

Jacqui Dixon
Chief Executive
Antrim & Newtownabbey Borough Council
Civic Centre, 50 Stiles Way, Antrim BT41 2UB

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Jacqui, a chara,

Adopted Council policy preventing on bilingual street signage

Conradh na Gaeilge is the democratic forum for the Irish-speaking community. The Conradh has over 200 branches and numerous individual members registered around the world, members that work hard to promote the use of Irish in their own areas. The organisation runs Irish-language courses; advocates for the language rights of Irish-speakers; raises awareness about the language etc...and we have a long track record of engagement with UN and Council of Europe treaty bodies in relation to ensuring compliance with human rights obligations. These include the duties in relation to the Irish language provided for under the European Charter for Regional and Minority languages (Council of Europe Treaty no. 148) and the duties relating to linguistic minorities under the Framework Convention for National Minorities (Council of Europe Treaty no. 157), both instruments to which the UK is a state party. For the avoidance of doubt the Council of Europe should not be confused with the EU.

We are writing in relation to the recently adopted policy by the Council at the meeting of the 26 February 2018 (item 10.10 CE/GEN/083) where a decision was taken by the Council to adopt a policy banning the provision of bilingual street signage and instead adopt an 'English Only' policy. We regard this policy as unlawful in relation to both domestic and international legal obligations and hence *ultra vires*. We would therefore seek the Council urgently repeal the policy and put in place a due process to adopt a policy compatible the Council's legal obligations.

We also have concerns regarding failures to comply with the Section 75 equality duties and the Council's Statutory Equality Scheme. This relates to both substantive compliance with the general duties (potential sectarianism in decision making) and procedural failures (Screening and Consultation duties). However, we are conscious that the most appropriate place to deal with these issues is under the complaints procedure set out in the Scheme rather than this correspondence.

The Agenda of the meeting set outs that instruction was sought on a policy on the matter from the elected body of the Council further to a request received from Abbeyville Residents Association requesting five street signs to be expressed in Irish (alongside the existing English signs). The Minutes record that was subsequently Resolved "***that the Council adopts a policy to provide street signs in English only.***"

We are not privy to any full legal advice the Council has received on this matter, merely the summary in the published minutes and agenda. This however appears to suggest that there is no legal obligation on the Council at all to provide Irish language signs, and that powers to do so are entirely discretionary, which is erroneous.

As you are aware the principle statutory provision in question is Article 11 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1995. This repealed the controversial ban targeting Irish language street signage previously in place. Article 11(1) & 11(2) of the 1995 Order provides a permissive power for Councils to place a second street sign in a language other than English. The discretion to do so is however not unfettered, not least as it is qualified by the provisions of Article 11(4) which place the Council under a 'have regard' duty to the views of residents in the street in question. The current Council policy of preventing any bilingual signage regardless of such views is incompatible with this.

Furthermore, this is not the only relevant consideration binding on the Council. It has been established as a principle of legal policy that, where possible, legislation should be interpreted compatibly with international obligations. We believe the policy is incompatible with international obligations under the aforementioned European Charter and the Framework Convention for National Minorities. To the extent to which the policy may engage rights to freedom of expression without discrimination on the grounds of language, under Articles 10 and 14 of the European Convention on Human Rights (ECHR), it may also be held to constitute an unjustified interference with those provisions (this is particularly relevant as Article 11(5) of the 1995 order makes it an offence to put up an unauthorised sign). As you will be aware rights under the ECHR are directly justiciable in the domestic courts further to section 6 of the Human Rights Act 1998 and ECHR rights must be interpreted in light of other relevant international standards and their authoritative interpretation by competent bodies (see *Demir and Baykara v Turkey*). In this instance the duties under treaties such as the European Charter and the assessments made by the Committee of Experts (COMEX) who supervise UK compliance with the Charter are relevant.

Part II of the Charter applies to Irish and Ulster Scots in Northern Ireland, with further provisions specifically for the Irish language in Part III of the Charter. The Charter and its authoritative interpretation are clear that Irish and Ulster Scots are to be treated in accordance with their own situation. We would like to draw attention to Article 7(2) of the Charter which prohibits, *inter alia*, unjustified restrictions which discourage the development of Irish. This provision provides that:

The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account

of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.

Conradh na Gaeilge is of the view that the policy is incompatible with Article 7(2). There is also an undertaking under Article 7(4) on public authorities to “*take into consideration the needs and wishes expressed by the groups which use*” Irish when determining policy relevant to speakers. This provision also encourages state parties to establish bodies to advise public authorities on all matters pertaining to Irish, for which consequently Foras na Gaeilge, has been established. The treaty body has elaborated that the undertaking to take into consideration needs and wishes of speakers “*requires the authorities to consult with representatives of users of regional or minority languages, when minority language policy is determined. The Committee of Experts considers this undertaking to be of great importance in creating, maintaining and enhancing a constructive dialogue between the authorities (local, regional and national) and the speakers of the languages in question.*”ⁱ In this context we would seek clarification from the Council as to what consultation took place with persons who are speakers of Irish, how consideration was given to their needs and wishes, and whether advice was sought from the statutory advisory body.

Under Article 7 of the Charter public authorities are required to *base their policies and practice* on the basis of objectives and principles which include the need to take resolute action to promote Irish in order to safeguard it (see Article 7(1)c). Whilst there are a number of ways in which this requirement can be met the Council of Europe has placed particular emphasis on bilingual signage and a number of the provisions of the Charter and Framework Convention in particular contain provisions in relation to bilingual signage. Under Part III of the Charter there is a particular duty to allow and/or encourage (alongside English if necessary), the traditional and correct forms of place names in Irish (Article 10(2)g). The Framework Convention for National Minorities also commits the UK to endeavour “to display traditional local names, street names and other topographical indications intended for the public also in the minority language” in areas where there are speakers of minority languages and when taking into account the specific conditions of the language (Article 11(3)).

