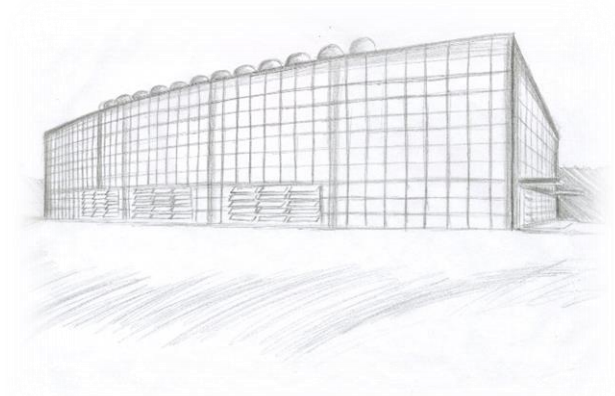


CHOWDHURY v. REPUBLIC OF SERENATIA



THE PAN-ASIAN COURT OF HUMAN RIGHTS

CASE OF CHOWDHURY v. SERINATIA
(Application no. 52978/16)

Compromis of 12 September 2016

KUALA LUMPUR

SUBMITTED TO THE PAN-ASIAN COURT OF HUMAN RIGHTS, SITTING AS A GRAND CHAMBER COMPOSED OF:

Anya Chin, *President*,
Shoujun Lyu,
Maxwell Lee,
Peter Ng,
Krishna Sharma,
Nina Leung,
Abdul Azeez Kareem,
Kevin Goh,
Fu Chia-Huei,
Tina Wong,
Nur Zikri,
Kaimu Bao,
Tsheringd Dorji,
Jun Jie,
Zhi Hao,
Praan Kaul, *judges*,
and Wang Mo, *Registrar*,

the following facts, circumstances, and background apply to the case of *Chowdhury v. Serenatia*,

THE FACTS

I. THE REPUBLIC OF SERENATIA

1. The Republic of Serenatia is a semi-developed democratic peninsula state with a population of approximately 21 million inhabitants. Its geography is rugged and in many places, inhospitable for construction or inhabitation, and accordingly despite spanning over 5000km², the majority of the population are concentrated in a several core urban areas. It is formed of a bi-cameral parliament and headed by a Prime Minister. It boasts a strong rule of law framework including a robust separation of powers between the branches of government.
2. The 2014 census showed that the population of Serenatia was 93.2% ethnic Serenati, with the remainder of the population consisting of ethnic minorities mostly from the Asian region. The largest numbers of ethnic minorities originate from India, China, and Nepal.
3. Serenatia is a common law jurisdiction, and a dualist state that is signatory to numerous international human rights treaties, including the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child. Its Constitution guarantees an extensive array of human rights protections, which are further bolstered by a variety of legislation including the Race Relations Act 1989 and the Equality Act

2005. It is also a signatory of the Charter of Asian States on Human Rights (CASHR), and has accepted the jurisdiction of the Pan-Asian Court of Human Rights (PACHR).

4. The language spoken is Serenati, a branch of the Sino-Tibetan language group that uses characters representing mono-syllabic words. There are some similarities with other languages within this group but the language is unintelligible to non-speakers of Sino-Tibetan or other character-based languages. Serenatia was a British colony for over 300 years, and accordingly English remains one of the two official languages.
5. However, since independence in 1974, English has been abandoned in non-urban areas and in many locations, is not widely spoken by citizens of Serenatia, who speak exclusively Serenati. Moreover, despite many jobs not actively entailing a Serenati language component in terms of functional performance and output, it is frequently listed as a pre-requisite for employment in job adverts.
6. Publicly-provided social services are of a generally high quality and both, the public healthcare and the subsidised education systems, are free. Alongside subsidised schools, there are also private and international schools; while the quality of teaching at these schools is higher, such schools charge high prices that are unaffordable for parents not earning large salaries or with employment packages that cover the schooling of children. This has meant that such schools are dominated by elite members of the community whilst the composition of public sector schools varies based on the language of instruction policy at the schools and the curriculum deployed to teach Serenati at the schools. In essence, the government had nominated specific schools to which ethnic minority students would be directed to enable them to learn Serenati at a pace appropriate to them in light of their background, skills and exposure to language support at home.
7. Following the introduction of the Equality Act 2005, the Serenati Supreme Court (the final appellate court of Serenatia) ruled in 2007 that the existing education system was discriminatory towards its ethnic minorities by virtue of segregated schooling for such groups which was the direct result of the educational policy implemented with respect to language of instruction and the teaching of the Serenati language to non-native speakers. In 2008, the Serenati government introduced the Parallel Track Policy (PTP) with a view to assisting ethnic minority children to integrate at a gradual pace into the Serenati education system.
8. As a means to provide equitable access to education for all ethnic majorities and minorities, the PTP created two parallel education systems under the Ministry of Education, dividing schools into two systems: one for Serenati language instruction (SLI), and another for English language instruction (ELI). The substantive curricula are identical with the exception of foreign language learning; in the SLI curriculum, English is taught as a foreign language, and in the ELI *vice versa*. However, the curriculum for teaching Serenati as a foreign language is broken down into several steps depending on the learner's aptitude and progress. This means that the learner is assessed based on their own progress alone, rather than in competition with their Serenati native peers.

9. Whilst there are no barriers to entry into either sets of schools in theory, in practice, ethnic minority parents have reported difficulties securing application forms for admission to SLI schools or if they have successfully applied, the interviews arranged for their children are in Serenati, a language which non-native ethnic minority children are not conversant in.
10. The ratio of enrolment of students between Serenati language schools and English language schools is 4:1 respectively at both the Primary and Secondary school levels. The most recent government report showed that ethnic minorities form up to 90% of some ELI schools; conversely, 10% at most of ethnic minorities are enrolled at SLI schools, and of these the vast majority are of a Chinese ethnic minority background due to the similarity between the Serenati and Chinese languages.
11. Satisfactory standardised testing of Serenati language is also a pre-requisite for entry into the Serenati public university system. The pass rate in these tests for students of the ELI system is 35%; most ELI students are not able to read and write Serenati beyond a Grade 2 level. The pass rate for SLI students in the standardised tests for the Serenati language is 53%.

