

LINGUISTIC DISCRIMINATION AS A SOCIAL, LEGAL AND HUMAN RIGHTS PHENOMENON¹

JÁNOS FIALA-BUTORA

Legal Studies Institute, Centre for Social Sciences, Budapest, Hungary
National University of Ireland, Galway, Ireland

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Abstract: This article explores the difference between equality and the absence of discrimination within the area of language use. It draws on examples of social practices of linguistic inequality in Slovakia, and analyses how these are regulated by Slovak law, international law and laws of countries of best practices. The article argues that these examples represent three different models of linguistic equality: formal equality, equality of opportunities and substantive linguistic equality. It will analyse how these approaches empower or disadvantage speakers of minority languages, and what normative guide they provide for linguistic equality.

Key words: linguistic rights, equality, anti-discrimination, Hungarians in Slovakia, international human rights law

1. INTRODUCTION

Is linguistic equality achieved by prohibiting discrimination on the basis of language? That depends on how the balance is achieved between equality norms and provisions on the use of languages. This article explores the gap between equality and non-discrimination by drawing on specific examples of language use in Slovakia. By analysing how various social practices of linguistic inequality are regulated by law, the article differentiates between three legal regimes of linguistic equality, which differ in what specific forms of inequality they permit to persist.

The different meanings of equality have already been explored in the legal literature (see Fredman 2011, for an overview). McCrudden differentiates between four meanings of equality, each emphasising a different component of the full dimension of equality: the individual justice model, the group justice model, equality as recognition of identity and equality as participation (McCrudden 2005). Fredman has further developed the concept of substantive equality by distinguishing its four dimensions (Fredman 2016). These approaches have not yet been applied to the area of language use. That area is typically considered from the perspective of specific

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norms on minority rights and language use, without a deeper theoretical reflection on their relationship to equality (Malloy – Caruso 2013; Henrard – Dunbar 2008; Alfredsson 2000).

Slovakia's language policy has received a lot of attention in the academic literature but not from the perspective of different conceptions of equality (Sloboda et al. 2018; Lanstyák 2000; Gbúrová 2009; Wardyn – Fiala 2010; Moorman-Kimáková 2014). This article will fill this gap by addressing three specific ways of setting the balance between equality norms and language policy: by Slovak law, by international human rights law and by laws of countries of best practices. Analysing linguistic practices under these standards highlights the level of protection users of minority languages would need to exercise their linguistic rights. The article argues that these examples represent three different models of linguistic equality: formal equality, equality of opportunities and substantive linguistic equality. Contrasting the specific examples of the wider phenomenon of linguistic inequality with the narrow legal understanding of discrimination leads to a deeper understanding of the impact of legal norms on social practice and can provide a more comprehensive framework for linguistic justice.

2. LINGUISTIC EQUALITY UNDER SLOVAK LAW

In Slovakia, section §2(1) of the Anti-discrimination Act prohibits discrimination on the basis of, among other grounds, language (Zákon o rovnakom zaobchádzaní 2004). Section §2a(2) defines direct discrimination as less favourable treatment of the person compared to others in a comparable situation. Section §2a(3) defines indirect discrimination as a formally neutral act or rule which treats a person less favourably compared to others, unless the act or rule could be objectively justified as following a legitimate interest and is proportionate and necessary to achieve that interest. Persons speaking a different language than Slovak are thus formally protected from unfavourable treatment by direct action or formally neutral rules. The Act applies to a wide area of relationships, covering employment and the provision of services.

At the same time, other laws contain provisions making direct distinctions between the use of different languages. More specifically: the Slovak language has certain advantages over other languages. Article 6(1) of the Constitution defines the Slovak language as the sole state language (Ústava Slovenskej republiky 1992). This provision is mainly implemented by the State Language Act, which formally declares the Slovak language to have “primacy” over all other languages on the territory of Slovakia, and also gives specific advantages to the use of Slovak in certain situations [Zákon o štátnom jazyku 1995, §1(2) and §3(1)]. The use of minority languages is mainly regulated by the Act on the Use of Minority Languages, which has a narrower scope and provides more limited protection to minority languages compared to that of the State Language Act (Zákon o používaní jazykov národnostných menšín 1999; Fiala-Butora 2012).

