The relative status of native and non-native speaker language teachers within educational institutions has long been an issue worldwide, but until recently the voices of teachers articulating their own concerns have been rare. Existing work has tended to focus upon the position of non-native teachers and their struggle against unfavourable comparisons with their native-speaker counterparts. However, more recently, native-speaker language teachers have also been placed in the academic spotlight as interest grows in language-based forms of prejudice such as 'native-speakerism' – a dominant ideology prevalent within the Japanese context of English language education. This innovative volume explores wide-ranging issues related to native-speakerism as it manifests itself in the Japanese and Italian educational contexts to show how native-speaker teachers can also be the targets of multifarious forms of prejudice and discrimination in the workplace.

"Is the English Native Speaker a political or a linguistic concept? Native-Speakerism in Japan *persuades us that it is political. Houghton and Rivers have assembled a powerful group of ELT professionals with first-hand experience of Japan and Italy who argue convincingly that native speakerism always has racist and gendered overtones."*

Alan Davies, University of Edinburgh, UK

"This excellent book constitutes a significant contribution to the critical study of language education. The concept of native-speakerism, based in an ideology of deficiency as well as an extremely questionable bifurcation of 'native speakers' and 'non-native speakers', is shown to be a far more complex process in which native speakers of English are both empowered and disempowered simultaneously."

Timothy Reagan, Nazarbayev University, Republic of Kazakhstan

Stephanie Ann Houghton is an Associate Professor in Intercultural Communication at Saga University, Japan. She holds a PhD in Education from Durham University, UK. She is author of *Intercultural Dialogue in Practice*, co-author of *Developing Criticality through Foreign Language Education* (with Etsuko Yamada), and co-editor of *Becoming Intercultural: Inside and Outside the Classroom* (with Yau Tsai).

Damian J. Rivers holds an MSc in Social Psychology, an MA in Applied Linguistics, and a PhD in Applied Linguistics/Sociolinguistics from the University of Leicester, UK. He is currently an Associate Professor at Osaka University and undertakes research into intergroup dynamics in foreign language education.

Multilingual Matters
Series Editor: John Edwards

9 781847 698681

Pbk ISBN: 978-1-84769-868-1

Native-Speakerism in Japan Edited by Stephanie Ann Houghton and Damian J. Rivers

MULTILINGUAL MATTERS

Native-Speakerism in Japan

Intergroup Dynamics in Foreign Language Education

Edited by Stephanie Ann Houghton and Damian J. Rivers

2 (Dis)Integration of Mother-Tongue Teachers in Italian Universities: Human Rights Abuses and the Quest for Equal Treatment in the European Single Market

David Petrie

Introduction

A citizen's right to take up employment inside the European Union (EU) is one of the fundamental pillars of the European Union as recorded in Article 56 of the Treaty on the Functioning of the European Union (TFEU). Article 18 prohibits discrimination based on nationality. These provisions have for over 50 years been the cornerstone of the attempt to create a European union of peoples and are reaffirmed in Article 45 as follows: 'Freedom of movement for workers shall be secured within the Union' and that 'such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment'.

Member states have an obligation to uphold and implement the TFEU which has direct and binding effect on all European Union territories. Member states which fail to uphold the Treaty can be brought before the European Court of Justice (ECJ) and fined.

On six occasions, between 1989 and 2008, the ECJ ruled that Italy was infringing EU laws prohibiting discrimination based on nationality with regard to non-Italian workers employed in its universities.

This chapter deals with the biggest case of mass discrimination based on nationality in the history of the EU: foreign lecturers working in Italian universities.

In 1980, the Italian government reformed its universities with decree law 382 granting tenure to its existing teaching staff as full professors, associate professors or tenured researchers. Equivalence with tenured researchers was granted to one pre-reform category called assistants; however, assistants teaching in their mother tongue were excluded from this provision. Instead, Article 28 of decree law 382 created a new category of workers, *lettori* (literally 'readers' and *lettore* in the singular). Contracts were annual and could be renewed for a maximum of five times, and salaries could not exceed that of associate professor.

