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Mestan v. Bulgaria – finally a genuine recognition of linguistic rights?

 strasbourgobservers.com/2023/09/08/mestan-v-bulgaria-finally-a-genuine-recognition-of-linguistic-rights/

September 8, 2023

by **Eva Meyermans Spelmans**

In the case of Mestan v. Bulgaria, the European Court of Human Rights ('the Court') found that a law imposing Bulgarian as the official language to be used in election campaigns violated the right to freedom of expression as enshrined in Article 10. In 2013, Mr Mestan was fined for speaking Turkish during a public event while campaigning for the parliamentary elections. The judgment shows that language is much more than just a medium of communication. Once again the Court establishes a minimum level of protection for linguistic minorities during election campaigns.

In the analysis of the case, the blogpost will first briefly touch upon the rich linguistic, religious and cultural history of Bulgaria, as this is crucial to understand Bulgaria's linguistic policy. Secondly, the blogpost will provide a brief overview of the complex framework of linguistic minority rights. The importance of the recognition of linguistic rights for a democratic society and for individuals will then be discussed.

Overview of the Facts

In this case, Mr Mestan, a Bulgarian national of Turkish origin, was the leader of the Movement for Rights and Freedoms Party. In 2013, he was a candidate for the Bulgarian parliamentary elections for this party, which is typically supported by ethnic minorities in Bulgaria. At a public event during his electoral campaign, he spoke in his mother tongue, Turkish, without an interpretation into Bulgarian for seven minutes to a mainly Turkish-speaking public. However, the Bulgarian Electoral Code contained an absolute prohibition on the use of any language in election campaigns other than the official language (Bulgarian). The violation of this prohibition entailed administrative sanctions. Therefore, on the 17th of May in 2013, Mestan was issued an administrative fine of 2.000 Bulgarian leva (approximately EUR 1.000) as according to the regional governor the offence constituted a significant danger to public order considering Mestan was the president of the political party.

On the 20th of May 2013, Mestan appealed the decision before the District Court in Kotel. He argued that the Turkish language he had used to address the people during this event was not only his mother tongue, but also that of his Turkish-minority electorate. According to him, a large number of the public were elderly people who were not fluent in Bulgarian, meaning that they could not assimilate the information at the same level if given in the official language. The applicant argued that the prohibition on language use constituted a breach of

Article 10 of the European Convention on Human Rights and asked to have the administrative fine set aside. The District Court decided to reduce the amount of the fine to 500 Bulgarian levs (approximately EUR 250) as it was the first offence of the politician, but upheld the decision itself. Subsequently, the Administrative Court in Silven ratified this decision.

Summary of the Judgment

Language as a medium of expression as protected by Article 10 of the Convention includes the freedom to receive and impart information and ideas in any language. This allows all persons to engage in the public exchange of diverse cultural, political, and social information and ideas. The Court had to examine whether the restriction of the use of a language other than the official language during election campaigns, and the scope and application of the restriction were compatible with Article 10.

The Court decided that the administrative fine imposed on the applicant on the ground that he had spoken Turkish at a public event as part of his election campaign, amounted to an interference with the exercise of his right to freedom of expression. The infringement of Article 10 was prescribed by law by Articles 133 and 299 of the 2011 Bulgarian Electoral Code. The Court briefly stated that the measure could pursue the legitimate aims of preventing disorder and protecting the rights of others. The focus of the Court was therefore on the question whether the measure was ‘necessary in a democratic society’.

According to the Court, States are in principle entitled to regulate the use of languages – in certain forms or with regard to circumstances relating to public communications – by candidates or other persons during election campaigns. Restrictions or conditions on language use can only be imposed if they correspond to a ‘pressing social need’. In examining the existence of a ‘pressing social need’ as part of the ‘necessary in a democratic society’ test, the margin of appreciation enjoyed by States plays an important role. The linguistic policies of the Contracting States are influenced by a multitude of historical, linguistic, religious and cultural factors. This makes it nearly impossible to identify commonly shared elements which may guide the Court in imposing a uniform standard, particularly in the context of linguistic policies in an electoral context. Accordingly, the Court allowed the State authorities a particularly wide margin of appreciation in certain contexts in this area. However, in a democratic society, there is an interdependent relationship between the right to freedom of expression and the right to free elections as guaranteed by Article 3 of Protocol No. 1. Free speech is an essential condition for ‘the free expression of the opinion of the people in the choice of the legislature’. In the run-up to elections States have a narrow margin of appreciation, as it is important in a democratic society that opinions and information of all kinds can circulate freely. The Court continued its examination by outlining

that the Convention does not per se guarantee the right to use a particular language in communications with public authorities or the right to receive information in a language of choice.

In this case, the Court stated that an absolute prohibition on the use of languages other than Bulgarian coupled with administrative fines is not compatible with the essential values of a democratic society, including the freedom of expression as protected by Article 10 of the Convention. In its judgment, the Court took into consideration that Turkish was the applicant's mother tongue, as well as the demographic of the target audience, consisting primarily of elderly people who understand Turkish better than Bulgarian. The right of an individual to impart his political views and ideas, and the right of others to receive this information would be meaningless if the possibility to convey the message in a language understood by the addressees is threatened by the possibility of sanctions, even if these only have an administrative nature.