The language laws contain rules which provide advantages to speakers of Slovak compared to speakers of minority languages. This formally violates the principles of equality laid down by Article 12 of the Constitution and the Anti-discrimination Act. These seemingly contradictory approaches are hard to reconcile in the abstract. The relationship of language laws and anti-discrimination laws is not one of specific and general norms, where the former would constitute an exception to the latter. The Anti-discrimination Act also prohibits indirect discrimination caused by regulation [Zákon o rovnakom zaobchádzaní 2004, §2a(3)], and laws are not immune to review under anti-discrimination provisions (see the European Court's practice, for example *Sidabras and Džiautas v. Lithuania* 2004). The Anti-discrimination Act makes a specific exception for laws implementing the principle of affirmative action (also called positive discrimination) in section §8a, from which follows that other laws have to comply with the Act. The exception in §8a does not apply to the State Language Act, as that is not following the aim of compensating a disadvantage of members of national minorities. Nor do the language laws in general comply with §2a(3) of the Anti-discrimination Act: some of their provisions might pursue a legitimate interest, and they might be proportional and necessary to that interest, but this must be assessed on a case by case basis.

To establish the relationship between these two sets of norms, the following part will analyse specific examples of linguistic inequality in Slovakia. This will clarify how state bodies understand the dividing line between the realm of anti-discrimination norms which require equality on the basis of language and language laws which adopt specific rules of inequality between languages.

Access to employment is one of the primary areas covered by equality law. The Anti-discrimination Act protect persons from unfair dismissal on one of the protected grounds. A few examples of persons allegedly made redundant in Slovakia because of the language they spoke at work were reported by the press. A woman employed at Deichmann Šamorín was allegedly dismissed by her employer because she spoke Hungarian to customers.² Similarly, a man was harassed by his colleagues at Volkswagen's plant in Bratislava for speaking Hungarian, as a consequence of which he had to resign from his employment.³

These persons both submitted civil lawsuits arguing a violation of the Anti-discrimination Act. The Act does prohibit these kinds of unfair treatment, therefore if they succeed with meeting the burden of proof, they can achieve victory before the courts. We can conclude that the law does protect persons from being dismissed solely due to the use of a specific language and the connected association with a minority.

² *Deichmann-ügy: még per is lehet belőle*, Új Szó, 2 December 2015. Available at: <https://uj szo.com/kozelet/deichmann-ugy-meg-per-is-lehet-belole> [cit. 20-01-2023].

³ *Pert indított a pozsonyi Volkswagen ellen egy csallóközi alkalmazott amiatt, amit szerinte a cégnél át kellett élnie*, Paraméter, 10 September 2021. Available at: <https://parameter.sk/pert-inditott-pozsonyi-volkswagen-ellen-egy-csallokozi-alkalmazott-amiatt-amit-szerinte-cegnel> [cit. 20-01-2023].

On the other hand, the Anti-discrimination Act does not support persons to actually use their language at the workplace. There are specific provisions in language laws detailing what language public employees must use – the default language is Slovak for all public employees under the State Language Act [Zákon o štátnom jazyku 1995, §3(1)] and the Law on the Use of Minority Languages makes specific exceptions permitting the use of minority languages in some circumstances (Fiala-Butora 2013). If employees were forbidden by their employers to use a minority language outside of that context, the employers would be acting in accordance with the law, and the Anti-discrimination Act would not protect the employees.

An example is provided by the Slovak Railways. In their internal employment regulations, they specifically require employees to use Slovak in communication with each other [Železnice Slovenskej republiky 2008, section 12(4)]. Two employees speaking Hungarian with each other would thus breach this obligation. The regulation is obviously disadvantageous for speakers of languages other than Slovak. At the same time, it complies with the language laws. This provision has not yet been challenged before courts, but according to the Railways, it does not violate the Anti-discrimination Act.

Similar examples are reported from the Slovak Post as well. Complaints about postal employees berating customers for trying to speak Hungarian were reported to the Ministry of Transportation which replied that the Slovak Post is not breaching the law (Roundtable of Hungarians in Slovakia 2019, para. 211). In Bratislava, the director of one post office ordered employees not to speak Hungarian among each other (Roundtable of Hungarians in Slovakia 2014, para. 147). Again, this situation does not fall under the scope of the Anti-discrimination Act.

Hospitals are another important area of language use. Hungarian-speaking newspapers frequently report incidents where patients are berated and even harassed for trying to speak Hungarian to staff or just speak Hungarian among each other (for example parents to their small children).⁴ A serious incident was reported from the Nové Zámky hospital's emergency unit, where a patient with severe abdominal pain was refused to be treated by a doctor because the patient, a young Hungarian woman, did not speak Slovak properly. The patient reported the incident, but the Hospital concluded that the doctor did not violate the law.⁵ Other hospitals allegedly forbade their staff to speak Hungarian to patients, on the ground that they are based in municipalities where the Law on the use of Minority languages do not apply (Roundtable of Hungarians in Slovakia 2019, para. 145).