I regard the term 'mother-tongue speaker' as an exact or almost exact synonym of 'native speaker'. None of the terms allows any direct inference as to the person's nationality. Both terms would tend to be used for persons residing in a country other than that of their birth and/or nationality. However, there are exceptions, for example, Italian citizens who are mother-tongue speakers of German (mostly from Alto-Adige, formerly governed by Austria), citizens born of mixed parentage whose mother tongue may not coincide with the official language(s) of that person's nationality or place of residence. Throughout this chapter, I use the term *lettori* as defined by Article 28 of the decree law which specifies that applicants for a post as *lettore* must be 'mother tongue'. Competence for the post had to be judged by individual university faculties. *Lettori* were employed to teach civilization, language, literature, translation and history. One feature which distinguishes *lettori* from other autonomous teaching staff was that they were teaching subjects (only one of which was language) in their mother-tongue languages (mostly English, French, Spanish and German).

It will be shown how the term 'mother tongue' led to occult discrimination based on nationality in breach of EU law.

The (in)effectiveness of the institutions of the European Union will be examined in the context of the Italian state's resistance to the new legal order, first enshrined in the Treaty of Rome in 1957, with subsequent amendments culminating in the TFEU which came into force on 1 December 2009.

Citing the supremacy of European law, hundreds of *lettori* petitioned the European Parliament, ran a vigorous press campaign and raised actions in Italian courts seeking equal and fair treatment in the place of work.

At the outset, it should be noted that EU law does not attempt to harmonize practices among the member states as each state is free to organize its affairs as it deems fit. EU law simply prohibits all forms of

discrimination based on nationality including occult discrimination. In effect, direct discrimination based on nationality is rare. The test for discrimination is equal and fair treatment, and the bar is set very high. Illegal discrimination will exist where laws and practices could be capable of an interpretation which might favour citizens of the host state over legally resident migrant workers. In the *lettori* case, the Italian government legislated in a way which made 'mother tongue' a prerequisite for access to a category of teaching jobs in its universities. The term mother tongue, when used in the context of a migrant worker, is likely to coincide with non-citizen.

This point was illustrated succinctly by ECJ Advocate General Fennelly in his opinion on 20 March 1997, in ECJ case (C-90/96):

> Article 28 of the 1980 Decree relies on mother tongue-linguistic competence to define a specific form of private-law employment, thus creating a virtually self-defined discriminatory category and providing the basis for the applicant's complaint. Foreign-language teaching thus has far greater potential for complaints on grounds of discrimination than other branches of learning. (ECJ, 1997)

Indeed, in the case of the *lettori,* the ECJ found that only around 15% held Italian citizenship. One might add that the term is so ill-conceived that it has the potential to create reverse discrimination. An Italian citizen, for example, whose competence in Castilian is equal to that of a Spanish citizen's, might nevertheless be excluded from applying for jobs reserved for 'mother-tongue' speakers.

The Wall Street Journal, 2 December 1998, reported lettori claims as:

> ...a clear cut test of Europe's commitment to labor mobility, which along with a common currency is key to the success of the EU's vaunted single market. If teachers from Scotland can't go to Italy to work, "Europe" won't be much more than a nice idea. (p. A)

The Irish Times, 5 February 1999, noted:

> The persistent refusal of the Italian university authorities to pay foreign lecturers on the same scale as Italian lecturers, to recognise continuity of employment and their refusal to hold fair competitions for full academic posts have been found to be in breach of European law and are, without doubt, the clearest mass systematic breaches of the treaty. (p.11)

Hundreds of law suits were lodged in Italian domestic courts, and four of the six ECJ cases were referrals from these Italian domestic courts, where a local judge could ask the ECJ for guidance on how to decide a case in which there appears to be a contrast between domestic law and EU law. The latter has direct effect and is binding on all EU member states. The ECJ ruled, in each of these cases, in favour of the *lettori*. The European Commission, in its role as guarantor of the Treaty, took two cases to the ECJ which ruled that Italy had failed to uphold its obligations under the TFEU. It should be noted that a citizen has no direct access to the ECJ but does have access to the General Court (formerly called the Court of First Instance) which deals with administrative matters.

