

Foreign Policy Review

Gábor Kardos: The Need for Minority Language Rights:
Some Theoretical and International Legal Considerations

György Andrásy: Freedom of Language as a Partly Territorial Right
of Everyone and the Issue of Minority Language Rights

Gábor Tolcsvai Nagy: The Indigenous Status of the Hungarian Language
Community in the Carpathian Basin.
A Historical and Contemporary Interpretation

Miklós Kontra: (Linguistic) Human Rights and/or Security Policy

Petra Lea Lánco: The Role of Language Technologies in Promoting
the Participation of Linguistic Minorities
in Social, Political and Economic Life

Balázs Szabolcs Gerencsér: The Law of Coexisting Languages
examining the quartet of language policy fields

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PREFACE

Márton Ugrósdý

It is our great pleasure to co-publish this special issue of Foreign Policy Review in cooperation with the Ministry of Foreign Affairs and Trade on the occasion of Hungary's presidency of the Council of Europe. We always have strived to foster academic debate that supports Hungarian foreign policy, and what could be more relevant in this regard than language rights and the protection of national minorities, and area which is sometimes overlooked by the international academic and expert community? It is for this very reason that we were very supportive of the idea of publishing the proceedings of a conference on language rights of which the participants were lawyers and linguists and which was held at the Hungarian Academy of Sciences in September 2021. However, due to lack of time we can eventually publish in this issue only six articles in English, out of which four were written by lawyers and two by linguists. The articles do not exclusively focus on minority language rights; instead, these rights are analyzed within language rights as a whole, in particular linguistic human rights.

The Council of Europe remains one of the most influential international organizations which protect human rights, including minority rights. Even though many experts consider the topic to be obsolete in the age of globalization, evidence shows that the strength and vitality, and ultimately the survival of national communities depend, to a considerable extent, on the rights and opportunities to use their national language, not only at home, but in all walks of life, including education and official matters. Language rights shall not come at the expense of the knowledge of the language that is spoken by the majority of people in a given country. Furthermore, bilingualism is an asset, which enables countries to engage their partners through

the minorities they have, by opening up new cultural and economic contacts and exchanges, enhancing both bilateral and multilateral relations. It takes a leap of faith to accept national communities in a country that speak a different language (in addition to the majority language), but this kind of diversity can clearly serve the interest of any healthy community, as we see it in the case of Südtirol/Alto Adige and Alsace-Lorraine for example.

The Institute for Foreign Affairs and Trade has the pleasure to present the Esteemed Reader the second special issue of Foreign Policy Review in 2021, and also the second volume published on the occasion of the CoE Presidency. We sincerely hope that the articles of this small volume will contribute to the academic debate on language rights and in particular, minority language rights and present a clear case for the advancement of these rights as a complementary asset to any nation's wellbeing and prosperity.

PREFACE

György Andrassy

All articles of this issue of the Foreign Policy Review originate from paper presentations of a conference entitled 'Arguments for International Recognition of Stronger Language Rights.' The conference was organized by the Hungarian Language in Sciences Presidential Committee of the Hungarian Academy of Sciences, in collaboration with the Department of International Law of the University of Public Service and was held in Budapest on 10 September 2021.

The basic idea for the conference has been that most researchers dealing with language rights are likely to think that international law should recognize stronger language rights than it does today and that therefore, it seems to be reasonable to collect some academic arguments for such a stronger recognition and, in general, to discuss the role of arguments in this context. Twelve Hungarian experts, lawyers and linguists were invited as presenters of the conference and all of them accepted the invitation; nevertheless, eventually only 11 could take part and hold presentation. Although the conference was hosted at the headquarters of the Hungarian Academy of Sciences, and the conference was open for guests, the presentations took place in a relatively narrow circle; however, the participants had a lively discussion after each presentation.

According to the original idea, the Review would have published all of the conference presentations or conference papers but the idea itself occurred too late and therefore, the authors were given a very short deadline and only six of them undertook the task. Thus, the six articles do not represent an editorial selection. In any case, the editors hope that the contributions published below provide remarkable arguments not only for further academic discourse, but for international legislators and bodies for implementation, in particular for CoE legislators and bodies, to consider the issue of recognizing stronger language rights than those they have recognized so far.

THE NEED FOR MINORITY LANGUAGE RIGHTS: SOME THEORETICAL AND INTERNATIONAL LEGAL CONSIDERATIONS

Gábor Kardos

Abstract: The study raises the question of whether it is necessary to recognize language rights, and responds with a series of philosophical, theoretical and anthropological arguments - sometimes quoting judicial formulations in favor of the recognition of language rights, especially minority language rights. It is a serious dilemma that, for historical-political reasons, states often give priority to linguistic homogenization and consider multilingualism, the use of minority languages, as outdated or even dangerous, incompatible with the modern nation-state model. The article discusses the two fundamental principles which best underpin the international recognition of minority language rights: the protection of diverse communities and their equal rights. The study points out that in the practice of the UN Human Rights Committee and the ECtHR discrimination in the use of minority languages is recognized only in a very narrow sense. It means that the minority language sub-rights of general human rights may be interpreted too narrowly, and that recognition of these sub-rights may be denied, and this leads to the conclusion that explicit safeguards are needed to secure that minority language rights, and the corresponding state obligations arising from them are precisely defined.