These hospitals are correct about their legal obligations. Language laws indeed do not require hospitals and their staff to understand and use minority languages – in

⁴ *Na Slovensku aj v nemocniciach len po slovensky!*, Maďari.sk, 20 February 2019. Available at: <http://madari.sk/magazin/aktuality/na-slovensku-aj-v-nemocniciach-len-po-slovensky> [cit. 20-01-2023].

⁵ *Felelősségre vonják a magyar betegét elutasító bolgár orvost?*, Hírek.sk, 5 November 2013. Available at: <https://www.hirek.sk/belfold/felelossegre-vonjak-a-magyar-beteg-et-elutasito-bolgar-orvost> [cit. 20-01-2023].

fact they explicitly exempt them from the obligation to speak minority languages [Zákon o štátnom jazyku 1995, §8(4)]. If a doctor chooses not to speak Hungarian, they can legally do so. Hospitals outside of bilingual municipalities can prohibit doctors and nurses to speak Hungarian.

It seems that the balance between the Anti-discrimination Act and language laws was struck by the Slovak legislator in a peculiar way: equality law protects employees from dismissal on the basis of language; but it does not give them the right to use their language for communication at the workplace. The latter is regulated by language laws, which are not governed by the principle of equality but hierarchy among languages. As a result, equality on the basis of language is very narrow and formal. It does not capture a large part of the life experience of minority language speakers, and even if it complies with Slovak equality law, it can violate international requirements on equality.

3. LINGUISTIC EQUALITY UNDER INTERNATIONAL LAW

International human rights law contains the same duality as Slovak law: it prohibits discrimination on the basis of language, and at the same time it recognises language policy as a legitimate aim of restricting minority rights (see for example *Mentzen v. Latvia* 2004). Because apart from specific minority rights treaties it does not contain elaborate rules on language policy, each body monitoring international treaties has to balance equality provisions against measures promoting the state language. This chapter will assess the approach of the European Court of Human Rights, the most important international human rights body with jurisdiction over Slovakia, to assess how it struck this balance compared to the domestic Slovak actors described above.

Article 14 of the European Convention on Human Rights prohibits discrimination on the basis of language, among others (European Convention on Human Rights 1950). This provision can only be applied in conjunction with another article of the Convention, protecting substantive human rights. These other articles provide only limited protection to linguistic rights. However, Article 10, which protects the right to freedom of expression, is clearly relevant to situations where private persons want to express themselves in a language of their choice. Slovak law does limit these expressions in certain cases. Would these limitations hold up to scrutiny under the European Convention?

Article 14 does not prohibit all kinds of differential treatment, only those limitations which do not pursue a legitimate aim or are not proportionate to that aim (*D.H. and Others v. the Czech Republic* 2007). The European Court can review any kind of measures for their compliance with Article 14, even if they are contained in a state's constitution (see for example *Kiss v. Hungary* 2010; *Anchugov and Gladkov v. Russia* 2013). In other words, Slovak language laws are not in general exempt from review; they have to be justified under the Convention criteria. The promotion

of an official language was accepted by the European Court as a legitimate aim (Podkolzina v. Latvia 2002); the question remains: whether the measures chosen by the Slovak legislator to pursue this aim are necessary and proportionate.

The Court can be particularly strict in situations where the restriction of expressions takes an invasive form, for example where it is enforced by financial sanctions (Murat Vural v. Turkey 2014). Although the Slovak government is of the position that violations of the State Language Act by private actors can no longer be penalised after the Act's 2010 amendments (Advisory Committee on the Framework Convention 2014, para. 5), in fact the sanctions were just moved into other laws (Fiala-Butora 2021).

One area where sanctions apply to private entities is the language of advertisements (Zákon o reklame 2001). In 2010, the Slovak Commerce Inspectorate imposed a fine of 150 euros on the Slovak-language *MY Nitrianske noviny* for publishing an advertisement in Hungarian from a business based in Hungary.⁶ The Inspectorate argued that the State Language Act requires advertisements to be bilingual. The *Gombaszög Youth Festival*, the biggest cultural event of Hungarian-speaking youth in Slovakia, was also investigated for their posters which contained a text in Hungarian without Slovak translation.⁷ They were not fined but ordered to take their posters down. Similarly, the Hungarian-language weekly *Ma7* was investigated for its billboards.⁸ The Ministry of Culture did not sanction them with a fine but ordered the advertising companies to take the Hungarian-only billboards down.⁹

These cases are very likely breaching the above standards of the European Convention. The authorities are imposing a very disproportionate measure, sanction and threat of sanction, targeting private bodies who enjoy freedom of speech to communicate with their customers and participants in a way of their choice. In the case of services offered in Hungarian, a newspaper published in Hungarian and a festival conducted in Hungarian, there are good reasons for such advertisements to be in Hungarian only. Advertising in Slovak might in fact be misleading – some potential patrons could understand that the goods offered can be enjoyed in Slovak as well. It is hard to see how the government could justify these steps, how they could present a legitimate aim and argue that sanctions are a proportionate way of achieving them, and there are no less restrictive alternatives to achieve the same goal.

