

PrAVri

Pravni fakultet u Rijeci



MINORITY LANGUAGES AND LANGUAGE RIGHTS

Under International and National Law

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Sveučilište u Rijeci
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On Planning and Evaluation of Language Policies
13th-15th September 2018
Udine (Friuli-Venezia Giulia)

- 11h30 – 13h00

MINORITY LANGUAGES AND LANGUAGE RIGHTS

- Language – means of expression, part of identity (cultural, ethnic, national...)
- Individual human right, mostly used in collective,
 - Right of states to have one or more official languages may not accommodate all languages spoken in one country,
 - States' duty to respect linguistic rights protected by the right to freedom of expression, the right to private life, the right of minorities to use their own language, or the prohibition of discrimination.
 - Increase social inclusion of all;
 - May prevent conflicts!
- Protected by international law

Overview of international instruments dealing with language rights:

1.1. UN level

- Art. 2 Universal Declaration of Human Rights, 1948
 - non-discrimination principle, included in all HR instruments!
 - Legal nature: Declaration UN GA
- International Covenant for Civil and Political rights, 1966 (Treaty, in force 1978, 172 states parties; monitoring HRC)
 - Art. 26 Right to equality and freedom from discrimination
 - Art . 27 Rights of members of minorities
- Declaration on the rights of persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992
 - Declaration UN GA

1.2. **Regional Instruments – Council of Europe**

- European Convention for Human Rights, 1950 (ECHR) and 16 additional protocols
 - Arts. 8, 6, 9, 10, P1.2
- Framework Convention for the Protection of National Minorities (FCNM), 1995
 - Protects the use of min. lang as human right of members of minorities in private and public, education, media, public administration (art. 10-14)
- The European Charter for Regional or Minority Languages (ECRML), 1992 :
 - Protects minority and regional languages as the cultural heritage of Europe and promotes measures for their preservation and development
- Recommendations by High Commissioner for Minorities OSCE,

Non- discrimination principle

- Definition of discrimination: to treat differently those in the same or similar situation without objective justification!
- Some grounds of discrimination can never be justified (race, ethnicity...)!
- measures aimed at correcting conditions which prevent or impair the enjoyment of the same rights not discrimination
- Language?

ICCPR, Art. 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

- existence of *ethnic, religious or linguistic* minorities – question of fact,
- individuals protected have special rights in addition to the same rights of everybody else,
- Enjoy them individually or in collective with other members,
- a right to use their language among themselves, in private and in public;
- official use may be limited – e.g. art. 14: right to hear criminal charges in the language one understands;
- „shall not be denied the right” includes positive measures of protection (legislative, judicial or administrative), against the acts of the State party itself, but also against the acts of other persons!

HRC Case-Law

- **Guesdon v. France, HRC 1990:**
- Breton speaking French citizen was accused before a French court for destroying French road signs and requested that he and other witnesses be heard in Breton, as their primary language, although they also spoke French,
- Request was refused so neither he nor his witnesses had been heard,
- He claims violation of Art. 14 (fair trial), 19 (freedom of expression), 26 (equality/discrimination) and 27(France made a reservation)

- HRC refused request under Art. 19:
 - *7.2 As to the author's claim that he had been denied his freedom of expression, the Committee observed that the fact of not having been able to speak the language of his choice before the French courts raised no issues under article 19, paragraph 2.*
- As to Art. 27 – no issue:
 - *7.3 In respect of the author's claim of a violation of article 27 of the Covenant, the Committee did not find it necessary to address the scope of the French "declaration" concerning article 27 of the Covenant in this case, as the facts of the communications did not raise issues under this provision*

- As to Art. 14:
 - procedural equality, principle of equality of arms
 - The provision for the use of one official court language by States parties to the Covenant does not, in the Committee's opinion, violate article 14.
 - Only if the accused or the defence witnesses have difficulties in understanding, or in expressing themselves in the court language, must the services of an interpreter be made available.

- As to Art. 26:

- *10.4 French law does not, as such, give everyone a right to speak his own language in court. Those unable to speak or understand French are provided with the services of an interpreter. This service would have been available to the author had the facts required it; as they did not, he suffered no discrimination under article 26 on the ground of his language.*

- **Ballantyne, Davidson and McIntyre v Canada, HRC 1993**

- English speaking residents in Quebec,
 - Claim violations of articles 2 (discrimination), 19, 26 and 27 by the Federal Government of Canada and by the Province of Quebec, because they are forbidden to use English for purposes of advertising, e.g., on commercial signs outside the business premises, or in the name of the firm.
- Goal of legislation: to preserve the linguistic profile of the province

- HRC on Art. 27 – not applicable:
 - *the minorities referred to in article 27 are minorities within (the) State (party), and not minorities within any province. A group may constitute a majority in a province but still be a minority in a State and thus be entitled to the benefits of article 27. English speaking citizens of Canada cannot be considered a linguistic minority. The authors therefore have no claim under article 27 of the Covenant.*

