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The Right of the Deaf to Polish Sign Language

Keywords: human dignity, disability, Polish sign language, the right to Polish sign language

Słowa kluczowe: niepełnosprawność, polski język migowy, godność człowieka, prawo do polskiego języka migowego

Abstract

The article aims to draw attention to the linguistic rights of the Deaf in Poland and their legal source. Deaf people's right to Polish sign language stems from their disability. This approach is incorrect. The title entitlement is the natural right of the deaf, derived from his dignity. In turn, the principle of human dignity is the gate leading to its "positivization". On the other hand, recognizing the constitutional nature of the right to Polish sign language strengthens the legal basis of the deaf's claims against the state and justifies the legal protection of this language. The recognition of the right to Polish sign language allows the deaf to the full and equal exercise of the rights and freedoms guaranteed by the Constitution of April 2, 1997.

Streszczenie

Prawo głuchych do polskiego języka migowego

Celem artykułu jest zwrócenie uwagi na prawa językowe Głuchych w Polsce i ich źródło. Prawo Głuchych do polskiego języka migowego wywodzi się z ich niepełnospraw-

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ności. Takie podejście jest nieprawidłowe. Tytułowe uprawnienie jest, w moim przekonaniu, prawem naturalnym Głuchego, wywodzącym się z jego godności. Z kolei zasada godności człowieka jest bramą, prowadzącą do jego „pozytywizacji”. Uznanie natomiast konstytucyjnego charakteru prawa do polskiego języka migowego wzmacnia podstawę prawną roszczeń Głuchych wobec państwa, a także uzasadnia prawną ochronę tego języka. Przyznanie głuchym prawa do polskiego języka migowego pozwala na pełne i równe korzystanie z praw i wolności gwarantowanych Konstytucją z 2 kwietnia 1997 r.

I. Introduction

For decades, the languages of “the silent world” were outside the scope of interest of the legislator². Deaf people and their needs were recognized in terms of social assistance intended to secure means of subsistence in the context of unemployment³. On the other hand, the state focused its efforts on providing primary and vocational education, social benefits, or professional activation of those people (a paternalistic approach to the deaf). The rights of the deaf were derived from disability, as confirmed by the provisions of the Convention on the Rights of Persons with Disabilities⁴. I regard that approach to the said problem as misguided. Sign language and the problems of deaf people should be “demystified” by being placed in a differ-

² The issue of legal protection of official languages or languages of national minorities, and in particular the right of minorities to their own language and culture, often features in legal journals. Those issues are well-recognized and described in juridical science. Yet, this is not the case with the right of the Deaf to sign language, as that subject rarely comes to the forefront of legal discourse. Authors are interested in the legal status of the Polish language but they do not perceive Polish sign language – see M. Bartosiewicz, *Język polski i jego ochrona prawna w porządku konstytucyjnym Rzeczypospolitej Polskiej*, Warsaw 2017; J. Trzeciński, M. Wiącek, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. I, eds. L. Garlicki, M. Zubik, Warsaw 2016; A. Wiltos, *Znaczenie art. 27 Konstytucji RP dla ochrony praw i wolności jednostki*, “Przegląd Prawa Konstytucyjnego” 2013, No. 4.

³ M. Skóra, *Right to Work for People with Disabilities*, “Przegląd Prawa Konstytucyjnego” 2020, No. 6, pp. 623–631.

⁴ E. Tupi, *Sign Language Rights in The Framework of the Council of Europe and its Member States*, Publication of the Ministry for Foreign Affairs of Finland 2019, p. 6.

ent context than merely disability and the so-called reasonable accommodation. The right to polish sign language is, in my opinion, a natural law of the deaf, derived from their dignity. Therefore, the constitutional principle of human dignity is the gateway to “positivising” the said right. On the other hand, recognition of the constitutional nature of the right to polish sign language reinforces the legal basis for claims of the deaf against the state and justifies the legal protection of that language. This assertion requires that the notion of sign language be clarified.