Another area where sanctions can be imposed is private broadcasting. Regional and local TV stations are required to translate or subtitle all their broadcasting to

⁶ *Týždenník MY dostal pokutu za maďarčinu*, Sme, 14 October 2010. Available at: <https://domov.sme.sk/c/5592908/tyzdennik-my-dostal-pokutu-za-madarcinu.html> [cit. 20-01-2023].

⁷ *Kipécézték a Gombaszögi Tábor*, Új Szó, 9 July 2014. Available at: <https://ujsozso.com/kozelet/kipecezték-a-gombaszögi-tabort> [cit. 20-01-2023].

⁸ *Államellenes feliratok a minisztérium körül*, Ma7, 24 November 2019. Available at: <https://ma7.sk/kozelet/aktualis/allamellenes-feliratok-a-miniszterium-korul> [cit. 20-01-2023].

⁹ *Hétköznapi sovinizmus*, Ma7, 8 December 2019. Available at: <https://ma7.sk/aktualis/hetkoznap-koznapi-sovinizmus> [cit. 20-01-2023].

Slovak on their own cost, including areas where Hungarian speakers constitute a majority (Zákon o vysielaní a retransmisii 2000). *Komárno TV* was fined by the National Broadcasting Council for violating this obligation by broadcasting an advertisement of the Hungarian-language weekly *Delta* only in Hungarian (Rada pre vysielanie a retransmisiu 2010). Similarly, *Štúrovo TV* was fined for broadcasting an advertisement of a company from Hungary (Rada pre vysielanie a retransmisiu 2012a). It was fined again for broadcasting a news report on a local traffic accident in which two Hungarian eye-witnesses said two sentences in Hungarian without Slovak translations or subtitles (Rada pre vysielanie a retransmisiu 2012b). *Štúrovo TV* this time appealed against the decision, and after being rejected by the Slovak courts filed an application to Strasbourg. The European Court of Human Rights rejected its application for being submitted late: the Court considered that the Slovak courts cannot provide an effective remedy for this violation, and therefore the applicant should have turned directly to Strasbourg (Július Pereszlényi v. Slovakia 2021). It is nevertheless clear from the decision that the matter falls under the Court's jurisdiction, and it can review the sanctions as potential violations of freedom of speech.

It is hard to see how the government could justify sanctioning a private broadcaster for broadcasting in the language of its target audience. All the more so because no comparable obligation to translate or subtitle broadcasting to minority languages exists in Slovakia. Any argument the government could raise for requiring Slovak translations would apply to translations to minority languages as well as for broadcasters who operate in areas inhabited by a significant number of speakers of minority languages.

The State Language Act creates several other forms of inequalities between languages. Touristic signs, for example, can be displayed only in Slovak. This is a very unreasonable requirement in regions where Hungarian-speakers live, and a large part of tourists are citizens of Hungary. The town of Komárno allowed a private association to put up Hungarian-English translations to the local touristic signs, and as a result they were threatened with a fine of 33 000 euros by the Nitra District Office (Okresný úrad Nitra 2014). They had to take the signs down. It is very hard to see what aim this provision and this particular measure serves, apart from suppressing communication in minority languages.

The State Language Act also requires cultural and educational events to be announced in the State Language – regardless of whether there are any attendants who do not understand the language of the event. Although I am not aware of any person fined for violating this requirement yet, the *Klasov volunteer theatre group* was investigated by the Ministry of Culture for their leaflets, announcing their Hungarian-language performance which did not have a full translation of one Hungarian poem.¹⁰ I was also an eyewitness to how for a time the *Ghymes band*, the

¹⁰ *Jazyk ochotníkov z divadla v Klasove dráždi Maďariča*, Sme, 21 April 2010. Available at: <https://domov.sme.sk/c/5338593/jazyk-ochotnikov-z-divadla-v-klasove-drazdi-madarica.html> [cit. 20-01-2023].

most famous Hungarian-language folk-music band from Slovakia, accompanied its weekly performances by Slovak announcements. They tried to make fun of the situation, but it could not conceal the absurdity of imposing a requirement on them to communicate in Slovak to their audience.