- As to Art. 19:
 - *the commercial element in an expression taking the form of outdoor advertising is covered by Art. 19*
 - *The Committee believes that it is not necessary, in order to protect the vulnerable position in Canada of the francophone group, to prohibit commercial advertising in English. This protection may be achieved in other ways that do not preclude the freedom of expression, in a language of their choice, of those engaged in such fields as trade. For example, the law could have required that advertising be in both French and English.*
 - *A State may choose one or more official languages, but it may not exclude, outside the spheres of public life, the freedom to express oneself in a language of one's choice. The Committee accordingly concludes that there has been a violation of article 19, paragraph 2.*

- As to Art. 26 (equality/ discrimination):
 - The prohibition concerns both English and French speaking entrepreneurs, so there is no discrimination,

1992 Declaration on the rights of persons Belonging to National or Ethnic, Religious and Linguistic Minorities

- UN GA declaration - recommendation
- Confirms the right of members of minorities to use their own language, in private and in public, freely and without interference or any form of discrimination.
- Duty of States to help develop their culture
- In education
 - enable „wherever possible, persons belonging to minorities may have adequate opportunities to *learn their mother tongue* or to have *instruction* in their mother tongue”
 - to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory.

Regional instruments: ECHR

- No separate provision on the protection of languages or linguistic rights
- No-discrimination in Art. 14 includes: on any ground such as sex, race, colour, language, religion,...
- Art. 14 connected to the rights protected by ECHR and protocols,
- Case-law:
 - 6 – fair-trial
 - 8 – private life
 - 10 – freedom of expression
 - P.1.2. – right to education

Article 6 § 3 - Right to hear charges in the language he/ she understands or to have an interpreter

- Only if he/ she does not understand the language of the court
 - Covers pre-trial and trial procedure
- Cannot ask for a language of an ethnic minority of which he is a member.
 - K v France - defence in Breton not allowed since he was found to have no difficulty understanding or speaking French
- How to establish when a suspect or defendant “cannot understand or speak the language used in court”?
 - Brozicek v. Italy (1989) and Cuscani v. UK (2002)
 - »» the burden of proof is on the (judicial) authorities to prove that the defendant sufficiently understands the language of the court, and not for the defendant to prove he did not (also in writing)

- Art. 8 – right to family life
- *Nusret Kaya and Others v. Turkey (2014)*
 - *Rules in prison did not allow inmates to speak Kurdish (or any other language other than Turkish) with their family on the phone;*
 - the inmates' assertion that Kurdish was the language used in their family relations, and was the only language understood by their relatives, could not be called into question.

- Art. 8 – right to private life
 - personal and family name
- Linguistic freedom as such is not one of the rights and freedoms governed by the Convention.
- each Contracting State is at liberty to impose and regulate the use of its official language or languages in identity papers and other official documents
 - Transliteration into the official language
 - Adaptation of the traditional name
 - the addition/ omission of a variable feminine ending to a foreign surname

- Art. 10 – freedom of expression
- Şükran Aydın and Others v. Turkey (2013)
 - Ban of Kurdish in political rallies and campaigns
 - While States had discretion to determine their linguistic policies and were entitled to regulate the use of languages during election campaigns, a blanket ban on the use of unofficial languages coupled with criminal sanctions was not compatible with freedom of expression. Furthermore, Kurdish was the applicants' mother tongue as well as the mother tongue of the population they had addressed.

- P.1.1 – right to education
- in conformity with the parents' own religious and philosophical convictions may include the mother tongue education
 - Belgian Linguistic case, 1968: no duty to provide education in all co-official languages but there should be no discrimination
- Cyprus v. Turkey, 2001
 - lack of secondary education in minority language (Greek) and difficulties in returning home;

Framework Convention for the Protection of National Minorities

- Policies and objectives to be achieved
- Linguistic rights integral part of minority rights within general human rights:
 - Obligation to protect national minorities and the rights of their members;
 - Freedom of expression in minority language, in the media;
 - Free use of min. lang. in private and public, orally and in writing,
 - Use in administration: traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations with the administrative authorities
 - In criminal-court proceedings – same as Art. 6 ECHR

- Personal and family name,
- Public signs and inscriptions: In areas traditionally inhabited by substantial numbers of persons belonging to a national minority...
- Place-names and road signs; Bilingualism as an option;
- Education: teaching in/of min. lang, including in private schools
- Right to learn one's minority language

European Charter for Regional and Minority Languages

- Protection and promotion of minority languages as cultural heritage of Europe;
- Fields of application:
 - Education,
 - Judicial and administrative authorities,
 - Media,
 - Culture,
 - Economic and social life,
 - Transfrontier co-operation

Italy and Croatia

- Croats in Italy – 2600 in Molise, Provincia di Campobaso
- Italians in Croatia – 20.000 in Istria, Rijeka, Zadar, some islands and Lipik (East Slavonia)
- Italy signed ECRML in 2000, not ratified
- Croatia ratified with respect to Italian + 6
- Both states parties to FCNM,
- Post WW II obligations - Peace Treaty 1947,
- London Memorandum, 1954 (on delimitation, Trieste, Istria)
- Osimo Treaty, 1974,
- Bilateral treaty on the protection of minorities concluded in 1996

- National legislation:
- Italy:
 - La legge in materia di tutela delle minoranze storiche, 1999 – one of 12 languages
- Croatia:
 - Constitution, Constitutional law on the rights of minorities, Law on education in minority languages, Law on the official use of minority languages