The Council of Europe at its highest level has extolled the use of bilingual official signage as a key measure to promote minority languages.ⁱⁱ The Committee of Ministers has linked signage to duties to promote awareness and tolerance in relation to minority languages.ⁱⁱⁱ The Council of Europe has expressed concerns when municipal authorities take regressive steps in relation to bilingual signage.^{iv} The Committee of Experts has also urged authorities to remove legal and practical obstacles to bilingual signage, including in context where there is hostility to such signage in some local government areas.^v This framework indicates hostility or ‘tensions’ should not be regarded as sufficient a rationale for not providing signs, rather there are other provisions under the Charter and Framework Convention whereby public authorities are duty bound to proactively promote tolerance. In general the international framework implies a Council in deciding to provide bilingual signs should not simply seek to

'balance' demand with opposition to minority language promotion as such a position may not be consistent with the concepts of minority rights or pluralism in a democratic society. This can take place within a framework of paying regard to views of residents.

It should be noted that the legal framework for indigenous and migrant languages are quite different and only the former are covered by the Charter.

As you may be aware the Department of Environment has a power under s107 of the Local Government Act (Northern Ireland) 2014 to direct that any action proposed to be taken by a Council not be taken if it considers it incompatible with international obligations.

We would therefore seek urgent clarification within the next 14 days as to whether the Council intends to seek repeal of this policy.

Yours sincerely

Ciarán Mac Giolla Bhéin
Advocacy Manager
Conradh na Gaeilge

cc Department for Communities; Northern Ireland Human Rights Commission, Foras na Gaeilge

ⁱ Application of the Charter in the UK, 1st monitoring cycle, paragraph 89 [MIN-LANG/PR (2002) 5].

ⁱⁱ "...Council of Europe reiterates that the use of minority languages in official signage is a promotional measure with a considerable positive effect for the prestige and public awareness of a minority language. This position is supported by the Committee of Ministers of the Council of Europe, which in recent years adopted several

recommendations calling on states to use minority languages on public signs” in ‘Council of Europe supports use of minority languages in official signage’ Press Release <http://www.coe.int/en/web/portal/-/council-of-europe-supports-use-of-minority-languages-in-public-signs> also citing: CM/RecChI2013(1) concerning the Czech Republic, CM/RecChI2013(3) concerning Serbia, CM/RecChI2013(6) concerning Bosnia and Herzegovina, CM/RecChI2014(1) concerning Ukraine.

ⁱⁱⁱ For example, in April 2015 the Committee of Ministers recommended “*that the Croatian authorities continue their efforts to promote awareness and tolerance vis-à-vis the minority languages, in all aspects, including usage of signs and traditional local names with inscriptions in Cyrillic script, based on the conclusions of the Committee of Experts [...], and the cultures they represent as an integral part of the cultural heritage of Croatia*” Recommendation CM/RecChI(2015)2 on the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by Croatia (adopted by the Committee of Ministers on 15 April 2015 at the 1225th meeting of the Ministers’ Deputies).

^{iv} See concerns regarding a City Council (Vukovar / Вукoвap) who had amended its policy and would no longer provide bilingual signs at Council buildings, institutions, city squares and streets. The Council of Europe stated that it ‘strongly regrets’ the removal of such minority language signs, whether through vandalism or official policy, instead calling on “all relevant public authorities” to fully implement the Charter ‘Council of Europe supports use of minority languages in official signage’ Press Release <http://www.coe.int/en/web/portal/-/council-of-europe-supports-use-of-minority-languages-in-public-signs>

^v “185. The Committee of Experts has been informed by the representatives of the Polish speakers that there are still problems with respect to the bilingual signs and these often create tensions. The situation differs in each municipality and in some cases no steps have been taken to set up bilingual signs. Furthermore, bilingual signs are often destroyed and are not always replaced, partly due to funding problems. Moreover, funds from the state budget are provided with delays, causing problems in the municipal budget and further hesitation from the authorities in approving the bilingual signs. As to the railway stations, no further bilingual signs have been installed on the new corridor, in stations such as Třinec-Konska and Ropice. Where Polish signboards have been installed, these remain switched off. Problems have been indicated as well at the railway stations in Třinec and Vendryně.

186. The authorities are aware that bilingual signs have been destroyed and the former Minister for Human Rights and Government Commissioner for Human Rights has publicly protested against such actions. Furthermore, the authorities explain that bilingual signs are a sensitive issue and the majority population is reserved in this respect.

187. As to the legislation, the authorities have informed the Committee of Experts that an amendment to the relevant legislation has been prepared, which is expected to enter into force in the near future. The amendment maintains the 10% threshold and foresees that an application for bilingual signs can also be submitted by a civic association which represents the interests of the minority in question and has been present on the territory of the municipality for at least five years. The authorities explain that the request of the representatives of the national minorities through the committee for national minorities would remain the main method, while the application submitted by an association would be an exceptional solution in cases where the committee does not properly fulfil its role. The amendment has been prepared by the Committee for Co-operation with Local Authorities of the Government Council for National Minorities, the Secretariat of this Council and the Ministry of the Interior.

The Committee of Experts urges the Czech authorities to remove the legal and practical obstacles to the use of Polish place names and topographical signs in accordance with the Charter.”

(Application of the Charter in the Czech Republic 2nd monitoring cycle, paragraphs 185-7 [ECRML (2013) 2], emphasis in original).