The above mentioned are all examples of situations which can easily fall short of the not particularly strict requirements of the European Court of Human Rights. There are other international human rights bodies, such as the United Nations Human Rights Committee and the United Nations Committee on the Elimination of Racial Discrimination, who can examine individual complaints related to language discrimination, and whose standards can be stricter than that of the European Court. Regardless of how a balance between equality provisions and language policy is struck by these bodies, it is important to underline that these international standards do not require equality in the area of language policy. They tolerate quite a significant degree of inequality, and only intervene for particularly serious cases of disproportionate measures without a reasonable justification and only in areas which can be characterised as individual rights. The resulting standard can be characterised as equality of opportunity: minority language speakers do not have to be supported by the state to compensate for disadvantages, but they also cannot be unreasonably burdened to prevent them from using their language. This is a standard which is higher than the formal equality adopted by Slovak bodies as explained in the previous part but still far from substantive equality. Slovak laws nevertheless quite frequently violate even this standard, as explained above. What substantive equality requires, will be analysed in the next part.

4. SUBSTANTIVE LINGUISTIC EQUALITY IN COUNTRIES OF BEST PRACTICES

Some countries guarantee equality of languages above the level required by international treaties. Finland, for example, recognises two national languages, Finnish and Swedish (Finnish Language Act 2003). While the latter is mother tongue of less than 6 per cent of the population, it is formally equal to the majority Finnish language. Another example is Italy where in the autonomous region of South Tyrol (Alto Adige) both German and Italian, the language of the local and the national majority, are recognised as official languages (Larin – Rögglä 2019, p. 1024).

In these examples, official recognition is accompanied with measures that guarantee that speakers of national minority languages can use their language in all areas of life. This does not mean full equality of opportunities – those can be limited by the demographic fact that minority languages have a smaller number of speakers and thus constitute a smaller market, therefore some cultural goods are produced in lower volumes in those languages. There are fewer newspapers published, university degree programs offered and cultural events taking place in Swedish than in Finnish,

and the state could do little to compensate these disadvantages. However, the state can ensure that there are sufficient numbers of speakers of minority languages employed as civil servants, doctors, police employees, etc., to provide public services in minority languages.

These two countries achieved a very high level of linguistic equality, which I will call substantive linguistic equality for the purposes of the following analysis. After briefly characterising its features, this part will assess its relevance for Slovak language policy by answering a few interrelated questions: what would substantive linguistic equality mean in Slovakia? What are the areas where this concept is most relevant for assessing the country's current language policy? Lastly, how does the country fare in this comparison?

Substantive linguistic equality does not apply to all languages but only a select few. In Finland, only Swedish enjoys the recognition as national language, and is elevated above other officially recognised minority languages, such as Sami, Russian and Roma (Government of Finland 1999, p. 10). Similarly, in Italy, German in South Tyrol enjoys a higher status than country's numerous other minority languages. Advantaging one minority language above others can be explained by history (both Swedish and German used to be the dominant languages while Finland was part of Sweden and South Tyrol was part of Austria) but also their large number of speakers, their regional concentration and other factors which facilitate the provision of services in these languages. For example, it is easier to recruit or train sufficient number of qualified professionals in these languages. The aim is not to discriminate against smaller minority languages but to provide a high level of rights which is only possible in some languages.

Substantive linguistic equality is also limited geographically. While the majority language is typically recognised as official in the whole territory of the country, German in Italy is only official in South Tyrol. While Swedish in Finland is formally a national language, the right to use it applies to areas where its speakers reach a certain proportion of the population. For that reason, its use is in practice restricted to the South and South-West of the country. Even in areas where it is recognised as an official language, but the number of speakers is low, its use is limited in practice (Bamberg 2021). In contrast, Finnish is official everywhere except the autonomous Åland Islands (Suksi 2013).

Equality does not apply to all areas of life. While states can take measures to increase the knowledge and encourage the use of minority languages, they cannot compel their use in purely private areas of life. The range of potential friends, romantic partners and other social contacts will always be more extensive in majority languages (Emens 2009).

Most importantly, substantive linguistic equality does not mean fully equal opportunities in practice. Rights can be guaranteed by laws, and languages can have formally equal status, but the ability to provide services at all levels, in all areas, will always be a struggle in languages which are spoken by only a fragment of the

population. Finland and South Tyrol also have their shortcomings, but nevertheless the authorities make substantial effort to ensure the implementation of linguistic rights in practice.