Blitz (1999: 44) has carried out a considerable amount of empirical research on the *lettori* question finding that [the] 'fact that non-Italians have been repeatedly victimised by a system closely protected by a bureaucratic state suggests that there are institutional patterns of prejudice working against the goals of integration', Italy's relationship with its universities is compared with 19th-century craft guilds that resisted economic liberalism in order to maintain their institutional traditionalism, while a follow-up essay examines the effects on the individuals suffering the illegal discrimination. Professor Blitz, who conducted interviews with *lettori* throughout Italy between 2005 – 2010, catalogues complaints of *lettori* removed from their teaching jobs, *lettori* told they were part-time workers, *lettori* told they were not allowed to explain grammar rules and *lettori* removed from examination boards. Many of them used the word 'mobbing' to describe their predicament. Several *lettori* attributed their unsatisfactory working environment to their ill health. One French woman attested to 'having been cut out of everything' and of having had a 'violent asthma' attack in the midst of a crisis of humiliation. (Blitz, 2010: 135). Blitz is not alone in recording these abuses; the THES, in an article, 8 May 2008, entitled 'Second-class colleagues,' cites an open letter to the Rector of the University of Trieste from a distressed husband commenting on his German wife's suicide, 'struck down by an illness greatly contributed to by your arrogance and your scorn for other people's rights'. While a colleague commented on her death as follows:

> During the past 25 years, like hundreds of colleagues, I've been sacked, redefined, demoted. I've been told by my direct superior that my category deserves to be 'exterminated' and that I will be 'made to pay' for arguing. I've been threatened with undefined 'measures' for taking time off to attend my father's funeral. I've been promised publications that failed to appear, through incompetence and malice, and had more prestigious

> publications outside Italy ignored. I'm strong. I've coped. Sigrid, finally, didn't. (THES, 2008: para. 7)

The Dispute

The first case to reach the ECJ was a referral from a Venice Tribunal. The ECJ, on 30 May 1989, in case (33/88) ruled that employing *lettori* with annual contracts renewable for a maximum of five times was in contravention of EU law prohibiting discrimination based on nationality, since this rule did not apply to Italian teaching staff.

Certain Italian universities noted that although the ECJ had prohibited the 5-year renewability clause, it had not specifically outlawed annual contracts. The case was again referred to the ECJ which had to spell out on 2 August 1993, case (C-259/91), that contracts had to be open-ended since Italian staff enjoyed open-ended contracts (ECJ, 1993). Thus, it was legally established that Italy was breaching EU law with regard to discrimination based on nationality.

It is worth examining some of the claims made against the *lettori*. It was argued that *lettori* would lose the freshness of their language and, above all, that since they had not passed *concorsi* (open competition exams), they could not be compared with tenured teaching staff. Furthermore, it was pointed out that Italian contract professors, who carried out similar duties to *lettori*, were employed on annual renewable contracts. None of these arguments impressed the ECJ. First of all, non-Italian citizens were barred from *concorsi* for research position until 1995, and then the Italian authorities could have recruited *lettori* by *concorsi*, but after choosing not to could not now rely on their own recruitment practices to justify different treatment. Contract professors with short-term contracts, the ECJ noted, were the exception in Italian universities, and *lettori* should benefit from comparison with the norm, not its exception. Finally, the ECJ pointed out that universities were free (at their own expense) to send *lettori* back to their countries of origin for retraining if freshness of their language was a concern.

Blitz's comparison of the *concorsi* system, and the professorial barons who control them, with medieval guilds resisting innovation was echoed by Italian historian Indro Montanelli, in an article entitled 'Clan Mentality Rules in Italian Universities', in the THES, 9 January 1998, as follows:

> It is forbidden to step outside the academic fortress. The very language of our teachers is mafia language ... Servility is the chief quality required to enter the system. The best way to get on is to marry the daughter of a barone. (THES, 1998a: para. 8)

(*Note*: Barone here means a university professor who treats his tenured chair as his personal fiefdom.)

The *concorsi* system has been widely and thoroughly discredited. For a brief examination of the phenomenon, see *The Independent*, 25 September 2010, 'Family fiefdoms blamed for tainting Italian universities' which quotes Professor Roberto Perotti as saying,

In some of Italy's state university departments 30% of the staff have a close family relative present. This is nepotism and corruption, and it's everywhere. (*The Independent*, 2010: para. 5)

However, the last word on how the concorsi system operates should be attributed to Professor Cesare Cecioni, former Director of Florence University's language teaching centre, quoted in the THES, 13 February 1998, telling a conference of lettori in Bologna in January 1998:

> It seems the lettori have still not understood that tenure has nothing to do with teaching: it rather concerns the privileges that a professor enjoys. If you were to apply for promoted posts you would have no chance of success. As we would be judging you, it would simply be the slaughter of the innocents. (THES, 1998b: para. 12)

Three British *lettori* did apply for promoted posts in 1995 and were barred by their faculty boards. Their subsequent legal challenge went from a domestic court to the ECJ and back to the domestic courts, where after 15 years, in 2010, they were each awarded 5000 euros in damages.

