

Bills Committee on Race Discrimination Bill

The Belgian Linguistics case

Purpose

At the last meeting held on 5 February 2007, Members asked the Administration to provide –

“details of the Belgian Linguistics Case (1968) 1EHRR 252 heard by the European Court of Human Rights and relevant citation/judgment.”

This paper provides the information requested. A copy of the full text of the Judgment has been deposited with the Clerk to Bills Committee.

Summary of background

2. In the Belgian Linguistics case (No. 2)(23 July 1968), certain measures of the Belgian Government that denied French-speaking students living in Dutch-speaking unilingual regions from state-subsidized education in French in those regions were challenged for violation of the right to education, the right to respect for private and family life, and the right against discrimination under the European Union’s Convention for the Protection of Human Rights and Fundamental Freedoms ("Convention") and the Protocol of 20th March 1952 (“Protocol”)¹

¹ Article 2 of the Protocol provides: "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

Article 8 of the Convention provides:

"(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(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."

Article 14 of the Convention provides: "The enjoyment of the rights and freedoms set forth in this 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."

3. The case was brought to the European Court of Human Rights. The principal issue of contention is stated in paragraph 2 of the facts at p.3 of the Court's judgment, which is reproduced below –

“The Applicants, who are parents of families of Belgian nationality, applied to the Commission both on their own behalf and on behalf of their children under age, of whom there are more than 800. Pointing out that they are French-speaking or that they express themselves most frequently in French, they want their children to be educated in that language.”

Detailed Facts

4. Dutch and French were official languages of Belgium. Under certain Acts of Belgium of 1932 and 1963, regions of Belgium where the majority of the population spoke only one of the two official languages were designated as “unilingual”. The Acts further provided that the language of education in a unilingual region shall be the language of the region. Inspections were conducted at public-funded schools to check whether the linguistic requirements were complied with. The Government refused to establish or subsidize schools that did not conform to the linguistic requirements. While a student educated in a school conforming to the linguistic requirements would have his school leaving certificate “admissible for homologation” (which was a form of recognition), a student educated in a non-conforming school would have to take an examination for the purpose of having his education recognized.

5. Parents of certain French-speaking children living in Dutch unilingual regions claimed that these measures constituted a violation of their children's right to education and that they were discriminated against. Among other things, the claimants complained that the measures denied the children of state-subsidized education in French. Further, a child who received education in French in a private school in the region would be put in a less advantageous position than a child who received education in a school conforming to the linguistic requirements, as the former child would need to pass an extra examination to get his education recognized.

6. Also, the claimants said the measures violated the right to respect for private and family life. If a French-speaking child living in a Dutch unilingual region was to receive education in French, the child had to be separated from the parents and attend a state-subsidized school outside

the region, unless his parents could afford private French education in the region.

The Decision

7. The European Court of Human Rights found against these claims.² The Court pointed out that construing the Convention and the Protocol as conferring on everyone within the jurisdiction of a State a right to obtain education in the language of his own choice would lead to absurd results, for it would be open to anyone to claim any language of instruction in any of the territories of the Contracting Parties.

8. The Court noted that the Belgian Government's measures would not prevent the organisation of private French-language schools, independent of state-subsidised education.

9. The Court did not find the Belgian Government's measures discriminatory or arbitrary. The pursuit of linguistic unity within the unilingual regions was based on the objective fact that a large majority of the population in the regions spoke only one of the two national languages. Furthermore the measures were based on a public interest, namely, to ensure that all schools dependent on the State and existing in a unilingual region conducted their teaching in the language which was essentially that of the region, hence promoting among pupils a knowledge in depth of the usual language of the region.

10. The Court acknowledged that a French-speaking child living in a Dutch unilingual region might be separated from his parent in order to pursue an education in French as a result of the measures. However, the measures did not violate the right to respect for private and family life. The separation was not imposed by the Acts but resulted from the choice of parents who chose to avoid their children being taught in Dutch, which is one of Belgium's national languages. The right to respect for private and family life did not guarantee the right to be educated in the language of one's parents by the public authorities or with their aid.

11. The Court further decided that the Belgian Government did not disregard the right to obtain official recognition of studies completed even though children educated in a non-conforming school would be required to take an examination to get the education recognized. The Court noted that the examination was not one of excessive difficulty and

² Pages 39-41, 45-47 and 81-83 of the case report.

might be taken as many times as a student wished, the failure rate was not abnormal, and the examination fees were small. The unequal treatment constituted by the examination requirement resulted from a difference relating to the administrative system of the school attended because a school not conforming to the linguistic requirements was not subject to school inspections.

12. In summary, the Court held that the right to education does not mean the right to be provided education in a language of the parent's choice. The right to education is confined to the right of access to educational establishments existing at a given time and the right to obtain, in conformity with the rules in force in each State, the official recognition of studies which have been completed. There was no violation of rights under the Convention as both French-speaking and Dutch-speaking children have access to public or subsidised education, that is to say, to education conducted in the language of the region.

13. This paper has been prepared in response to Members' request as recorded at paragraph 3(a) of the minutes of the Bills Committee meeting held on 5 February 2007.

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