality and non-discrimination as well.

The most powerful tool in the field of discrimination at European level is the Convention for the Protection of Human Rights and Fundamental Freedoms (also called the "European Convention on Human Rights" and "ECHR") It is an international treaty which only member states of the Council of Europe may sign. The Convention, which establishes the Court and lays down how it is to function, contains a list of the rights and guarantees which the States have undertaken to respect. The Convention for the Protection of Human Rights and Fundamental Freedoms was adopted under the auspices of the Council of Europe in 1950. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity.

So, Article 14 of ECHR contains a prohibition of discrimination, both direct and indirect discrimination. This prohibition is broad in some ways, and narrow in others. On the one hand, the article protects against discrimination based on any of a wide range of grounds. The article provides a list of such

grounds, including sex, race, colour, *language*, religion and several other criteria, and most significantly providing that this list is non-exhaustive. On the other hand, the article's scope is limited only to discrimination with respect to rights under the Convention. Thus, an applicant must prove discrimination in the enjoyment of a specific right that is guaranteed elsewhere in the Convention.

Article 14 of the European Convention on Human Rights does not create an independent protection from discrimination. It may only be invoked in combination with another substantive provision of the European Convention on Human Rights or of one of its additional Protocols. It is only when discrimination is found to exist in the enjoyment of the rights and freedoms set forth in the Convention that it will come into play. This is not to say that Article 14 of ECHR has no autonomous function to fulfil in the system of the Convention. On the contrary, it supplements all the other substantive provisions by adding the requirement that they be applied and implemented without discrimination. So the Protocol 12 extends this prohibition to cover discrimination in any legal right, even when that legal right is not protected under the Convention, so long as it is provided for in national law.

Some guidance may be sought in the case-law of the European Court of Human Rights (hereinafter Court) in order to interpret the language discrimination clause of ECHR and the Protocol mentioned above. The European Court of Human Rights is an international court set up by the member States of the Council of Europe. It consists of a number of judges equal to the number of the members of the Council who have ratified the Convention for the Protection of Human Rights and Fundamental Freedoms. The case-law derived from the ECHR is made even more relevant to the interpretation of the discrimination cases appeared before the Court. Therefore we examine a relevant case of the European Court of Human Rights below.

IV. Language discrimination in the European case law – The Belgian Linguistics case

One of the language discrimination-related and most widely examined cases of the European Court of Human Rights is the so-called Belgian Linguistics case. In the case “relating to certain aspects of the laws on the use of languages in education in Belgium” v. Belgium, the Court famously noted that, „although the right to obtain from the public authorities the creation of a particular kind of educational establishment could not be inferred from Article 2 of Protocol No. 1, nevertheless, a State which had set up such an establishment could not, in laying down entrance requirements, take discriminatory measures within the meaning of Article 14”.

Between 1962 and 1964, the Applicants, inhabitants of Alsemberg, Beersel, Kraainem, Antwerp, Ghent, Louvain and Vilvorde, submitted six applications, both on their own behalf and on behalf of their children under age, against the Kingdom of Belgium. They argued that provisions of the Belgian linguistic legislation relating to education violated the requirements of Articles 8 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("Convention") and Article 2 of the Protocol 1 (P1-2) of March 1952 ("Protocol").

The Applicants are French-speaking and they want their children to be educated in French. Alsemberg, Beersel, Antwerp, Ghent, Louvain and Vilvorde belong to the region considered by law as Dutch-speaking, whereas Kraainem has since 1963 formed part of a separate administrative district with a "special status." They complain that the Belgian State:

- does not provide or subsidize any French-language education in the municipalities where the Applicants live or, in the case of Kraainem, that the provision made for such education is, in their opinion, inadequate;
- withholds grants from any institutions in these municipalities which may fail to comply with the linguistic provisions of the legislation for schools;
- refuses to acknowledge the validity of certificates issued by such institutions;

- does not allow the Applicants' children to attend the French classes which exist in certain places.

The Applicants challenged (among other legislative acts) the Act of 30th July 1963 "relating to the use of languages in education". Section 4 of the Act lays down that the language of education shall be Dutch in the Dutch-speaking region, French in the French-speaking region and German in the German-speaking region. In six communes on the outskirts of Brussels, including Kraainem, the normal language is Dutch. However, children may receive nursery and primary education -but not secondary education- in French if this is the child's maternal or usual language and provided the head of the family is resident in one of these communes.

The Court observed that Article 2 of the Protocol does not guarantee a right to ensure that public authorities create a particular kind of educational establishment. But, a State, which had set up an establishment, is prohibited from laying down entrance requirements that are discriminatory within the meaning of Art. 14. Art. 14 of the Convention does not prohibit all kinds of differences in treatment in the exercise of the rights and freedoms. However, where the difference in treatment has no objective and reasonable justification the principle of equality of treatment is violated. A justification has to be examined in relation to the aim and effects of the measure under consideration and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realized.

