VAN TAALKONTAK NA TAALSAAMBESTAAN DEUR TAALREG
FROM LANGUAGE CONTACT TO LANGUAGE COEXISTENCE THROUGH LANGUAGE LAW

Fx 32/2/2410452

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1. INLEIDING

Taal is sonder twyfel een van die belangrikste elemente van die individuele en kollektiewe identiteit van mense en volke en dit onder sy twee fundamentele verskyningsvorme: die representatiewe en die kommunikatiewe funksie (Bionckart 1985)

Soos die groot Duitse wetenskaplike, Wilhelm von Humboldt reeds meer as een eeu gelede gesê het: iedere taal stem ooreen met een welbepaalde siening op die wêreld (Humboldt 1836)

Aan een volk se taal raak is bygevolg een besonder gevaarlike aangeleentheid, want dit raak ook die hart en wese van daardie volk self. Geen taalbeplanning mag bygevolg ligsinnig uitgewerk word want die gevolge daarvan kan op lang termyn onherstelbaar wees. Die verantwoordelikheid van wetenskaplikes en politici in hierdie domein is totaal.

Suid-Afrika staan nou op die drempel van 'n nuwe era, gebaseer op 'n nuwe nie-rassistiese politieke bedeling. In hierdie bedeling sal ongetwyfeld 'n belangrike opdrag wees om 'n reëling uit te werk wat moet voorkom dat die onvermydeike taalkontak 'n meertalige situasie, hom ontwikkel tot taalkonflik, maar eerder lei tot taalsaambestaan en as moontlik selfs tot taalsamewerking.

Om daartoe te kom is 'n duidelike regskader (legal frame) noodsaaklik. Nou kan taalregte op drie verskillende maniere verseker word

- eerstens kan reëlings uitgewerk word wat die tale self betref - dit is wat ons taalwetgewing noem
- tweedens kan die regte van sprekers van bepaalde tale verseker word. In hierdie geval plaas ons ons in 'n perspektief van menseregte (individueel en kollektief)
- derdens kan politieke (territoriale) strukture uitgewerk word waarbinne bepaalde gedifferensieerde taalreëlings deurgevoer kan word.

Ten slotte is dit natuurlik moontlik om 'n kombinasie van twee of drie van hierdie sisteme aan te wend.

2. Aspects of language legislation

Generally, today, linguistic laws are embedded in the constitutions of states and consequently implemented through their own laws, decrees and regulations. Very rarely, it is done through jurisprudence and only Switzerland gives us an example of that system. Once you have a constitution that recognizes the linguistic diversity and you have defined the legal instruments which you will use, then it must be decided what languages they will apply to. As simple as this question may seem from the outset, in reality it is often a very difficult one, many times abused by politicians - particularly those who refuse the concept of language-rights itself. They will start the discussion on the distinctions between languages and dialects, and we will be confronted by systems of artificial standardization, like Corsican, Galician, Moldavian (which ceased to exist last year), Luxembourgian, Macedonian and all those other so-called languages which are examples of politicization of the language issue.

This aspect, of course, does not interfere with the legal aspect we've mentioned before, nor with the typologies of statutes which we will describe afterwards. However, the contested language situation will of course be harmful to the credibility of the language legislation. What situations and what statutes can one have in a state in which multilingualism is recognized?

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First of all, a state can declare itself to have an official language in which the state organs are functioning, the justice is rendered and the education is given. In this model, a state can also have two, three or more official languages, like Switzerland, Canada, Belgium, Finland, etc. Such an official language can sometimes be spoken by only a very tiny part of the population. For instance, only one percent of the population of Belgium speaks German.

The second possibility is the concept of the national language. This is the language which historically determined the identity of the people, and it is given a particular status by the authorities, although it may also sometimes only be spoken by a very small part of the population. We know all of the examples of Ireland with the Gaelic language, Switzerland with the Romanch language and Malta with the Maltese language. After the decolonization, it was also the case of many African and Asian states which declared some of their local languages as national languages, whilst the former colonial language continued to function as an official language (for instance French, English, Protugese and Spanish).

There is - in the third place - also the possibility of what is called the auxiliary language. Some states have declared (or not declared) an auxiliary language which is neither national nor official. The best example is Luxembourg, which declared its local German dialect to be the national language, declaring a foreign language - French - to be the official one, and downgrading the former official language - German - to an auxiliary one.