II. Sign Language

The prominent American linguist Noam Chomsky emphasizes the language’s special relationship with human development and progress: “It is commonly assumed that whatever the human intellectual capacity is, the faculty of language is essential to it”⁵. Therefore, language is an interesting subject of research and has long fascinated researchers. Linguists pose questions about the genesis of language and cannot authoritatively state how language evolved. Knowledge of the early stages of the formation of language and its roots is vague⁶. In turn, although interesting, a biblical myth of the Tower of Babel is not cognitively sufficient. The biblical parable reveals an undeniable truth: the multiplicity of languages (more than 7,000) in the world does not facilitate communication. Speech is a convenient form of their transmission (communication). If the speech or hearing apparatus is deficient, then a person experiences severe problems in communication, and speech loses its properties. It is replaced by writing or gestures⁷. Gestures are expressed in four forms: (a) gesticulation (b) gestures embedded in a language (c) pantomime, and (d) sign languages⁸. The latter are fully-fledged and natural languages. There was a lingering misconception that sign languages were primitive and devoid of

⁵ N. Chomsky, *Three Factors in Language Design*, “Linguistic Inquiry” 2005, vol. 36, No. 1, p. 3.

⁶ B.L. Whorf, *Język, myśl i rzeczywistość* (Language, Thought, And Reality), Warsaw 1982, p. 131.

⁷ P. Żywicznyński, S. Wacewicz, *Ewolucja języka. W stronę hipotez gesturalnych*, Toruń 2015 and the sources quoted therein.

⁸ D.L. Everett, *Jak powstał...*, p. 317.

grammatical rules for many years⁹. That myth collapsed thanks to research into American Sign Language (ASL), undertaken in the 1950s¹⁰ by Professor William Stokoe. He proved that ASL had its own linguistic structure, syntax, and morphology. According to Professor W. Stokoe, sign words consist of hand configurations, location, movement, and non-manual signals¹¹. Sign languages have the characteristics of spoken languages since they consist of letters, words, sentences, and narratives. They have their own gesticulation and intonational emphases, which are expressed by the movement of the body and hands and facial expressions¹². The latter has an important task of transmitting content, complementing signs, a “manual” equivalent of a word. Sign language is not a system of gestures (visual-spatial signs system) common to all the deaf worldwide. Sign languages are national, stem from the culture of a state and its experiences, evolve, and even feature regionalism. In conclusion, it must be stated that, first, s.l. is a spatial-visual language; second, it is the natural language of the deaf, for whom speech is inaccessible and is also an effective means of communication for the deaf. Third, sign language is not a universal communication system for the deaf. So, the Deaf “speak” Polish sign language in Poland.

III. Normative Sources of the Right to Sign Language in Poland

I support the idea that “Language reveals the engine of our souls, our mind. It illuminates us and energizes us. We share it with all we meet. It is the cognitive fire of human life”¹³. Therefore, language as a fundamental value to man is protected by law, and the right to language is a fundamental human right: “Linguistic rights or language rights (LRs) – terms often used as synonyms –

⁹ P. Tomaszewski, P. Rosik, *Czy polski język migowy jest językiem naturalnym*, [in:] *Człowiek wobec ograniczeń. Niepełnosprawność – Komunikacja – Terapia*, eds. G. Jastrzębowska, Z. Tarkowski, Lublin 2002, p. 136.

¹⁰ Ibidem, p. 136.

¹¹ P. Tomaszewski, *Lingwistyczny opis struktury języka migowego*, [in:] *Język jako przedmiot badań psychologicznych. Psycholingwistyka ogólna i neurolingwistyka*, eds. I. Kuczma, H. Okuniewska, Academica 2011, pp. 184–238.

¹² D.L. Everett, op.cit., p. 318.

¹³ Ibidem, p. 438.

are all rights related to the learning and use of language (...). They are as necessary to satisfy people's basic needs as food and shelter, necessary to live a dignified life. They are so fundamental that no state (or individual or group) is supposed to violate them¹⁴". When seeking the normative sources of the right to language, it should be noted that it is protected in different ways and at different levels: universal (UN), European and national.

At each of those levels, language is protected under anti-discrimination regulations: e.g., the "enjoyment of the rights and freedoms outlined in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status" (Art. 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms; Art. 21 (1) of the Charter of Fundamental Rights of the EU). The Polish Constitution also provides that: "No one shall be discriminated against in political, social or economic life for any reason whatsoever"¹⁵. Since sign language is natural, it constitutes, in the light of the general human rights principles, a legally protected human characteristic that does not allow different and less favorable treatment of deaf to hearing people under the same legal or factual circumstances. However, this approach to s. l. is fragmented since discrimination is a reprehensible practice based on stereotypes and prejudice. Thus, while they serve to improve the legal position of the deaf, they cannot provide a sufficient basis for the separation of the right to sign language and its protection.

The language of ethnic minorities or language minorities is protected at each of those three levels. Therefore, for example, Art. 27 of the International Covenant on Civil and Political Rights¹⁶ provides that: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language". The European Char-

¹⁴ S. Keller, T. Skutnabb-Fabric, *Linguistic Human Rights, the UN's Human Rights system, and the Universal Esperanto Association's work on Language Rights*, [in:] *Language, Communication, Information*, eds. I. Corners, P. Nowak, Poznań 2013, p. 151.