„Modern is not what is fashionable or what is new, but only the idea in the light of which the greatest number of problems can be understood or made clear, or at least seen, from the vast wealth of experience which mankind has accumulated up to the mundane present.” (Mátrai, 1938,)

Keywords: minority language rights, linguistic homogenization, UN Human Rights Committee, European Court of Human Rights (ECtHR)

Languages, Language use and Language Rights, Justification for Different Forms of Protection

Language, as an envelope, defends vulnerable human existence, as do the walls woven by norms and customs surrounding civilized humanity. (Elias, 1987, 78) The use of language is an innate human ability and the main means of communication, which in itself justifies its protection. (Pupavac, 2006, 61) Language is a means of naming the objective world, of human communication, but also of social domination. (Bourdieu, 1991, 165) A Canadian court decision also points out that language bridges the isolation of the individual in society and that linguistic rights play a crucial role in human existence, development and dignity. (Manitoba, 1985, 744) A logical consequence of this anthropological approach is the protection of mother tongue use as (also) *a human right*, because if we accept that language is a fundamental element of personal identity, it might lead to the conclusion that all individuals should enjoy a secure and supportive language environment. (Dunbar, 2001, 94)

Language is a means of creating and expressing identity, distinguishing those who use it from others. It acts as a marker of cultural difference and identity, the latter being constructed through social interaction. (Zenker, 2018, 1-2) A language that is different from the majority and the culture based on it may not only be congruent with a distinct identity, but also represent the community that uses it.

The Permanent Court of International Justice stated in the Case of *Greco-Bulgarian "Communities"* that a minority community is

"a group of persons living in a given country or locality, having a race, religion, language and traditions of their own, and united by the identity of such race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, securing the instruction and upbringing of their children in accordance with the spirit and traditions of their race and mutually assisting one another." (Greco-Bulgarian „Communities”, 1930)

In the Rights of Minorities in Upper Silesia (Minority Schools 1928) the Permanent Court of International Justice accepted that a declaration on behalf of a minority pupil on his origin or mother tongue required by law as a precondition to be admitted to a minority language school is not violating equal treatment. Consequently, members of the group should give evidence of their subjective view on their identity, if they would like to enjoy minority protection. Through this it is also secured that their subjective identification is not arbitrarily made, the subjective choice is intertwined with its objective ground. (The question is whether or not they feel free to admit their identity?)

The decision of the European Court of Human Rights in the case of *Timishev v. Russia* (Timishev, 2003), held that the concept of ethnicity, its origin, refers to a social group bound together by, among other things, a common language.

I think there is no need to find further arguments, the above mentioned considerations sufficiently justify the protection of language use as a *minority right*.

The languages that are the basis of language use are part of humanity's cultural heritage. Consequently, they are also covered by international cultural heritage protection. In 2003, the Convention for the Safeguarding of the Intangible Cultural Heritage, an international treaty for the protection of intellectual heritage, was adopted, within the framework of UNESCO, which states in Article 2 that the intangible cultural heritage:

„1. ... means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international

human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.

2. The “Intangible Cultural Heritage”, as defined in paragraph 1 above, is manifested inter alia in the following domains:
 - (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;
 - (b) performing arts;
 - (c) social practices, rituals and festive events;
 - (d) knowledge and practices concerning nature and the universe;
 - (e) traditional craftsmanship.”

The text of the convention focuses, somewhat strangely, on the oral traditions and forms of expression, which merely includes language as a vehicle of cultural heritage. This is due to the fact that there was no consensus among the founders to include language directly in the intangible cultural heritage. Some states feared that the direct designation of a language would give too much importance to the protection of minority languages, and some even concluded that this would lead to a tendency towards later secession (!). (Blake, 2015, 189) States have accepted the quoted wording as a compromise.

The preamble to the European Charter for Regional or Minority Languages (1992) stated in respect of the continent:

„Considering that the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe’s cultural wealth and traditions;”

From a legal-dogmatic point of view, minority language rights, like minority rights in general, are of a mixed nature. Some rights have the characteristics of civil and political rights, - since they are sub-rights of these, - so that the state’s action is mainly negative, although positive state action is required, for example, in certain cases of minority language

expression or in relation to minority language use in court. The specific nature of economic, social and cultural rights is reflected in the minority language rights associated with the establishment and maintenance of state institutions, such as the right to education, not only in the positive nature of the state obligation, but also in the gradual nature of its implementation, depending on the available material resources. The latter leads to the possibility that the unjustified deprivation of material resources may also constitute a violation of minority institutional language rights. In addition, the majority state has a duty of protection and legal certainty.