If you have considered all these different possibilities for language statues then you have also to decide where they have to apply. Here we have two possibilities:

One is a territorially restricted statute with two sub-types (hierarchical and non-hierarchical). The non-hierarchical means that all the languages are official but each of them is used in a particular part of the state (Switzerland, Belgium). In the hierarchical system, a particular official language for the whole state is supplemented by another language which is official only in a part of the state (Italy, Spain). In that case, the state language takes precedence over the official language of the part. There is only one example in Europe and probably in the world where the official language of the part takes precedence over the state language, and that is the statute of the Åland islands in Finland, where the Swedish language takes precedence over Finnish.

The question that follows is whether we will apply these languages, classifications and hierarchies territorially or personally.

Either the state is multilingual in its totality and the citizens identify themselves with one of the languages (this is the case of Malta or Ireland), or the state is divided into territories

which each have their official language (Belgium, Finland, Switzerland, Czecho-Slovakia and whatever existed of Yugoslavia up until now. The two systems may co-exist, as in Belgium, where the bilingual territory of the capital, Brussels, belongs to the first category and the rest of the country to the second one.

3. Human (minority) rights perspective

Having described the various possibilities which one can reach through language-legislation, I would now like to deal with the possibilities we can achieve through the framework of establishing a human rights system. In the field of minority protection, the main question is whether such a system is one of collective or individual rights. If we touch this problem we have to try to define the concept of collectivity. It is obviously much more difficult to define the concept of a group than the concept of an individual - although even that is not as simple as it appears, because in the last century there were individuals who were not considered to be people, but slaves. And in the question of abortion, the discussion is when the human being starts to be a human being. So it is too simple to say: "Just everyone knows when a person is a person." With the minority, the ethnic group, or the people, it is as with the elephant: everyone knows what it is, but you cannot describe it so easily.

It would, of course, be a sign of great weakness to accept not to grant rights to groups because we aren't able to define the group. I would like to stress that the concept of people used by the UN since 1948 in numerous documents has never been defined. This has not prevented the UN from giving the right of self-determination to peoples. So if the peoples can have the right of self-determination without knowing what a people is, then the minorities can have minority rights without knowing what a minority is. And so the refusal of certain states or even international organizations to stabilize a fundamental system of minority rights, because we cannot define "minority", is just a dilatory tactic, because they don't want minority rights. In December 1989, UNESCO for the first time organized a group of experts to try to define the concept of people. From the documents, one can conclude that the organization was very surprised that they were not able in one meeting to define the concept. That UNESCO had the illusion that they could have defined it in just one meeting clearly shows how even these eminent organizations sometimes lack a degree of seriousness.

For the purpose of this conference, I am willing to give it a try myself. A collectivity, to be a group, needs three necessary characteristics: first it needs a proper existence which is distinct from the existence of its components; secondly, a group must have a subjective appreciation of its own difference in respect to the others; and, thirdly, the group must be convinced that the well-being of all is necessary for the well-being of the singular members. Obviously, in reverse, the group must be convinced that what is dangerous for the group is dangerous for its members. If we have these three basic elements (and probably others), we can speak about the presence of collectivity. Moreover, each group is a combination of a diachronic and synchronic

existence. The diachronic existence is what one can call the collective memory, and the synchronic existence is what we can call the environmental consciousness.

If we accept that language collectivities are groups in the society, then the main thing to establish is the relationship of the language to the group. In most cases, the language is just the essential criterion to determine the identity of the group, not only objectively but also subjectively. For instance, objectively in Czecho-Slovakia, there is no Czech language and no Slovak language. It is a subjective (historical, cultural, and sociopolitical) division of one language system. The important thing is that the Czechs and Slovaks are convinced that they talk Czech and Slovak; likewise, there is no Serbian and no Croatian language, but Serbians are convinced they speak Serbian and Croats that they speak Croatian. This demonstrates that language rights cannot always be a matter of rigid scientific, linguistic assumptions. The language as an essential criterion to determine the group, ~~and~~ is an external as well as internal criterion. Externally it makes it possible to distinguish the group from other groups, and internally it allows identification of all the members of the group. I want to stress very strongly that, evidently, every group is simultaneously inclusive and exclusive; otherwise, it is the negation of the group concept.

