SKENDER v. the FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Prohibition of discrimination – *inadmissible* **Article 14**
Right to education – *inadmissible* **Protocol No. 1, Article 2**

Impossibility of sending children to school in another district where education in the minority language is provided

On 22 November 2001 a Chamber of the European Court of Human Rights unanimously declared inadmissible the application in the case of *Skender v. the Former Yugoslav Republic of Macedonia*.

Summary of the facts

The applicant is a national of the Former Yugoslav Republic of Macedonia, of Turkish origin. He has two daughters whom he wished to send to a Turkish-speaking school situated in a other district than the one where they lived, as the school of their own district did not provide teaching in Turkish. According to the Primary Education Act, pupils should attend the State primary school of their place of residence.

In February 1997 the applicant asked the Turkish-speaking school to admit his elder daughter. He received no answer and complained, allegedly on two successive occasions, to the competent authority. He started proceedings before the Supreme Court. The school, at this stage, refused to enrol his elder daughter, as they did not live in the district of the school. The Supreme Court refused, on procedural grounds, to examine the applicant's complaint in respect of the school's refusal. The Constitutional Court did not quash the Supreme Court's decision. The Supreme Court refused to examine the applicant's request for having the proceedings reopened as the applicant had not provided fresh evidence as required by law.

Complaints

The applicant complained under Article 14 of the Convention in conjunction with Article 2 of Protocol No. 1 that his older daughter was refused access to a Turkish-

speaking school on the basis of her father's residence. The applicant also complained under Article 2 of Protocol No. 1 that the authorities had refused to provide education in Turkish in the applicant's district.

Decision

Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 did not necessarily presuppose a breach of those provisions – and to this extent it was autonomous –, there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter.

However, the Court did not need to examine whether the applicant's claim fell within the ambit of Article 2 of Protocol No. 1 since, in any event, the complaint was inadmissible.

The applicant failed to make proper use of the opportunities to challenge the refusal of the school to enrol his elder daughter or to complain to the Constitutional Court that his elder daughter was discriminated against.

It followed that the complaint must be rejected for non-exhaustion of domestic remedies.

A right to education in a particular language or a right to obtain from the State the creation of a particular kind of educational establishment could not be derived from Article 2 of Protocol No. 1. This provision did not require of States that they should, in the sphere of education or teaching, respect parents' linguistic preferences, but only their religious and philosophical convictions. To interpret the terms "religious" and "philosophical" as covering linguistic preferences would amount to a distortion of their ordinary and usual meaning and to read into the Convention something which was not there. Moreover, the Court recalled that the "drafting history of that Article" confirmed that the object of the second sentence of Article 2 was in no way to secure respect by the State of a right for parents to have education conducted in a language other than that of the country in question; indeed in 1951 the Committee which drafted Protocol No. 1 to the Convention set aside a proposal put forward in this sense, several of its members having believed that it concerned an aspect of the problem of ethnic minorities and that it thus fell outside the scope of the Convention.

It followed that this complaint was incompatible *ratione materiae* with the provisions of the Convention and must be rejected.