Kloss (1969, 133) mentions two groups of approaches to minority rights. The first group is that of “tolerance rights”, where the expected state behavior is to refrain from unjustified state interference. The second group consists of the rights which presuppose active state enforcement in the various arenas of public life, notably the courts, public administration, education and the media. These are “promotion rights.” The approach that groups minority language rights in the same way as the former is an approach that groups them directly according to the different nature of the state obligations that derive directly from them.

As far as the first group is concerned, it is mainly the right to the free and non-discriminatory use of the minority language in private life. These rights are implicitly protected by the right to privacy and freedom of expression. Freedom of expression also includes freedom of choice of language in areas other than public life, as the UN Human Rights Committee held in *Ballantyne, Davidson and McIntyre v. Canada*. (Ballantyne, 1989) Language laws that protect the official majority language at the expense of minority language use, such as most recently the Ukrainian, language law also impose restrictions in private life. Thus, the importance of “tolerance rights” comes from the protection from the tyranny of the majority which sometimes takes a regulatory position.

“Promotion rights” may be recognized by legislation or judicial practice as part of general human rights or as an autonomous minority right. The point is to legislate on the content of the positive obligations that the state can be expected to implement: for example, when to start a

minority language class. More specifically, whether the general rules or, as a specific exception, more favorable norms apply, i.e. in the example, fewer pupils are sufficient to start a minority class. A more radical way of promoting a minority language is to give it official status. (Kymlicka, Patten, 2003, 8-9) Of course, this does not necessarily mean real equality, since the public and institutional use of the majority official language is necessarily more intensive.

Other Arguments: Diverse Communities and Equal Rights

The political philosophical justification for minority language rights can be traced back to the acceptance of survival as a community with a distinct identity as a value in itself and the interpretation of equality. As a justification for minority rights and thus minority language rights, these two elements are already reflected in the position of the Permanent Court of Justice in the case of the Albanian minority schools, which saw the essence of protection in equality, alongside the preservation of the characteristics, traditions and features of the protected group. (Minority Schools in Albania. 1935)

Today the Framework Convention for the Protection of National Minorities expressly protects – among other minority rights – the language rights of minorities, and the European Charter for Regional or Minority Languages as a part of the European cultural heritage not only protects but also promotes minority languages. Thus, it may seem justified to talk about a breakthrough, as far as the above justification is concerned not just in terms of the protection of minority rights in international law, but also with regard to the fact that majority-minority multilingualism has won a battle in Europe. In fact the breakthrough is symbolic and rhetorical, since pre-modern societies in Europe have been generally multilingual in everyday life, and there is a strong belief that maintaining monolingualism requires huge normative work for the modern nation-state, at the cost of large sacrifices. (Oeter, 2010, 141) And in many countries around the world, it is still a goal to be achieved. This heritage of modernism is more persistent than the optimistic expectations of like-minded people¹ at the time of the entry into force

of the Framework Convention and the Charter, although there are undeniable positive achievements associated with their implementation. Linguistic homogenization has become the fate of modernity and is still with us today. Moreover, the problems of asylum seekers and immigrant communities seem to overwhelm² the issue of the protection of national minorities who have historically lived together.

As far as legal equality is concerned in a given state, the right of speakers of the dominant language to use their mother tongue is embodied in the status of the majority language as an official language, which means that their linguistic rights are not expressed explicitly, but are implicit linguistic rights. (Andrássy, 1998, 35-48, 167- 182)

Implicit linguistic rights justify the linguistic rights of linguistic minorities through the mediating principle of equality of human and civil rights. That is, equal human dignity is the political philosophical, human and constitutional basis of minority language rights. Based on the implicit linguistic rights of majority language speakers, the recognition of minority language rights is the real realization of legal equality.

In a number of states, there is a contrary view, expressed or unspoken, that equality is not created by guaranteeing minority language rights³, but by equal access to the national, i.e. official language. This thesis was originally formulated in the connotation of the ability of members of the lower classes to perform official functions in France in the context of the Great Revolution in Abbe Gregoire's famous *Rapport sur la nécessité et les moyens d'anéantir les patois et d'universaliser l'usage de la langue française* (Gregoire, 1794, Hobsbawm, 1997, 262).