The observation of certain political leaders that people who defend minority rights are divisive is irrelevant. If they divide here, they assemble over there. If language is a very important element, it is in the meantime a fragile element. In contrast to other identification criteria (like how long you are and if you are black or yellow or whatever race), it is a variable criterion because, clearly, one can change one's language. As long as that change of language would be strictly the consequence of an autonomous decision of the individual, there is no further observation to make. But, from experience, we know that this is never the case and that it is always exterior pressures (direct or indirect) which make language change.

The possibility of changing your language has as a consequence the creation of mechanisms and systems to induce this language shift. Even theoretical individual decisions are still the consequence of exogene factors. For instance, if you decide to change language in order to get an important job, it is not your own decision. You think that you have taken this decision, but it is the person who offers you the job who effectively has taken the decision. These external factors are exactly the source of the conflicts between the individuals and the group and between the groups themselves. There are, in reality, no dominant languages or dominated languages. There are only languages of dominant peoples and languages of dominated peoples.

Now that we know that language is a very important element of the group, we have to see what rights a group can have. The group must have the right to defend itself. This is not possible only through the individual human rights, because the group as such is

the bearer of rights which are more than the sum of the rights of the individuals who compose it. The rights of the group are of another nature as the rights of the individual. The individual human rights are based on the great principles of the American and French revolution, the philosophers like Emmanuel Kant and Thomas Paine, and have an important characteristic: the almost absolute limit which is the freedom of the other individuals. Our whole democratic system rests on that. It is particularly on that principle that the majority group in the state bases its demands for language liberty (of the numerical majority). In a homogeneous group, the decision of the numerical majority is the democratic decision. In a non-homogenous group the decision of the numerical majority can be a dictatorship. I like to quote, in this connection, the famous French revolutionary who said: "In any policy which has to handle elements of unequal dimension, it is the law that sets free and freedom that oppresses. So between the strong and the weak, the law guarantees freedom and freedom can mean oppression."

Since we know that all relations between individuals, peoples and groups are unequal relations, we need the legal system to organize the relations and we cannot accept the so-called freedom, because that freedom is the dictatorship of the numerical majority.

Consequently, a non-homogenous or plural society can only be managed in the framework of a very strictly established legal system which aims to guarantee the maximum of equality for each citizen as well as for each component group. This can only be done through a combination of individual and collective rights.

If one admits that there is a collective right, then one must also admit that the individual right can be limited by rights of the collectivity whereto the individual belongs, as well as other collectivities. And the different collective rights also limit each other. This is nothing else than applying the principle of Kant to the combination of individual and collective rights.

Let us now turn to one of the most basic differences between collective and individual rights. It is not a matter of numbers, as one could assume, but of relations. The model implies that every citizen exerts his individual rights wherever he happens to be, (he) carries them, so to say, in his luggage. His collective rights, on the contrary, can only be exerted in the collectivity to which he belongs (or to which he has been accepted on a mutual agreement in the case of migration). Said differently, it means that no one can claim any linguistic cultural rights (in a public manner) outside his own group, except with the explicit agreement of the group in which he has been accepted.

The attentive reader will have noticed that in this paper we have avoided, as much as possible, speaking about minorities (and majorities). This is because, just as it is not mentioned in the (individual) human rights instruments, they are meant for a particular kind of person, it is also the aim of the system of

collective rights to apply to all groups. IN reality, it will eventually be "minorities" which will claim the rights, because the majority - some rare exceptions left aside - usually does not need the specific collective rights to assert their demands.

Admitting a collective right as a separate category of rights has a paramount consequence. When in a given legal system (which a state in reality is) there exist a variety of ethno-linguistic groups (peoples, nationalities, minorities), the simple system of democracy (one (wo)man, one vote) does not secure equality between the citizens.

The acknowledgement of collective rights implies thus by itself that one accepts alongside the "one (wo)man, one vote" principles also the "one group, one vote" principle.

The combination of the two principles is the main challenge of the legal system which has to accomodate plural societies. This brings us to the third part of this paper.