In its analysis, the Court pointed out that of thirty-seven Contracting States surveyed, only Ukraine had a similar absolute prohibition for political candidates to express themselves in a non-official language at public election events. Repeatedly, the Bulgarian provision had been criticised by the [Advisory Committee on the Framework Convention for the Protection of National Minorities](#), by the [Venice Commission](#) and by the [OSCE/ODIHR](#). In their recommendations and opinions, these international boards found that this provision deprives minorities from their opportunity to effectively participate in public affairs through elections. Only when people part of a minority group can express themselves in their mother tongue during an electoral campaign, they have equal access to elections as enjoyed by other citizens. This analysis aligns with the values of a 'democratic society' as promoted by the Court. In the context of this case, the Court stresses the importance of pluralism, tolerance and the protection of minorities in a democratic society. According to the Court, 'respect for minorities, far from weakening democracies, can only strengthen them'. These considerations led the Court to find that despite the margin of appreciation of the national authorities, the absolute prohibition does not correspond to a 'pressing social need'. Therefore, the prohibition was not 'necessary in a democratic society' and thus not proportionate.

Comment on the judgment

The European continent is characterised by its linguistic diversity. To individuals, languages are part of their personal identities. To groups, languages can be part of a shared inheritance and culture. [Bulgaria](#) is a great example of a divided society, as it is characterised by its multiple religions, languages, cultures and nationalities. The [Ottomans](#) ruled Bulgaria for over five centuries until its independence in 1878. The Turks remained in Bulgaria after border changes and still constitute the largest national minority (8,8%). In the 1980s, Bulgaria's Communist Party attempted to nationalise its minorities by force. The new

language policy at the time only allowed Bulgarian in public places and Turkish names were to be Slavized. In recent decades, the status of national minority languages is gradually improving. Although Bulgaria did not ratify the European Charter on Minority or Regional Languages ('ECRML'), it did ratify the Framework Convention for the Protection of National Minorities ('FCNM').

The importance of recognising minority rights cannot be underestimated, as according to UNESCO's Universal Declaration of Linguistic Rights it fosters peace, stability and security. In this regard, it is crucial that all citizens, including those part of a linguistic minority, are able to participate in the political life in order to prevent conflicts and enhance integration in society. This ambitious rhetoric can be found in different international frameworks, such as the ECRML and the FCNM, which aim to protect linguistic rights, but cannot hide their ambiguous, non-binding character. It is unclear what a 'right to use a minority language', 'minority' or 'right to language' exactly entail. Without a clear definition, 'use of a language' can pertain to the public domain (e.g. in education), while it can also refer to the private domain. The ECRML has a limited scope, as it explicitly excludes the languages of migrants. This ambiguity allows European States such as Bulgaria to guard their sovereign rights in the form of linguistic nationalism under the guise of an official multilingual policy. It is feared that such States might actually undermine their political-geographical cohesion by officially recognising a degree of linguistic diversity.

Repeatedly, the Court has emphasised that 'linguistic freedom as such is not amongst the rights and freedoms governed by the Convention'. However, linguistic rights are part of countless areas of life and thus can be linked to other human rights, such as the right to education, or the prohibition of discrimination. Consequently, in the case law of the Court, including the present case, applicants increasingly revert to other rights provided for in the Convention to ensure a language right. Despite the non-binding character of these international agreements, it is interesting to see that the Court considers the recommendations and opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities, the Venice Commission and the OSCE/ODIHR.

The values listed by the Court of pluralism, tolerance and protection of minorities in a democratic society require a balanced, reasonable linguistic framework. Otherwise, linguistic rights issues can lead to sentiments of alienation or marginalisation and potentially to instability or conflict. Linguistic rights may address the causes of alienation, marginalisation and exclusion, which in turn can avoid ethnic tensions and conflicts. Democracies can be strengthened when more people are able to participate in the political life of a country. Indeed, the argument can easily be made that more recognition is needed for linguistic minority groups in order to seriously alleviate tensions. As stated before, the recognition of minority languages in a state remains a sensitive topic for various political and national reasons. Consequently, the right to use one's language, without discrimination, is still underrepresented as a key human right. In this light, the Court's words may look empty as there is no genuine recognition of multilingualism on the European continent.

Similarly to the case of Şükran Aydın and others v. Turkey, the Court emphasises that the minority language was the speakers' mother tongue and that some of the persons addressed did not understand the official language. The reasoning in both cases shows the importance given by the Court to the mother tongue as a language in which one can best express themselves, but also the language which allows some part of the minority audience to better understand the speaker. The legitimate interest to use one's mother tongue cannot be restricted by referencing another language available for communication. This reasoning is accepted by sociological analysis and refutes the argument that there is little reason for minority groups to protect their languages since the speakers will 'inevitably' and 'voluntarily' shift from their mother tongue to the language that seems to fit better in the situation. Furthermore, it shows that languages should not only be seen in the context of groups and politics. It is important to also see language as an individual freedom, since one's mother tongue means much more to a person than simply a medium of conveying and receiving information. This implies that when the different interests need to be balanced, a distinction should be made between the right to use a language for an individual and the State or the minority group's political aspirations. Furthermore, as linguistic rights are an integral part of already existing human rights, linguistic rights should not be framed as rights of minorities that form a distinct category of rights.

Conclusion

In the present judgment, the Court acknowledges the impact which cultural and linguistic exclusion can have on the ability of an individual to participate and contribute to the political life of a country. The case demonstrates the importance of exchanging opinions and information during election periods in a language one understands, with a focus on the mother tongue of the applicant and the addressed group. However, there is no genuine recognition of multilingualism in Europe as in most European countries a balanced, reasonable linguistic framework is still lacking. Balancing state interests and individual interests is not an easy task, but the importance of a balanced framework in safeguarding peace, stability and security on a multilingual continent like Europe cannot be underestimated. The case of Mestan v. Bulgaria establishes an important minimum level of recognition necessary in a democratic society. Nonetheless, it remains up to the European states to take linguistic diversity seriously in order to foster harmonious interaction between groups with dynamic cultural identities.