In the light of the above, participation in public power becomes a function of linguistic assimilation. Important arenas for state language policy are education, the judiciary and public administration "because it is through the regulation of language access to these that the state can influence access to power, i.e. maintain the hegemonic position of certain language groups - the linguistic majority." (Nagy, 2018, 47) Modernization and social advancement (Joutard, 2007, 193) will only be possible in the majority language and will necessarily be linked to assimilation. In addition to this, minority languages will also become invisible in many respects, as they are only used in private life. As a social scientist pointed out:

“Minorities are deprived of the possibility to communicate. Their language is being taken away. One of the basic tenets of all homogenization hysteria is that the minority should not be able to speak, should be silenced. Let it be silenced with regard to language and let it be silenced with regard to the right to determine the way it is expressed.” (Csepeli, 2014, 322)

Arguing for minority language rights on the basis of legal equality is not a demand for real linguistic equality. This is impossible in this context, since the state can hardly be neutral in a linguistic - cultural sense, since linguistic sovereignty is an attribute of state sovereignty. In addition, statehood and sovereignty give rise to new languages, such as Bosnian and Montenegrin, which have recently been born. It could be said that the number of languages multiplies when the number of states increases, but the reverse is not true. (Hobsbawm, 1997, 82)

The Dilemmas of International Law

The linguistic rights of minorities are implicit or otherwise heteronomous, and ideally also autonomous. They follow from the very essence of universal human rights for all, their enjoyment free from discrimination, and are therefore human sub-rights, i.e. heteronomous linguistic rights. Autonomous, on the other hand, are the specifically formulated minority rights of persons belonging exclusively to a linguistic minority.

However, the protection does not automatically extend to public life. Thus, in *Cadoret v. France*, the UN Human Rights Committee held that the fact that the complainant could not use the language of his choice in French courts did not raise the question of freedom of expression. (Cadoret, 1988) However, the UN Human Rights Committee has held that an express prohibition on the use of minority languages in public when the conditions for such use are met in practice constitutes discrimination under Article 26 of the International Covenant on Civil and Political Rights, as stated in *Diergaardt v. Namibia*. (Diergaardt, 1997):

“... The Committee notes that the authors have shown that the State party has instructed civil servants not to reply to the authors’ written or oral communications with the authorities in the Afrikaans language, even when they are perfectly capable of doing so. These instructions barring the use of Afrikaans do not relate merely to the issuing of

public documents but even to telephone conversations. In the absence of any response from the State party the Committee must give due weight to the allegation of the authors that the circular in question is intentionally targeted against the possibility to use Afrikaans when dealing with public authorities. Consequently, the Committee finds that the authors, as Afrikaans speakers, are victims of a violation of article 26 of the Covenant.”

It can be concluded from this that, in order to establish discrimination in the use of a language in the public domain, it is not sufficient for minorities not to be guaranteed the use of their mother tongue but it must expressly forbidden.

If the language aspect of a human right is implicit, the wording is too narrow. For example, as a part of the right to a fair trial defendants have the right to understand the proceedings, so they have the right to an interpreter. But if they understand the language of the procedure, even if their mother tongue is different, they have no right to interpretation. To be entitled to a fair trial in such a case, a separate minority language right is needed, because the courts may be reluctant to recognize the minority language aspect in practice. As an illustration I only refer to the case of *Cyprus v. Turkey* (Cyprus, 2001) Turkey occupied the northern part of Cyprus in 1974, where the Turkish Republic of Northern Cyprus was later established. This generally not recognized state has allowed Greek-language primary schools to operate but banned Greek-language high schools. Those Greek students living there who wanted to pursue their studies at high school level had to choose between education either in Turkish or in English. The case concerned whether Turkey – which, according to the European Court of Human Rights exercised effective control over the territory – violated the Greek students’ right to education under Article 2 of the First Protocol to the European Convention on Human Rights. The Court ruled in principle – on the basis of the Belgian language case – that Article 2 of the Additional Protocol does not define the language in which the right to education is to be respected. Consequently, the right to education in the mother tongue is not part of the right to learn. (But the quasi-first instance procedure conducted by the European Commission on Human Rights led to the conclusion that the Greeks of Northern Cyprus are entitled to

have a wish to secure the education of their children according to their cultural and ethnic traditions.) Finally, the Court concluded that the policy of the North-Cypriot authorities' can be regarded as having the effect of denying the essence of the right to education, as the students had to travel to the Greek part to pursue their studies there. As an analyst of the case correctly pointed out, the Court did not respect the Greek language, its decision was a not recognition of the right to learn in mother tongue, but it was arrived at because of the particular circumstances of the case. The Court took the view that the complaint had to be accepted because the sensitive political context justified it.(Paz, 2013, 199-200) Consequently, in similar cases we should wait for a sensitive political context. The conveyed message is not that it is better to avoid such a context, just the opposite, to exploit it.