¹⁵ The Constitution of the Republic of Poland of April 2, 1997 (Dz.U.No. 78, item 483).

¹⁶ Dz.U. 1977, No. 38, item 167.

ter for the Regional or Minority Language (ECHRML) is another important document on the right to language¹⁷. That document is intended to protect historical regional or minority languages, particularly those at risk of becoming extinct. The activities undertaken under the Charter aim to maintain and develop Europe's cultural richness and traditions. Yet, the Charter must recognize the right to use regional or minority language in private and public life as inalienable. When moving on to the specific provisions of the ECHRML, the definition of "regional or minority languages" should be noted, which means languages that are traditionally used within a given territory of a state by nationals of that state which form a group numerically smaller than the rest of the state's population; and different from the official language(s) of that state; it does not include dialects of the official language(s) of the state or the languages of migrants (Art. 1). On the one hand, the definition of regional languages or minorities is so extensive that it can also include sign languages since the deaf are a group numerically smaller than "than the rest of the State's population". In addition, they meet further conditions for recognition as a minority language, i.e., the deaf are citizens, and sign languages are not the languages of migrants, nor are they dialects. On the other hand, the national nature of sign languages does not allow them to be classified as regional or minority languages, which are traditionally related to national or religious minorities¹⁸. Including sign languages in the Charter could be advantageous, as it imposes many positive obligations on the states parties. The most important ones include a) the recognition of the regional or minority languages as an expression of cultural wealth; b) the need for resolute action to promote regional or minority languages in order to safeguard them; the facilitation or encouragement of the use of regional or minority languages, in speech and writing, in public and private life; (c) the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages; (d) the promotion of study and research on regional or minority languages at universities or equivalent institutions (Art. 7). Consequently, it must be held that, although sign languages could theoretically benefit from the pro-

¹⁷ Dz.U. 2009, No. 137, item 1121.

¹⁸ E. Tupi, *op.cit.*, p. 18.

tection guaranteed by the Convention, in practice, sign languages remain outside the scope of the Convention¹⁹.

The provisions of national constitutions intended to protect national and ethnic minorities by law are interpreted similarly. Let me refer to the example of Poland, which guarantees Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, customs, and traditions and develop their own culture. National and ethnic minorities have the right to establish their own educational, cultural institutions and institutions designed to protect their religious identity and participate in the resolution of matters concerning their cultural identity (Art. 35 of the Constitution). In Poland, the languages of minorities include Belarus, Czech, Lithuanian, German, Armenian, Russian, Slovak, Ukrainian, Jewish, Karaim, Rusyn, Romani, and Tatar. Polish sign language is not the language of a national minority, and an ethnic minority²⁰ since its national nature precludes it from being granted such status, while the Deaf culture is not based on blood ties, traditions passed down from generation to generation, or a common religion, but on a linguistic culture. It is also argued in science that the language rights of the deaf are stronger than that of a minority that can acquire the majority language or official language²¹. The right to s.l. opens the “door” to other rights and freedoms.

The Convention on the Rights of Persons with Disabilities is an important step toward recognizing the right to sign language. The purpose of the Convention is to enable all persons with disabilities to enjoy all fundamental freedoms and human rights with no limitations and promote respect for their dignity. Persons with disabilities include persons with long-term reduced physical, mental, intellectual, or sensory capabilities, which in interaction with various barriers may limit their full and effective participation in society on an equal footing with other citizens. By applying the definition of disability to the problem under consideration, deafness is the cause of disability since it reduces one’s physical and sensory capabilities. However, it is difficult to determine the barri-

¹⁹ Ibidem.

²⁰ Act of January 6, 2005 on national and ethnic minorities and on the regional language (Dz.U. 2017, item 823).

²¹ S. Trovato, *Reason for the Right to Sign Languages*, “Sign Language Studies” 2013, vol. 13, p. 403.

er limiting full and effective participation of the deaf in society: is sign language alien to other members of society, or is it speech alien to the deaf? Or perhaps both languages are a barrier because they occur in a reflexive relationship: the deaf communicate through s.l, which is incomprehensible to the hearer, and the hearer communicates through speech that is incomprehensible to the deaf. This quandary is not resolved by the Convention, which recognizes sign language as equivalent to speech, since, under Art. 2 of the Convention, “language” means spoken and sign language, as well as other communication systems.