Since majority languages are almost universally understood, at least by educated individuals, persons belonging to the majority group will in general face fewer difficulties in accessing public services in their languages. They might have fewer opportunities to socialise in their language in areas dominated by minority language speakers, but that does not compare to the challenges minority language speakers face in areas dominated by majority language speakers.

Applying the above criteria to Slovakia would result in differentiating among minority languages. The Hungarian language is best placed to benefit from equal status with the majority Slovak language, due to the number of its speakers, their concentration and qualifications. The Rusyn language is another possible candidate due to the regional concentration of its speakers, but it has a low number of speakers overall. The Roma language has a high number of speakers who are nevertheless not concentrated, and are also underrepresented among higher qualified professionals. Rusyn and Roma would need intensive support to benefit from equality. For the other minority languages of Slovakia, substantive equality seems unattainable due to the low number of speakers.

Substantive equality would require recognizing languages as formally equal, and to support minority languages to overcome the natural disadvantage stemming from the lower number of their speakers. Because not all disadvantages can be fully compensated, minority languages could not be fully equal in practice. Nevertheless, law should impose additional restrictions on the use of minority languages.

Language laws in Slovakia fall below these requirements in several respects. The Slovak language is formally elevated above all other languages by the Constitution, which recognizes it as the sole state language, and by the State Language Act, which expressly declares that Slovak enjoys precedence over other languages. Languages are thus not even formally equal.

In terms of specific norms, language laws widen the inequality instead of closing the gap between Slovak and other languages, as shown in the previous parts above. There are two specific areas which deserve specific attention under the lens of substantive equality.

Public signs are relatively inexpensive to place. The translation costs are nominal, they do not have to be done locally, and bilingual signs do not have higher production costs than unilingual signs. For that reason, public signs are an area where bilingualism is relatively easy to achieve. Nevertheless, equality is not the standard followed by the Slovak language laws. Slovak-language signs are the norm; minority-language signs are often only permitted but not required. That means some bilingual municipalities display bilingual street signs on their own cost, others do not (Mrva – Szilvássy 2011; Laihonon 2012). Some signs are not even permitted to be displayed bilingually, as the above-mentioned touristic signs, or the names of rivers, parts of municipalities,

directional signs and others (Roundtable of Hungarians in Slovakia 2019, para. 164). Even signs which must be bilingual are often missing in practice (Roundtable of Hungarians in Slovakia 2014, para. 150–153) or use Slovak municipality names due to the Ministry of Culture's dubious interpretation of the law (Roundtable of Hungarians in Slovakia 2019, para. 166). There seems to be no justification for these practices deviating from equality. They do not add anything to the possibility to use the Slovak language, they merely restrict the use of minority languages.

Providing services in minority languages requires an active human resource policy, with personnel speaking minority languages made available to match the demand. This is the other area where Slovak laws fall below the requirement of equality. Slovak is generally understood everywhere in the country (Lanstyák 2000, p. 143). It is a mandatory subject in all primary and secondary schools. Therefore, there is no shortage of public servants speaking the language, not even in minority-populated areas. The reports on the State Language have so far not uncovered public servants who would be unable to speak Slovak (Ministerstvo kultúry 2000).

That is not the case with minority languages. They are taught in minority language schools, therefore only persons belonging to the specific minority communities speak them. University-level training is provided only in Slovak, with the partial exception of Hungarian, therefore lawyers, doctors, public servants, even if they speak minority languages, might not be familiar with the terminology necessary to perform their jobs in those languages. This situation would require specific tools to allow public bodies to increase the numbers of their employees speaking minority languages. However, these tools are missing from the language laws.

The State Language Act requires all bodies and their employees subject to the law to use the state language in their work [Zákon o štátnom jazyku 1995, §3(1)]. A comparable provision of the Law on the Use of Minority Languages states that public bodies and their employees shall use minority languages under the law but at the same time expressly exempts these bodies and their employees from knowing minority languages [Zákon o používaní jazykov národnostných menšín 1999, §7(1)]. This creates a situation where public bodies interested or even required to provide services in minority languages cannot translate these requirements into their human resource policies. They cannot require the knowledge of minority languages from their employees. They cannot make them a formal precondition of employment or provide wage subsidies for employers learning a minority language. They are lacking the tools to enhance the knowledge of languages among their employees.

