

Belgium Linguistics Case - 'In the case "relating to certain aspects of the laws on the use of languages in education in Belgium" v Belgium' (Application n° 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64)

1) Reference Details

Jurisdiction: European Court of Human Rights.

Date of Decision: 23 July 1968

Status of Case: Decision at Merits

Link to case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&key=31239&portal=hbkm&source=external&table=285953B33D3AF94893DC49EF6600CEBD49>

2) Facts

The applicants submitted, between 1962 and 1964, six applications on their own behalf and on the behalf of their children, alleging that Belgian linguistic legislation relating to education infringed their rights under the European Convention, namely Article 8 in conjunction with Article 14, and Article 2 of the Protocol 1 of March 1952. All applicants were inhabitants of Alsemberg, Beersel, Antwerp, Ghent, Louvain, and Vilvorde, which belonged to the region considered by law to be Dutch-speaking, or of Kraainem.

3) Law

The applicants alleged a violation of Article 8 (right to respect for private and family life) in conjunction with Article 14 (non-discrimination) of the European Convention on Human Rights, and Article 2 of Protocol 1 to the European Convention on Human Rights of March 1952 (right to education).

In particular the applicants sought to challenge the Acts of 27th July 1955, 29th May 1959 and 30th July 1963 "relating to the use of languages in education", the Act of 14th July 1932 "on language regulations in primary and intermediate education", and the Act of 15th July 1932 "on the conferring of academic degrees". Though the Acts of 14th and 15th July 1932 were repealed by the Act of 30th July 1963, they were still in force when the Applicants brought their cases before the Commission, and were challenged alongside the newer legislation.

Section 4 of the Act of 30th July 1963 was given particular attention. It laid down that the language of education should be Dutch in the Dutch-speaking region, French in the French-speaking region and German in the German-speaking region. In Kraainem, and five other communes on the outskirts of Brussels where the normal language is Dutch, nursery and primary, but not secondary, education was allowed in French if this was the child's maternal or usual language and provided that the head of the family is resident in one of these communes.

4) Legal Arguments

The Applicants

The applicants, whose children totalled more than 800, asserted that the law of the Dutch speaking regions where they lived did not include adequate provisions for French-language education. They also complained that the Belgian state withheld grants from institutions in these regions which did not comply with the linguistic provisions set out in the legislation for schools and refused to homologate certificates issued by these institutions. Further, the state did not allow the applicant's children to attend French classes which existed in certain places thereby obliging the applicants to enrol their children in local schools, contrary to their aspirations, or send them further afield which entailed various risks and hardships.

The Government

The Government argued that the right to education in one's own language was not included in the Convention and the Protocol, and that the applicants did not belong to a national minority within the meaning of Article 14.

5) Decision

The Majority

The Court found by a majority of 8 to 7 that the Belgian Act of 2 August 1963 did not comply with Article 14 of the Convention read in conjunction with Article 2 of Protocol 1 on the basis that it prevented certain children from having access to French-language schools in the communes on the outskirts of Brussels solely because of the residence of their parents. The Court found unanimously that there had been no breach of Articles 8 and 14 of the Convention, and Article 2 of the protocol, with regard to the other contested legislation and points at issue.

In reaching its decision the Court considered that the principle of equality of treatment enshrined in Article 14 was violated if the distinction had no objective and reasonable justification, did not pursue a legitimate aim, and was not proportionate to the aim pursued. Further to this, the Court opined that the right to education implied the right to be educated in the national language, and did not include the provision that the parent's linguistic preferences be respected.

Dissenting Opinion (Holmbäck J., Maridakis J., Rodenbourg J., Ross J., Wold J., Wiarda J. and Mas J.)

A joint dissenting opinion issued by Judges Holmbäck, Maridakis, Rodenbourg, Ross, Wold, Wiarda and Mas noted that the conditions of access to French language schools existing in the six communes were not discriminatory as they pursued a legitimate aim.