The Challenge from the European Parliament and European Commission

The *lettori* ran a very public campaign that focused on the European Parliament, busloads of *lettori* and students arrived in Brussels and Strasbourg with petitions cataloguing abuses. One petition, addressed to former President of the European Parliament, Simone Veil, dated 24 June 1996, contained a statement from KB, who wrote:

> I have worked at the Istituto Universitario Orientale di Napoli for seven years as a mother-tongue English language lecturer. On eighteenth September 1990 I gave birth to twins. I had no maternity leave neither before nor after the birth even though I suffered serious health problems particular to a multiple pregnancy. I was required to return to work two weeks after the birth with a full timetable, including invigilation of

> 5-hour written examinations and full-day exam commissions. As a result of physical and psychological stress I lost my milk and was unable to breast feed my two-week old twins. I could not insist on having my legal rights to maternity leave because the renewal of my contract was subject to the head of department's approval. (Petition to European Commission High Level Panel, 1996: 3)

There were a total of 223 mass sackings at the universities of Bologna, Naples, Salerno and Verona. *Lettori* who had previously taught literature, history and other subjects were excluded from teaching those subjects, their names were removed from internal phone books and they were removed from examination boards. This mobbing was the subject of the first of four resolutions in the European Parliament, B4-0968/95, of 13 July 1995 which noted:

> … whereas the basic human rights and democratic freedoms of fourteen [University of Verona] foreign language teachers are being violated following eviction from their offices to a basement measuring six metres by four and through other forms of intimidations and legal filibustering. (European Parliament, 1995: para. C)

Under pressure from the Parliament, the European Commission had launched infringement proceedings against Italy which in turn enacted a new law, 236, in 1995. Law 236, instead of converting existing fixed-term *lettori* contracts into open-ended contracts, merely offered the *lettori* priority in the selection process for new contracts as *collaboratori ed esperti linguistic* (collaborators and linguistic experts).

This law, however, had a sting in its tail, the *lettori* discovered that CELs were no longer part of the teaching staff and therefore could be paid less.

In a programme broadcast on BBC File on Four, 3 June 1997 (cited in ALLSI, n.d.), Mark Whitaker, interviewing First Secretary Fernando Gentilini at Italy's permanent mission to the European Union in Brussels, asked:

> How would you feel if you had been doing your job for several years and then your bosses suddenly say actually your job isn't that, we are now going to call it something else and we're going to pay you 50% less?

In an attempt to consolidate the 1995 law, collective contracts were signed between Italy's leftist leaning *Confederazione Generale Italiana del Lavoro* (CGIL) as well as other trade unions and the government, in what one Italian Member of the European Parliament, MEP, saw as an underhand exchange

of favours. Gianni Tamino, himself a university researcher, told the THES, 13 February 1998, that his government's response was 'totally unacceptable, disrespectful and at times even ridiculous' while adding that the CGIL ' [in] Sacrificing the legal rights of a minority, in this case those of the *lettori*, for wider interests is no way for a trade union to conduct its business and will not wash in Europe' (THES, 1998: para. 3).

Unconvinced by the measures taken by the Italian authorities, the Commission, acting upon information provided by the *lettori*'s independent trade union ALLSI, the Association of Foreign Lecturers in Italy (www.allsi.org), continued with its infringement proceedings. Italy, however, resisted. The infringement proceedings continued, but far from smoothly.

Citizens who believe their rights are being denied can complain to the Commission in its role as guardian of the TFEU. The author of this chapter targeted the University of Verona, where he was first employed in 1984.

The Commission replied that it could not proceed on the basis of one university's alleged infringement. ALLSI put together files from over 20 universities. From these, the Commission cited as examples six universities, Basilicata, Milan, the Eastern University Institute of Naples, Palermo, Pisa and Rome's La Sapienza, and sent a reasoned opinion to the Italian government on 16 May 1997, laying out its legal position and inviting the Italian government to rectify its law and its practices under threat of being hauled before the ECJ.

ALLSI requested copies of the correspondence between the Commission and the Italian government, which the Commission rejected on the grounds that documents in infringement proceedings were covered by rules of secrecy.