The European Court of Human Rights ruled in *Catan and others v. Moldova and Russia* (Catan, 2012) that Russia had violated Article 2 of the First Additional Protocol to the European Convention on Human Rights, because it was responsible, as the state exercising effective control over Transnistria, for the provision there that state schools could use only the Cyrillic alphabet in education. Here again, the Court avoided finding freedom of choice of language in education, arguing that it found no legitimate justification for interference by the local authorities, and held that the aim was to Russify the Moldovan community. The aim was to unify Transnistria with Russia. Primary and secondary education play a fundamental role in the development of children and their future success, and it is therefore unacceptable to interrupt the process of education and to present parents with a difficult choice in order to achieve the sole aim of entrenching separatist ideology.

Consequently, the nature of the political context is again the basis of justification.

The question of "political context" leads back to the question of the justifiability of language rights. The negative understanding is that minority language rights endanger stability because they undermine the territorial unity and the cultural nature of the state. Linguistic rights can be stylized as an apparent threat to the security of the state because they can be interpreted as challenging the cultural supremacy

of the majority. For example, the public use of place names and other geographical names in minority languages, even if only in the form of name tags, can represent that a community exists, is there, is at home, is authentic in its physical space. So it is not only the majority community that has an authentic existence in the given state context. And basic mother tongue education is threatening because, although it provides only a modest amount of knowledge, it does provide some intellectual recognition of a means of expression, demonstrating that there is a *raison d'être* for a different culture. Needless to say, the higher the form of education, the more threatening it is to majority cultural dominance. More sophisticated arguments about minority language education and media are not based on the unacceptability of segregation. It is that separate schools and cultural institutions help to create separate competing communities within the state. And official language rights obscure the ethnocultural character of the majority state. Even if at the local level, often only in law but not in practice, the use of minority languages is allowed in the administration, it is not allowed in the central bodies, especially the parliament, which is the embodiment of popular sovereignty.

The positive consideration is that linguistic rights and their protection can be seen as a means of maintaining peace and security, but according to the fears cited above, claiming language rights could threaten state sovereignty. It can therefore be seen that conflicting conclusions can be drawn with regard to minority rights, including language rights, from the point of view of peace and security. They are dangerous if they are not sufficiently respected, but they are also dangerous if they are claimed or guaranteed to an 'excessive' extent. It follows from this, however, at least for the political leadership of certain states, that since it is dangerous either way, it is advisable to keep the guarantee of minority language rights to a minimum. On the one hand, because it is much cheaper, less money is spent on creating and maintaining minority language infrastructure. On the other hand, if there is a lot of pressure, there is room for *manoeuvre*, otherwise, if there is a high level of protection of minority language rights, there is none, because then the linguistic minority will think of secession. In other words, one way or another, linguistic minorities are seen as a security risk.

The positive approach seems to prevail in international documents, look at for example, the preamble to the 1993 UN General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, It explains that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of the States in which they live. Therefore, we can conclude, the failure to protect these rights can lead to political destabilization of the state concerned. Conversely, if the majority state meets the aspirations of minorities and guarantees their rights in a way that recognizes the dignity and equality of all, it will reduce tensions within and between states. Unfortunately, these arguments do not necessarily convince some majority politicians who play the minority card.

Returning back to the questions of legal dogmatics, in the absence of a clear decision, it would be necessary to formulate and explicitly guarantee minority language rights in an autonomous manner in spheres, like judicial and administrative procedures or public education. However, this need is only partially met by current international law, even though the linguistic rights of persons belonging to national minorities appear to be protected in international law. If the international legally non-binding sources in the form of recommendations are also taken into account, they already amounted to almost five hundred printed pages in 2003! (Medgyesi, 2003)

In reality the international protection of linguistic rights is still not satisfactory. The protection of the linguistic rights of national minorities in binding international law, is mostly indirect either through the prohibition of discrimination on the basis of language as in, for example, Article 14 of the European Convention on Human Rights or in the private sphere through freedom of expression and right to privacy. In the former case, however, discrimination must be identified, - is there an objective justification for the distinction? - and in the latter case a corresponding legal interpretation is necessary, as we saw in the Ballantyne case.

If the protection is direct, it has a rather weak normative power and the state obligation deriving from it is rather vague and uncertain. It is not even clear from the wording of Article 27 of the International Covenant on Civil

and Political Rights whether the right of minorities to use their mother tongue languages extends or not beyond the private sphere to public life. Article 10(1) of the Council of Europe's Framework Convention for the Protection of National Minorities recognizes (but does not guarantee) the right of minorities to use languages in private as well as in public (but before non-state bodies), orally and in writing. Paragraph 3 simply provides the same guarantees as to the use of the mother tongue of a minority person subject to criminal proceedings that a foreign tourist in such a situation would have. Under Article 14(2), the majority state may find good ground in a number of internationally guaranteed loopholes for not enforcing in practice the right to learn in a minority language. (These problems cannot, unfortunately, be eliminated by the otherwise excellent Thematic Commentary of the Advisory Committee on the monitoring of the implementation (Them Com3).