Part 4: Structural guarantees for group rights

It is evident that all the above-described situations are not "floating" in the atmosphere, but take place somewhere on our globe. Non-territorial group rights are thus a rare exception, although they could be useful in such cases as the Jews and the Roma/Sinti. In reality, examples of real implementation of non-territorial linguistic/cultural/ethnic rights are very rare and the known attempts (Cyprus, Lebanon) are not very promising. It may thus be useful to present briefly some systems of government which can be usefully implemented to accommodate minority situations. It is evident from the outset that the centralized state is the least adapted to a plural society since it does not allow for a diversification in the treatment of administration or territorial organization.

Of course, such states can create exceptional statutes for certain particular area's because of their special geographical situation, being islands (e.g., Madeira, Sicily), or ethno-linguistic identity (Wales, Friesland), or even both (Corsica, Fär Oer, Aaland, Greenland), but this may create certain tensions with the mainstream areas and populations, which may feel, in a sense, "discriminated" against, be it justified or not.

What general systems of government can thus be proposed, which are also beneficial to linguistically differentiated or plural societies?

They are of three kinds ;

1. Decentralisation: It may be self-evident that in ethnically very mixed area's the decentralisation of decision-making power to local and regional authorities can be a workable tool to ease tensions between communities.

Particualrly in the field of education and administration, which are the two main domains in which language rights have to be secured next to the areas of justice and the media solid municipal autonomy can already give usefull solutions. Let us take the simple examples of birth, marriage and death certificates, building permits, commercial registers, etc. If they can be delivered by municipalities (whether or not according to a centrally defined model) they can easily be provided in the language of the peop;e. The same goes for the kindergarten and primary school, or even secondary school in the case of larger municipalities. To a lesser extend even local radio and television today can be organised and/or subsidized by municipalities or other local authorities.

2. REGIONALISATION

A lot of matters are of such dimension that they surpass the municipalities capacities. This does not necessary mean that they necessarily have to be dealt with on the central government level.

This problem can be handled through various systems of regionalisation. These regions can be given weldefined competences by the state to carry through their own policy. This may be very adequate e.g. for health services and social services like a regional employment agency or a transportation company or television.

The regional model is very diverse. It can go from mere territorial division without much power or means up to quite well structured units with elected assemblies, taxation powers, own administration etc. However the weak point of the model is that those power are "granted" to the regions by central state authorities, so that they can be subject to pressure on political blackmailing by conjunctional majorities or powergroups at central state level.

3. FEDERALISM

This brings us to the most sophisticated form of political organisation federalism. The main difference with the previous model is that the relations of the central and the facts is based on a solemn contract which is negociated and once accepted can only be changed with the agrement of a democratic majority of the whole and of the parts.

This given the system a great degree of stability. It is completed with a federal court which can rule on differences arising between the state and the parts or between the parts. Furthermore a mechanism of financial compensation is build in so that the richer parts transfer wealth to the poorer parts. Each part has its own basic law or constitution, which may of course not contradict the federal constitution. Thus each part can also have its own language legislation as well as institution.

In relation to the language one can strive to form mono-lingual units. Where this is not possible the second option is to have units with a clear linguistic majority. In that case all other languages proved from/or rights mechanism can be organised. The particularity however resides in the fact that the chances are great that the minority in unit A will be the majority in unit B, and vice-versa, so that the government of unit A will be a kind of guarantee of the rights of its kin-minority in unit B and act as such on the federal level. The federal system thus implies a number of checks and balances which make it counterproductive for any language community to oppress or harm another one because it could get the same treatment in another part of the state.

5 CONCLUSION

Let us be clear in our conclusion. Language contact will always lead to conflict because it is in the nature of the speakers of the languages to be competitive. Language conflict itself is however not the issue but the regulation of it. One has to reduce the concept of conflict to its most basic meanings which is a difference of opinion. Only when language conflict is not regulated can it become dangerous. To achieve this regulatory function, one needs permanent rules and institutions adapted to each and every situation.

This flamly means that complex multilingual, multi-thnic plural societies cannot be democratically governed through simple institution. This is the reality which 90 % of the states of the world are confronted with, but, unfortunately whose leaders are not often capable of standing up too.

Repression obnubilation or cognicance of linguistic deversity seems to be so much easier. The human cost however of this shortsightedness is high and the bill will one day or another be presented.