Unknown to ALLSI, the complainant, the Commission altered its claims in law as set out in its reasoned opinion of 16 May 1997 and wrote another letter to Italian Minister Lambero Dini on 19 July 1998. This revealed that the Commission had abandoned its pursuit of the question of status. In other words, the question of whether the new posts offered as CEL would downgrade the *lettori* to that of non-teaching staff was dropped.

The Commission's case now rested on the alleged failure of the Italian Republic to guarantee the acquired rights of the former *lettori;* that is to say, to compensate them for unpaid arrears in wages, pensions and increments for years of service dating back to the first day of their contracts in line with treatment enjoyed by Italian teaching staff.

ALLSI came into possession of these and other documents and made them public, through the European Parliament. On 6 July 2000, 446 *lettori* signed a petition addressed to the President of the European Commission,

Romano Prodi, alleging that the Commission was receiving false and allegedly criminally false information from the Italian authorities. The documents showed that 38 *lettori*, who had refused to sign new contracts as technicians, were not listed in data sent to the Commission. ALLSI's lawyer Professor Lorenzo Picotti examined these documents and wrote:

> …the Commission accepted the deliberately instrumental, unfounded and unproved justifications which have been presented as facts in defence arguments by the Italian Government on the basis of partial information, obvious omissions and at times complete and utter falsehoods [and] has taken a position which is from a legal perspective incomplete, imprecise, unclear and also contradictory. (Petition to President of the European Parliament, Romano Prodi, 2000)

Law Professor Sir Neil MacCormick MEP, Q.C. (cited in ALLSI, 2007) commented:

> There must be strong suspicion that the information in question is actually false and may even have been supplied in the knowledge either that it was false or that it amounted to deliberate suppression of a material truth. If such knowledge existed, the act of supplying the information would have been plain fraud. At this very time, the question of whether there was such an act of official fraud is being investigated through criminal proceedings in Rome.

This is by no means the only example of authorities attempting to thwart the work of the ECJ. In Commission vs. Italy case (C-371/04), the Advocate General (AG) whose duty is to advise the ECJ on how a case should be decided complained that the Italian authorities repeatedly failed to reply to letters and when they did the AG described the reply as (a)

> flurry of legislative references …[which] were not supported by any annexed legislative texts or explanatory memoranda … a bundle of over 100 pages of assorted documents … No explanation has been given of how those texts are relevant. [Adding that] It is unusual that in infringement actions for the Member State concerned to provide the Court with comprehensible information about its relevant law. In the present case, the situation in Italy was not entirely clear even after the hearing. [And] It is manifestly unsatisfactory for the Court to be left so ill-informed at this stage in the procedure. (ECJ, 2006a: para. 16/21)

This is tantamount to contempt of court, aggravated by the fact that the Court is impotent to sanction the contempt.

This damning comment, coming from an Advocate General of the ECJ, illustrates the inherent weakness in the entire legal procedure. Member states sign up to upholding the EFTU but little can be done to ensure that cooperation is efficient and carried out in good faith.

ALLSI took a complaint of maladministration to the European Ombudsman, who criticized the Commission for 'fundamentally alter[ing] the basis on which it was dealing with the complainant's case, in a way which the complainant considered highly damaging to his interests' (Decision of the European Ombudsman on complaint 161/99/IJH against the European Commission, 2000: para. 4).

In addition, ALLSI took the Commission before the General Court (formerly the European Court of First Instance), requesting that 16 documents pertaining to the Commission case be disclosed. The Court rejected the application on the grounds that 'such disclosure may adversely affect the public interest' (ECJ, 2001b: para. 80).

In this specific case, it is difficult to imagine what public interest was being protected. The lettori merely wanted to ascertain whether or not documents potentially usable in the infringement proceedings contained false information which if put before the ECJ would skew its judgment to their detriment.

The ECJ ruled on 26 June 2001

> that, by not guaranteeing recognition of the rights acquired by former foreign-language assistants who have become associates and mother-tongue linguistic experts, even though such recognition is guaranteed to all national workers, the Italian Republic has failed to fulfil its obligations under Article 48 of the EC Treaty (now, after amendment Article 39 EC). (ECJ, 2001a: para. 37)

Thus, law 236 of 1995 did not conform to EU law.