II. THE CIRCUMSTANCES OF THE CASE

12. The applicant, Anya Chowdhury, was born in India on 13th August, 2009 to parents Pravin and Arthi, both of Indian origin in Bhopal, the capital of Madhya Pradesh, a state in central India. They moved to Serenatia on 20th June 2015, and currently seek entry for Anya into either an ELI or SLI school. She speaks some English and Hindi, and since arriving in Serentia has learned some basic Serenati words.
13. Upon application for the 2015 academic school year, Anya failed to gain admission to St. Christopher's Primary School – an SLI school – because during the interview, she is unable to demonstrate sufficient Serenati language skills. The school did not consider her to be a suitable candidate and expressed to the Chowdhurys that, in general, non-Serenati speaking children are educated at ELI schools.
14. The Chowdhurys were then advised by EduCareTion – a local NGO – to enrol Anya in an ELI school. EduCareTion advises the Chowdhurys that Anya will thrive in the familiar environment of an ELI school, where she will be learning alongside peers from similar cultural and socio-economic backgrounds. Being from a lower middle class family, Pravin and Arthi have little choice but to enrol Anya in an ELI school as the private and international fees are out of their financial reach.
15. Anya was admitted to Worple Road Government Primary School – an ELI school – and is taught basic Serenati at school along with other children of ethnic minority descent. However, Pravin and Arthi are concerned for Anya's future prospects. They have heard that many students who have graduated from government nominated schools for ethnic minorities have been unable to secure public university places even though they have

achieved the GCSE Serenati qualification which is the equivalent of the Ministry of Education's required Primary 3 public school curriculum standard.

16. Moreover, many previous Worpel Road students have been unable to opt to sit for either of the Ministry of Education's Serenati language examinations. Due to the small number of students who transfer from ELI Primary to SLI Secondary schools, priority is given to existing SLI students taking the language exams at the point of transfer from SLI Primary to SLI Secondary schools. Due to the large number of ELI Secondary school students failing the language tests to gain entry into the public university system, priority is given to SLI Secondary students in these tests. The Chowdhurys were aware of these Ministry of Education priorities prior to enrolling Anya at Worpel Road, but felt no choice but to enrol her anyway as it was the only school that would accept her for the 2015 academic year.
17. The Chowdhurys brought and lost a claim against the Ministry of Education in August 2015, in which they argued that the PTP constituted a violation of both the Race Relations Act 1989 and the Equality Act 2005. Their Appeal was rejected in February 2016. They lost their final appeal at the Serenati Supreme Court in August 2016.
18. They are now taking the case to the Pan-Asian Court of Human Rights, arguing that the Republic of Serenatia has violated the Charter of Asian States on Human Rights on three counts.
19. Firstly, they argue that the PTP is a discriminatory state policy and that it constitutes discriminatory practice against linguistic and ethnic minorities in Serenatia.
20. Secondly, they also contest that the various language tests institutionalise discrimination in education by setting an unachievable standard that must be met by ELI students to gain entry to the public university system.
21. Finally, they argue that the priority granted to students of both Primary and Secondary SLI schools to sit language exams to gain entry both to the secondary SLI school channel or the Ministry of Education's university entrance language tests constitutes discrimination against those schooled at ELI institutions.
22. The Serenati government has previously argued that its international obligations extend only to the subsidised provision of education until the secondary schooling level and that there is no international obligation to provide equal access to tertiary education. Moreover, it argues that with the existence of prestigious private ELI universities in Serenatia that are regulated by the Ministry of Education, a *de facto* parallel track education system exists as an alternative to the public education system all the way through even the tertiary level.
23. It has also argued that the policy is not discriminatory against ethnic minorities but rather is objectively imposed based on statistical evidence that SLI students are more likely to continue both from SLI Primary into SLI Secondary education, and from SLI Secondary to public tertiary education. They point to the fact that the curricula in both

ELI and SLI schools are almost identical and that the purpose of introducing the PTP was to ensure a standardisation of content for both ethnic and non-ethnic Serenati citizens.

24. The Ministry of Education has also stated that its policy of prioritisation is supported by the same evidence. They also claim that they cannot be held accountable for the choices made by parents or the advice given by EduCareTion to school Anya or any other ethnic minority children at ELI institutions.
25. The Ministry of Education points to its two official languages of Serenati and English as the foundation upon which it builds its curricula, arguing that both are needed for a functional role in society. As a result, it claims, emphasis is put on the acquisition of fluency of both languages throughout the education process. It highlights the entry of 35% of ELI students to the public university system as evidence that the issue revolves around the competency of individual students and not an institutional flaw in the curriculum design, or discrimination against ethnic minority students.
26. It also relies on the successful integration of a large number of Chinese ethnic minority students into the SLI system at an early level, arguing that this also reflects the equitable nature of the schooling system and evidencing that there is no institutional discrimination against ethnic minorities in the Serenati education system.

III: BRIEF

Prepare legal memoranda for both parties in the case of *Chowdhury v. Republic of Serenatia*.

- Advise the Chowdhurys on the prospects of their claim, specifically identifying *inter alia* relevant sections of domestic and international law of which the government may be in breach.
- What defences or justifications may be available to the Ministry of Education to challenge the Chowdhurys claim? Make reference *inter alia* to international treaties, and foreign, domestic, or international case law in support of your arguments.