In the present case, the Court noted that „Art. 14 cannot be interpreted as guaranteeing children or parents a right to obtain instruction in a language of his choice”. The Court took into account that Belgium is a multilingual State comprising several linguistic areas and that in the unilingual regions, both French-speaking and Dutch-speaking children have access to public or subsidized education in the language of the region. The Court found that the purpose of laws on the use of languages is „to achieve linguistic unity” within the two large regions of Belgium. It observed that the challenged provisions concern only official or subsidized education. They in no way prevent, in the Dutch-unilingual region, the organization of independent French-language education. The Court did not consider that the measures adopted in this matter are so disproportionate to the requirements of the public interest which is being pursued as to constitute discrimination contrary to Art. 14 of the Convention, read in conjunction with the first sentence of Art. 2 of the Protocol or with Art. 8 of the Convention. Nor is there any derogation from the right to respect for private and family life enshrined in Article 8 of the Convention.

The Court applied the same reasoning to the prohibition on providing instruction in the second language in subsidized schools in unilingual regions. In the opinion of the Court, the measure serves a legitimate function, namely, „the protection of the linguistic homogeneity of the region”. On the issue of validation of certificates, the Court noted that „the legislature intended to promote among pupils in unilingual regions an in-depth knowledge of the local language”. This objective related to public interest, and, in itself, did not involve any element of discrimination. The Court, however, did not exclude the possibility that the application of the legal provisions in issue might lead, in individual cases, to a lack of proportionality between the means employed and the objective aimed at, to such an extent as to constitute discrimination.

The next question was whether certain children are prevented, solely on the basis of their parents' place of residence, from attending French-language schools at Louvain and in the six communes on the outskirts of Brussels which enjoy a "special status," including Kraainem. The city of Louvain is situated in the "Dutch-language region." The Catholic University at Louvain includes both a Flemish and a French section. The Court emphasized that the maintenance of French-language education there continues a centuries-long tradition, and that it serves the needs of the University. Consequently, the exclusion of French-speaking children living in the Dutch unilingual region whose parents are not members of the teaching staff, students or employees of the University, does not amount to a discriminatory measure.

The Court noted that the situation, however, "is completely different in the case of the six communes" with special facilities, "which belong to the agglomeration surrounding Brussels". The language of instruction there is Dutch, but the law requires the organization of official or subsidized education in French at the nursery and primary levels for the benefit of children whose maternal or usual language is

French, on condition that it is asked for by sixteen heads of family. This education, however, is not available to children whose parents live outside the six communes. The Dutch classes in the same communes, on the other hand, in principle accept all children, whatever their maternal or usual language and place of residence of their parents. The Court found that such a measure is not justified in the light of the requirements of the Convention. In the view of the Court, the residence condition is not imposed in the interest of schools, for administrative or financial reasons: it proceeds solely from considerations relating to language. The Court did not consider it necessary to examine whether this measure respects Article 8 of the Convention, read in conjunction with Article 14.

In its decision the Court held that only one provision of the Act of 1963, concerning access to the French-language schools existing in the six communes on the periphery of Brussels, including Kraainem, does not comply with the requirements of Article 14 of the Convention read in conjunction with the first sentence of Article 2 of the Protocol. It reserves for the Applicants concerned the right, should the occasion arise, to apply for just satisfaction in regard to this particular point.

A joint dissenting opinion noted that „access to French language schools existing in the six communes was not discriminatory”. A partly dissenting individual opinion found that the provisions were introduced for the purpose of linguistic unity and though inconvenient, they do not amount to discrimination. Another partly dissenting individual opinion found that P1-2 did not entail a positive obligation on the part of States to provide education and that Article 14 was not applicable to the case.

According to the topic of the application we can state that there can be a relation between educational and language discrimination issues. Law should keep pace and design the catalog of language rights in connection with language discrimination which has not been worked out yet. The existing articles and protected rights listed in the legal declarations and covenants are difficult to interpret and their application are not an integral and inveterate part of the European and international law. We have only few cases which reflects the need to establish the legal framework of language discrimination and the elaborated list of other language rights.

V. Conclusion

Although the measures and scopes of the issue examined in this paper is not laid down exactly, we have pointed out through declarations and covenants listed above that language discrimination and equality in language rights is one of the most respected human rights in multilingual countries and in international organizations as well. In our view, the issue of equality in language rights and language discrimination must be no longer held as a marginal question: equal treatment in language rights is a very essence of the core of democracy. We would like to emphasise that more must be done to turn out a more sophisticated law in the field of language discrimination, to establish the catalogue of language rights, and to put a language perspective in policy. A more integrated approach would open up new avenues for resolving social, political and cultural problems related to language disputes, so it would benefit society as a whole. In our view, on this way social attitudes and cultural stereotypes can be changed, and ensured that people speaking different languages could have a word with each other.

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