Conclusions

Language bridges the isolation of the individual in society and plays a crucial role in human existence, development and *dignity*. This is why the protection of mother tongue use as a human right is justified. Language is a means of creating and expressing identity, acting as a marker of cultural difference and group identity, and is therefore one of the most important expressions of *community identity*. Thus, the use of mother tongues must also be protected as a minority right. The languages on which language use is based are part of the *cultural heritage of humanity*. They are therefore the subject of international protection of cultural heritage. The rationale for recognizing language rights is the correct understanding of *equality of rights* and the *preservation of diverse communities*.

The fact that the minority language sub-rights of general human rights may be interpreted too narrowly, and that recognition of these sub-rights may be denied, justifies the conclusion that explicit safeguards are needed in international law, where possible, to ensure that minority language rights, the sub-rights and the corresponding state obligations arising from them are precisely defined.

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Endnotes

- 1 „Even in the last century, it was not uncommon to punish indigenous or minority children in school if they did not speak the official language: Aboriginal children in Canada, in Australia, in the United States, in Taiwan and Finland were at times punished, humiliated and even beaten for talking their own language. In Turkey, it was forbidden to teach the Kurdish language, and until relatively recently so was broadcasting Kurdish songs, publishing in Kurdish, or even having a Kurdish name. In Bulgaria in the 1980s, a law made speaking Turkish in public an offence: there was a joke in Bulgaria that Turkish was the most expensive language in the world because if you used it in the street you could be fined hundreds of leva, the Bulgarian currency. Also in the 1980s, some local authorities in Florida went so far as to attempt to ban the official use of all languages except English – even the Latin used to identify animal species in public zoos – as well as forbidding translation in Spanish or other languages for public health care purposes for pregnant women and in public hospitals, because English was to be the exclusive official language for local authorities.” Dimitry Kochenov and Fernand de Varennes 2014 4)
- 2 The immigrant communities have left behind their original homes. Their motivations have been mainly, but not exclusively, economic, and they are only newly or relatively newly arrived in the European countries. Many of them do not show any signs of giving up their identity and assimilating into the majority. Their growing numbers and adherence to their culture and traditions raises the question of whether it would be necessary to accept them as permanent factors in the society, and consequently, at least on a longer run to secure for them, beside equality and freedom of religion, other minority rights. To improve the standards for minority rights of immigrants and at the same time at least to maintain or, as it is generally needed, to raise the level of protection of homeland minorities is not an easy path.
- 3 It is not difficult to find evidence of this statement. Look at the following text: „...the immersive teaching of a regional language is a method which is not limited to teaching that language but consists of using it as the

main language of instruction and as a language of communication within the establishment, by providing that the teaching of a regional language can take the form of immersive teaching, article 4 of the referred law disregards article 2 of the Constitution. (“The language of the Republic shall be French.”) It is therefore contrary to the Constitution.” That was a recent conclusion of the Constitutional Council of France. (Conseil, 2021)

FREEDOM OF LANGUAGE AS A PARTLY TERRITORIAL RIGHT OF EVERYONE AND THE ISSUE OF MINORITY LANGUAGE RIGHTS

György Andrassy

Abstract: International law recognizes language rights within international human rights law and the study shows that while codifying human rights within the UN and the Council of Europe, legislators have made two serious mistakes that affect language rights. The competent bodies of implementation have corrected, to some extent the first mistake, but they have not recognized the second one or if they have recognized it, they have not interpreted it appropriately. Then the study concludes that what is most lacking from international law regarding language rights is the explicit recognition of freedom of language and a satisfactory definition of minority language rights. However, since minority language rights cannot be properly defined in the absence of the definition of freedom of language, the study seeks to define this freedom and according to the definition found, freedom of language is a partly territorial human right.

Keywords: international human rights law, personal universality of human rights, recognition of freedom of language, territorial human rights, minority rights as additional rights, minority language rights

Introduction

Man-made law and its application are not perfect and this is also true of international law. Therefore, it is an important task for theorists and commentators to discover or identify the weaknesses of both the

provisions of international law and their application and thus to contribute to their elimination. These tasks seem to be especially important with regard to language rights, since several theorists and commentators think that current recognition of these rights is not satisfactory. I have also held for decades that international regulation on language rights and interpretation of this regulation by competent international bodies of implementation are, to a certain degree, problematic and incomplete. Since the very beginning, I have reasoned for these propositions, raising arguments from political philosophy, political and legal theory, international and constitutional law, history of law and occasionally from social linguistics.