The absence of these tools of course does not mean that there are no speakers of minority languages employed in public bodies. Rather, it means that the presence of these speakers in public positions is accidental, it is not a result of a coordinated effort. It reflects the demographic composition of the areas where the body is based, but it can also fall significantly below it. According to the surveys of the government's Report on the use of minority languages, there are public administration bodies in

areas populated by minorities which have no employees speaking minority languages (Úrad vlády 2018).

The legal situation also means that human resource management must be covert. Public bodies do not have knowledge about the language skills of their employees, the state does not require and collect statistics. Job advertisements do not require the knowledge of minority languages because this would be considered discriminatory towards Slovaks who are unlikely to speak minority languages. This is illustrated well by an incident in Rožňava where the local municipality was hiring a clerk to the department on Hungarian culture. They specified in the advertisement that the person must speak Hungarian.¹¹ It nevertheless caused an outcry and was considered discrimination by the press. The Ministry of Culture considers requiring the knowledge of minority languages as discriminatory (Ministerstvo kultúry 2012). Similarly, a survey of a series of advertisements for social assistant positions working in Roma communities shows that language requirements, although badly needed in many of these communities, were just not part of the requirements (Roundtable of Hungarians in Slovakia 2019, para. 113). It is possible that public bodies and even private employers do take minority language skills into account in their hiring decisions, but as a consequence of the legal landscape they cannot do it explicitly, and therefore there is no concentrated effort to increase the linguistic skills of public bodies. By treating the linguistic skills of employees formally neutrally, that is, by not regulating them, the state advantages the use of Slovak, which is spoken by a wide variety of stakeholders, providers and recipients of services alike.

Substantive linguistic equality would require justification for every departure from equality. Minority languages are in a disadvantaged position, and although law cannot compensate for all inequalities, it can do so for some. Compared to this standard, Slovak law treats languages formally unequally, by elevating Slovak above other languages. Instead of helping them, it further disadvantages minority languages for no obvious reason. Importantly, it deprives public bodies of the tools to implement linguistic rights in practice. Language laws are not helping to overcome the demographic disadvantages of minority languages, but they are further entrenching them.

5. MODELS OF LINGUISTIC EQUALITY

The above analysis uncovered that linguistic equality can be understood in at least three different ways. These do not have precisely defined content but can be nevertheless used as heuristic models for analysis. They differ in how they balance the general requirement of equality with norms of language policy which differentiate between languages.

¹¹ *V Rožňave hľadajú nového úradníka, má to však háčik: Neviete maďarsky, máte smolu!*, Čas, 8 February 2016. Available at: <https://www.cas.sk/clanok/363394/v-roznave-hladaju-noveho-uradnika-ma-to-vsak-hacik-neviete-madarsky-mate-smolu/> [cit. 20-01-2023].

The highest level of equality is provided by legal systems characterised by substantive linguistic equality. This system recognises some, not all, languages as formally equal, and concentrates on equal outcomes in practice. The concept of equality permeates language policy norms; they are oriented at ensuring equal access to public services in minority languages. Equality norms take precedence over language policy norms; deviations from equality must be justified. Substantive equality does not amount to full equality; it is restricted to specific languages in specific areas, and falls short of full equality even there. Nevertheless, for those languages and in those areas, it is closest to full equality.

International law does not raise to the level of substantive equality. It permits inequality by accepting some forms of the promotion of the majority language. Nevertheless, it submits language norms to scrutiny under equality provisions. Different treatment must be justified; not all goals and all means are acceptable. Restrictions on minority languages can be questioned, especially those which have no reasonable goal, or which are based on invasive measures, such as financial sanctions. Nevertheless, states are not required to achieve equal outcomes for minority language users. Compensating demographic disadvantages is not an international requirement. Also, equality norms have a narrow scope: they only apply to individual rights. General measures on public signage or human resource policies of public bodies are outside of its scope because they are hard to characterise as an individual right. The second model can be best described as equality of opportunity or limited equality on the level of linguistic norms: in areas subject to equality norms, languages must be treated equally, but equal outcomes are not required.

Slovakia's approach is closest to the third model, named formal equality. It is characterised by a separation of equality law and language policy. In the area of language use, equality law is subordinated to language laws. Equality law applies only to a narrow set of situations. It does prohibit discrimination on the basis of language, but this prohibition applies only in areas not related to language use. For example, a person cannot be refused services in Slovak on the ground that he or she is a speaker of a minority language; but the service does not have to be provided to him or her in their language. What must be provided is specified by language laws, which are not based on the concept of equality but on the subordination of minority languages to the majority Slovak language.