Any Italian worker with a plurality of contracts is entitled to have their acquired rights maintained from the first day of the first contract. It will be recalled that law 236 merely offered *lettori* priority in a selection process to become CELs, thus creating three categories of workers, *lettori* who refused to sign contracts as CELs, ex-*lettori* who signed as CELs but insisted on their acquired rights and CELs employed for the first time under law 236. Subsequently and unsurprisingly, Italian university authorities cavilled and equivocated on which rights were acquired and from which dates and to whom.

Not satisfied by law 236, the Commission continued to pursue Italy for failure to implement previous judgments of the ECJ.

Italy changed its legislation with law 63 of 2004, which set a minimum wage pegging *lettori* to tenured researchers, which the Commission regarded as inadequate. Italy was brought back to the ECJ and the AG, a full member of the Court whose opinion is persuasive though not binding on the Court, recommended fining Italy 265,000 per day until its law and its practices conformed to previous judgments of the ECJ.

On 15 November 2005, scores of *lettori* attended the hearing of the Grand Chamber of 13 judges in the ECJ in Luxembourg. The Italian State Advocate submitted evidence suggesting that Italy's latest law, law 63 of 2004, conformed to EU law and that the universities had, by and large, put this law into practice. Were this the case the *lettori* monthly pay slips would show minimum salary as equivalent to tenured researchers. The *lettori* had for months sent their pay slips to the Commission showing that this was not the case.

The judgment, ECJ case (C-119/04), delivered on 18 July 2006 found Italy yet again to have breached its Treaty obligations but declined to impose fines, stating at paragraphs 45 and 46:

> …the Court does not have sufficient information to permit it to find that, on the date of the Court's examination of the facts, the breach of obligations persisted. The imposition of a penalty payment is not, therefore, justified. (ECJ, 2006b)

Professor Sir Neil MacCormick MEP, Q.C. issued the following statement:

> It is a scandal that Italy has been yet again found in breach of its Community obligations to a group of European citizens, but yet again suffers no sanction. What trust can we citizens place in our rights under the treaties if a cosy club of Commission, Court and member state can agree that wrong has been done yet fail to ensure the wrong is righted. The Commission in this case failed to put forward a sufficient case to show that Italy's default continued up to the time of the hearing. Did the Commission really try to win its case? If the Court needed further evidence from the Commission, why did it not direct the Commission to adduce such evidence before proceeding to final judgment? (cited in ALLSI, 2007)

At a law seminar held at the University of Trento on 13 February 2007, now retired ECJ judge Ninon Colneric, one of the 13 judges adjudicating the case, said:

> The problem of that case in the end was the enforcement proceedings, linked to procedural rules […] that the Court has to apply…a French tradition, I often thought it highly difficult to accept.
>
> So the Court is linked to what is put forward by the parties. It cannot do its own research on what happened even if you see that something has gone seriously wrong. You are stuck, you are confined to the pattern of arguments put forward by the parties … the Commission had not challenged that material in detail. That's why we had to proceed from the basis of what the Italian state had said. Our hands were ... bound by these procedural rules.
>
> The Court has to have the courage to change its procedural rules and if you compare it with the rules of French administrative law, you see that in French administrative law things have developed. The Court in that sense are like immigrants: it's very, very hard to change the basic procedure of the Court. The litigants must have been very, very disappointed. (Cited in ALLSI, 2007)

A Supreme Court composed of 'immigrant' judges who feel themselves bound by archaic principles of French administrative law hardly inspires confidence.

Had the lawyers representing the *lettori* been allowed to intervene, they would certainly have filled the gap left by the Commission and rebutted the evidence presented to the Court by the Italian State Advocate. But it is the Commission which takes the case to the ECJ, and the complainant, technically a third party, is deprived of the fundamental right to choose a lawyer and be represented in court by that lawyer.

Questioned on this point at a law conference (the University of Edinburgh, 2007) on 1 March 2007, ECJ judge David Edward said that allowing citizens direct access to the ECJ would lead to too much vexatious litigation.

Citizens might prefer the risk of vexatious litigation to that of litigation based on false or partial evidence. In any event, there is no reason why lawyers representing complainants should not be granted access to the Court as an interested party.