In this study, I first argue that in connection with language rights the UN and Council of Europe (CoE) legislation has two serious weaknesses and though the UN Human Rights Committee (HRC), the European Commission of Human Rights (ECommHR) and the European Court of Human Rights (ECtHR) have eliminated the first weakness, to a certain extent, they have not yet recognized the second one properly. This critical analysis leads to the proposition that what is most lacking from international law regarding language rights is a) the explicit recognition of freedom of language in a well-defined form and b) a much more satisfactory definition of minority language rights. It is important to stress, however, that the realization of this claim does not necessarily entail amendments to existing international instruments. The reason is that international law, in my opinion, includes both freedom of language in a well-defined form and a much more precise definition of minority language rights implicitly or tacitly, and accordingly, the claim could be realized through interpretation of law within the process of implementation of the respective instruments. Nevertheless, it would be desirable to amend the instruments in question in the long run.

As for the relationship between freedom of language and minority language rights, it will turn out that the latter cannot be satisfactorily defined in the absence of a detailed definition of the former. Therefore, in contrast with the usual approach, this study does not focus on a more precise definition of minority language rights; instead, it attempts to deduct freedom of language and a relatively detailed definition of it mainly from the provisions of the relevant instruments and their interpretation given by the competent bodies of implementation.

The First Serious Mistake of Legislation

Current international law recognizes language rights in international human rights law and in a closely related legislation. According to this legislation, human rights are (personally) universal rights, i.e. rights of everyone and therefore, the wording of most rights in UN and CoE human rights documents begins with the terms “everyone” or “no one”.¹

Nevertheless, in the case of language rights, the legislators have drafted these rights not so much as universal rights, i.e. as rights of everyone but exclusively or almost exclusively as minority rights, i.e. as rights of persons belonging to linguistic minorities. And this seems to be a serious mistake or inconsistency. Moreover, two professors of international law, Hersh Lauterpacht and John P. Humphrey made the mistake already at the very beginning of international codification of human rights that took place within the UN just after the Second World War. For some reason Humphrey (who served at that time as director of the Division of Human Rights of the UN Secretariat) prepared the first draft of the Universal Declaration of Human Rights (UDHR) or that of the International Bill of Human Rights (IBHR) (Hobbins, 1989, 22.) and he included a provision that dealt with, inter alia, language rights. He took this provision, i.e. Article 46 of the so-called Secretariat Outline (Draft Outline of an International Bill of Human Rights, 1947, 486.) from Lauterpacht’s book entitled ‘An International Bill of the Rights of Man’ almost word by word. (Lauterpacht, 1945, 72; Morsink, 1999, 270-272.)² Lauterpacht’s provision (i.e. Article 12 of his Bill) intended to transpose important elements of the general substantive law of the international minority protection system established after the First World War into the emerging international human rights law and Humphrey agreed. However, Lauterpacht made a mistake and not so much as he transposed certain minority rights, but as he did not transpose a language right, actually freedom of language which was certainly not a minority right in the minority protection system (Polish Minorities Treaty, 1919, Art. 7(3)).³ Unfortunately, Humphrey did not correct Lauterpacht’s mistake and this contributed to the strange fact that while the international minority protection system recognized freedom of language as a non-minority right, as a right of every national, international human rights law does not (Andrássy, 2013, 238-261, 383-392.).

After heavy debates, the minority article was deleted from the draft UDHR but in the end, the General Assembly (GA) adopted a separate resolution, in which it declared that the UN ‘cannot remain indifferent to the fate of minorities’. (Fate of Minorities, 1948.) Nevertheless, due to the omission of the minority article, the UDHR contains only one provision concerning language, which states that ‘[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, *language* [...]’. (UDHR, 1948, Art. 2(1), *Emphasis added.*)

In 1950 the CoE adopted the European Convention on Human Rights and Fundamental Freedoms (ECHR 1950) and thereby took ‘[...] the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration’ (ECHR 1950, preamble). The wording of the rights recognized in the ECHR follows the wording of the corresponding articles of the UDHR, but the ECHR defines these rights in more detail and therefore, certain rights in the ECHR already contain some linguistic right elements. Namely, Article 5.2. sets forth that ‘[e]veryone who is arrested, shall be informed promptly, *in a language which he understands*, of the reasons of his arrest and of any charge against him’. Further, Article 6.3 sets forth that ‘[e]veryone charged with a criminal offence shall have the following minimum rights: (a) to be informed promptly, *in a language which he understands* and in detail, of the nature and cause of the accusation against him; [...] (e) to have the free assistance of an interpreter if he cannot understand or speak the *language* used in court’. (*Emphases added.*) Thus, since everyone has these linguistic right-elements, these are consistent with the personal universality of human rights. Finally, Article 14 of the ECHR transposed the non-discrimination provision of the UDHR with some differences; accordingly, ‘[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, [...] association with a national minority [...]’.