The Anti-discrimination Act thus treats languages not as communication tools but simply as the person's characteristic, similarly to religion or racial origin. Its only purpose is to identify the protected person and to offer protection if they were discriminated against based on this identification. The instrumental value of languages is not recognised by the law; it does not prohibit inequalities stemming from the fact that person cannot use their language for the purposes of communication. Language laws can restrict the use of minority languages orally and in writing which put their users in a disadvantage, and these disadvantages are not overruled under the Anti-discrimination Act.

6. CONCLUSION

The Slovak legal order protects persons from arbitrary discrimination on the basis of language in some areas unrelated to language use. The Anti-discrimination Act does not protect the use of certain languages. It protects their users if they do not use their language, but it does not prohibit forcing them to use the Slovak language in certain circumstances. Speakers of all languages have a right to be treated equally – if they use Slovak.

The exemption of language laws from the requirements of equality norms is all the more unfortunate because the former are characterised by a highly asymmetrical position of languages. They establish a hierarchy among languages, with Slovak having an elevated position. All majority languages in the world enjoy advantages simply through their demographic presence. The Slovak legal order adds to minority languages' disadvantages instead of compensating for them. It restricts the use of minority languages significantly below their demographic potential. For example, there is no reasonable justification for why all public signs in minority-populated areas could not be bilingual. It does so with tools which are sometimes harbouring on the arbitrary, as their only goal seems to be suppressing the use of minority languages without providing any additional benefit for Slovak speakers. It also deprives public bodies of the instruments necessary to implement language rights in practice, further disadvantaging minority languages.

Equality does not have a precise content and scope. There are various areas and forms of equality which policymakers have to choose from, by balancing contradictory requirements. They have a wide discretion in deciding what disadvantages to compensate for. The particular form chosen by the Slovak legislators can nevertheless be characterised by a highly unequal balance between languages. Slovakia thus prohibits discrimination on the basis of language, while at the same time it entrenches and promotes a system of significant linguistic inequality. Speakers of all languages are equal – if they speak Slovak.

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JAZYKOVÁ DISKRIMINÁCIA AKO SOCIÁLNY, PRÁVNÝ A ĽUDSKOPRÁVNÝ FENOMÉN

Článok skúma vzťah diskriminácie na základe jazyka a jazykovej rovnosti analýzou špecifických príkladov jazykovej praxe zo Slovenska a ich hodnotením v troch odlišných právnych režimoch. Rozdiel medzi absenciou diskriminácie a rovnosťou závisí od nastavenia rovnováhy medzi antidiskriminačnými pravidlami a pravidlami používania jazykov. Tri hodnotené právne režimy zodpovedajú trom spôsobom nastavenia tejto rovnováhy. Najvyššiu úroveň jazykovej rovnosti predstavujú krajiny dobrej praxe, napríklad Fínsko a Taliansko, ktoré môžeme nazvať modelom substantívnej jazykovej rovnosti. Tento model sa zameriava na zabezpečenie možnosti používania vybraných menšinových jazykov v praxi vo vybraných oblastiach, na garantovanie dostupnosti verejných služieb v týchto jazykoch. Neznamená absolútnu rovnosť jazykov, ale je k nej najbližšie. Režim medzinárodných zmlúv o ľudských právach môžeme nazvať modelom rovnosti príležitostí. Dovoľuje zvýhodňovanie väčšinového jazyka na úkor menšinových, ale prísne reguluje spôsob, akým k tomu dochádza. Pravidlá o používaní jazykov musia zodpovedať požiadavkám antidiskriminačných noriem, ktoré zakazujú nepomerné zásahy do používania menšinových jazykov. Tento model nevyžaduje opatrenia na kompenzáciu faktického znevýhodnenia menšinových jazykov vyplývajúceho z menšieho počtu hovoriacich, preto nevedie k rovnakým výsledkom v praxi. Slovenská právna úprava predstavuje tretí prístup, model formálnej rovnosti, pre ktorý je príznačná nadradenosť pravidiel o používaní jazykov antidiskriminačným normám. Rovnosť sa tak obmedzuje na ochranu osôb hovoriacich menšinovým jazykom v situáciách, keď svoj jazyk nepoužívajú. Antidiskriminačný zákon chápe jazyk ako vlastnosť človeka, nie ako komunikačný prostriedok. Inštrumentálnu funkciu jazyka, teda možnosti používania jazykov, upravujú jazykové zákony, ktoré nepodliehajú pravidlám rovnosti. Práve naopak, sú založené na hierarchii medzi jazykmi. Slovenská právna úprava tak zakazuje diskrimináciu na základe jazyka a vyžaduje rovnosť pre všetkých vrátane osôb s iným materinským jazykom len vtedy, keď hovoria slovensky.