There are many references to “sign language” in the Convention. Thus, for example, States Parties will take appropriate action: a) to provide professional sign language interpreters (Art. 9 Accessibility); b) to use of sign language in official situations and by recognizing and promoting sign languages (Art. 21); c) enabling persons with disabilities to learn life and social skills that will facilitate their full and equal participation in education and social life, including sign language learning and the promotion of the linguistic identity of the deaf community (Art. 24); d) to ensure the right to education, they will employ teachers qualified in sign language (Art. 24).

The provisions of the Convention establish positive state obligations toward persons with disabilities. There is only one reference to the right of the deaf in the Convention: “Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture” (Art. 30 (4) of the Convention). As claimed in Deaf Studies, the convention associates the language rights of the deaf with accessibility, referring to it as a “gateway for linguistic accessibility”²². Placing sign language in the world of disability is not positively assessed, as it leads to stigmatization of the deaf community: “This status, however, instead of including the deaf in the mainstream of social life, perpetuates their marginalization. It has a demotivating effect and results in a passive approach to life among the deaf”²³. Aware of their linguistic differences, they

²² A. Ball, *Equal Accessibility for Sign Language under the Convention on the Rights of Persons with Disabilities* *Equal accessibility*, “Case Western Reserved Journal of International Law” 2011, vol. 43, p. 780; S. Batterbury, *Language Justice for Sign Language Peoples: the UN Convention on the Rights of Persons with Disabilities*, “Language Policy” 2012, vol. 11, pp. 253–272.

²³ Z. Teper-Solarz, *Glusi – na marginesie “Świata Słyszących”*, “Uniwersyteckie Czasopismo Socjologiczne” 2016, No. 1, pp. 38–39.

do not consent to be referred to as deaf and mute: “They speak of themselves as the Deaf spelled with a capital D (to emphasize belonging to the “deaf world”²⁴). They openly admit their differences. They do not consider themselves disabled because they are a linguistic minority living in their own world of symbols.

Finally, when discussing Europe and the European Union, it is necessary to point out those basic laws which explicitly discuss sign language²⁵. The fact that the Polish Constitution or the Charter of Fundamental Rights fails to refer to the language rights of the deaf may not be interpreted as a denial of said rights. I believe that human dignity, guaranteed by Art. 30 of the Constitution, Art. 1 of the Charter of Fundamental Rights, is the normative source of that right²⁶. Language is a natural human feature. It makes up the identity of every human being²⁷. Sign language, which forms part of the identity of the deaf, operates in the same manner. It should be noted that the Polish Constitution does not guarantee the right to the Polish language, and lawyers do not seek the normative sources of that right since it is an inherent right of every Pole, derived from his/her humanity and nationality. It is therefore clear that every Pole has a natural and inalienable right to communicate in that language. Thus, it is not necessary to legislate for that right. Since Polish sign language is a natural language of Deaf Poles, who are neither a national nor an ethnic minority, they have an inalienable right – on an equal footing with the hearing Poles – to express themselves through their own language and the right to communicate in P.s. l. Therefore, the normative source of the right to sign language is Art. 30 of the Constitution. That right entails the positive obligations of the state.

²⁴ Ibidem.

²⁵ M. Meulder, *The Legal Recognition of Sign Languages*, “Sign Language Studies” 2015, No. 4, pp. 498–506. Sign language is recognized by the Constitution of: Finland, Portugal, Austria, Hungary.

²⁶ I omit the content and understanding of the constitutional principle of human dignity, because it is well described in the doctrine of law.

²⁷ “Major human rights instruments and leading scholars identify two key social values of language: for individuals, language is constitutive of cultural identity (we are what we speak), and for society, linguistic pluralism increases diversity. Since language is central to identity, one’s freedom to use one’s language is seen as ‘inherent’ in the ‘dignity of the human person’, and thus falls within the ambit of human rights law” – see M. Paz, *The Tower of Babel: Human Rights and the Paradox of Language*, “The European Journal of International Law” 2014, No. 2, p. 474.

IV. Conclusion

Sign languages are natural languages of the deaf. The right to sign language is a natural right of a Deaf person, which derives from his/her dignity. States are taking steps to legally recognize that right, confirming it at the constitutional or statutory level. The international community also recognizes the need for legal guarantees for the language rights of the deaf, expressed in the Convention on the Rights of Persons with Disabilities, which acknowledges the culture, language, and identity of the deaf. The Polish Constitution does not explicitly confirm the right to Polish sign language, but I believe Art. 30 of the Constitution is its implicit normative source.

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