On 23 December 2010, the Italian government altered its law yet again, this time to 'extinguish' law suits concerning *lettori*. This new legislation has given rise to further litigation in the Italian domestic courts, with judges in Padova, Pavia, Naples and Milan refusing to implement the legislation. A magistrate in Turin has asked the Italian constitutional court to rule on whether or not the clause extinguishing *lettori* rights is in conflict with the Italian Constitution. The author of this chapter addressed the European Parliament on 25 January 2011, saying that the 'extinguishing' of non-citizens'

right to have claims adjudicated in a court of law is unprecedented in Europe after the Second World War (Petrie, 2011). In a letter to this author dated 11 May 2011, the European Commission said that its 'investigations' into this law are 'on-going'.

To date, approximately 20% of the *lettori* have received a remedy, a number have died, while many, now approaching retirement, fear they too will die without having enjoyed the equal rights enshrined in the TFEU which their governments have all been signatory to.

Conclusions

Descriptors such as 'mother tongue' and 'native speaker' are to be avoided in recruitment procedures for access to employment; these terms cannot reasonably be added to a *curriculum vitae* as a 'qualification'. Legislation or norms using these terms have more potential to fall foul of prohibitions on discrimination based on nationality, since they are more likely to attract applicants who are not citizens of the host state, and indeed may even be reserved for guest workers. The entire infringement proceedings are woefully flawed, on two points. First, the complainant has no direct access to the Court, without which there can be no justice. Second, the TFEU relies on the member states' cooperation for its implementation; however, this cooperation has been shown to be wanting and enforcement procedures are lengthy and weak.

Recalcitrant and recidivist governments have little to fear from Brussels. As one thinker, Domenico Pacitti, put it (http://www.pacitti.org/interviews_26082003.htm), 'Italy's major contribution to the EU will be to teach other member states the twin related arts of evading laws and legislating in order to evade them at a later date.' (Just Response, 2003)

The Italian government's legislation of 1980 was found to infringe EU single-market rules, the 1995 reform failed to satisfy the ECJ, its 2004 legislation was deemed to conform at least in theory, if not in practice. The 2010 legislation 'extinguishes' court cases where *lettori* are seeking to have these theoretical rights implemented as interpreted by the ECJ.

The relative status of native and non-native speaker language teachers within educational institutions has long been an issue worldwide, but until recently the voices of teachers articulating their own concerns have been rare. Existing work has tended to focus upon the position of non-native teachers and their struggle against unfavourable comparisons with their native-speaker counterparts. However, more recently, native-speaker language teachers have also been placed in the academic spotlight as interest grows in language-based forms of prejudice such as 'native-speakerism' – a dominant ideology prevalent within the Japanese context of English language education. This innovative volume explores wide-ranging issues related to native-speakerism as it manifests itself in the Japanese and Italian educational contexts to show how native-speaker teachers can also be the targets of multifarious forms of prejudice and discrimination in the workplace.

"Is the English Native Speaker a political or a linguistic concept? Native-Speakerism in Japan *persuades us that it is political. Houghton and Rivers have assembled a powerful group of ELT professionals with first-hand experience of Japan and Italy who argue convincingly that native speakerism always has racist and gendered overtones."*

Alan Davies, University of Edinburgh, UK

"This excellent book constitutes a significant contribution to the critical study of language education. The concept of native-speakerism, based in an ideology of deficiency as well as an extremely questionable bifurcation of 'native speakers' and 'non-native speakers', is shown to be a far more complex process in which native speakers of English are both empowered and disempowered simultaneously."

Timothy Reagan, Nazarbayev University, Republic of Kazakhstan

Stephanie Ann Houghton is an Associate Professor in Intercultural Communication at Saga University, Japan. She holds a PhD in Education from Durham University, UK. She is author of *Intercultural Dialogue in Practice*, co-author of *Developing Criticality through Foreign Language Education* (with Etsuko Yamada), and co-editor of *Becoming Intercultural: Inside and Outside the Classroom* (with Yau Tsai).

Damian J. Rivers holds an MSc in Social Psychology, an MA in Applied Linguistics, and a PhD in Applied Linguistics/Sociolinguistics from the University of Leicester, UK. He is currently an Associate Professor at Osaka University and undertakes research into intergroup dynamics in foreign language education.

Multilingual Matters
Series Editor: John Edwards

9 781847 698681

Pbk ISBN: 978-1-84769-868-1

Native-Speakerism in Japan Edited by Stephanie Ann Houghton and Damian J. Rivers

MULTILINGUAL MATTERS

Native-Speakerism in Japan

Intergroup Dynamics in Foreign Language Education

Edited by Stephanie Ann Houghton and Damian J. Rivers