In 1966 the UN adopted the International Covenant on Civil and Political Rights (ICCPR, 1966.) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966.) and Article 14 of the ICCPR transposed the two universal right-components relating language use

of Article 6 of the ECHR. As far as non-discrimination is concerned, Article 2 (1) of the ICCPR sets forth that each State Party '[...] undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant without distinction of any kind, such as race, colour, sex, *language* [...]'. (*Emphasis added.*) Further, Article 26 of the ICCPR provides another provision on non-discrimination that mentions also the requirement of non-discrimination on the ground of language. Article 2 (2) of the ICESCR also secures non-discrimination on the ground of language.

Last, but not least, the ICCPR contains a minority article; this is actually a simplified version of the original Lauterpacht/Humphrey article, however, it is deprived of most specific right-elements. This minority article, i.e. Article 27, recognizes three minority rights, out of which one is a language right: the right of persons belonging to linguistic minorities '[...] to use their own language'.⁴ Article 27 provoked heavy debates; for example, a commentator wrote that Article 27 '[...] raises more problems than it really resolves [...]' (Tomuschat, 1983, 950.). Nevertheless, it was a real step ahead that in 1992 the UN, inspired by Article 27 adopted its minority declaration (UN Minority Declaration, 1992), and that in 2005 the UN Working Group on Minorities adopted a Commentary to the Declaration (UN Commentary 2005).

The CoE has extended the range of rights protected by the ECHR by a number of protocols but language rights have not been included, although the Heads of States and Governments in 1993 envisaged and initiated the inclusion of a minority right (CoE, 1993, Appendix II, para. 10. (4)). Nevertheless, the CoE adopted the European Charter for Regional or Minority Languages (Charter) in 1992 and the Framework Convention for the Protection of National Minorities (Framework Convention) in 1995 and thus the emphasis was placed on minority language provisions in the CoE as well.

So far, the UN and CoE legislation has largely reached the above-mentioned results in recognizing language rights. The main weakness in this achievement is that while human rights are (personally) universal rights, rights of everyone, the UN and CoE human rights (and related) instruments recognize, except penal affairs, only minority language rights: as if outside penal affairs only persons belonging to linguistic

minorities would use language, persons belonging to linguistic majorities not. In sum, current recognition of language rights in UN and CoE human rights (and the related) instruments is in contrast with the (personally) universal character of human rights on the one hand, and is unreasonable in light of the actual use of languages by humankind, on the other.

Recognition of Freedom of Language by Bodies Implementing UN and CoE Instruments

Bodies implementing international instruments may be able to address the shortcomings of the instruments at least in part, and there have been such rectifications regarding language rights, too. In a case, the French-speaking Belgian applicants stated that pursuant to the Belgian regulation concerning language use, they did not '[...] receive administrative documents in French' and claimed that this constituted a violation '[o]f Articles 9 and 10 of the Convention since freedom of thought and expression imply *linguistic freedom*' (ECommHR 1965, p. 340, *emphasis added.*). Well, neither Article 9 of the ECHR on freedom of thought, religion and conscience, nor Article 10 on freedom of opinion and expression specify the language(s) in which everyone has these freedoms. Nor is it clear whether, if freedom of thought and expression imply 'linguistic freedom,' this freedom extends to administrative matters.

The Belgian Government took its position by quoting the ECommHR: 'It is clear that one has to distort the usual meaning of the passages if one is to transform the right to express one's thought freely in the language of one's choice into a right to complete, and insist on the completion of all administrative formalities in that language.' (ECommHR, 1965, p. 348; Nagy 2020, 12.) This suggests that the ECommHR and the Belgian Government acknowledged that freedom of thought and freedom of expression include 'the right to express one's thought freely in a language of one's choice' but this right does not extend to relations with administrative authorities. Then the ECommHR stated that 'in the last analysis,' the applicants were '[...] claiming the right to be able to use the language of their choice or of their mother tongue or usual

language, in their relations with the authorities [...]. However, [...] it appeared that the guarantee of this right' lied 'outside the scope of the Convention, in particular of Articles 9 and 10.' The ECommHR also stated that there was [...] no article in the Convention or First Protocol to expressly guarantee "*linguistic freedom*" as such' (ECommHR 1965, p. 360, *emphasis added*).

From all these, two propositions are especially important for our subject. One is that 'in the last analysis,' the applicants did not insist on the right to use the language of their choice in their relations with the authorities or they were satisfied with this right in a limited sense: they claimed this right as the right to use their mother tongue (as a chosen language) in these relations. The other proposition was made by the ECommHR: accordingly, there was 'no article in the Convention or First Protocol to expressly guarantee "*linguistic freedom*" as such' (*emphasis added*). This ascertainment suggests that the ECommHR concluded that because Articles 9 and 10 include the right of everyone 'to express one's thought freely in the language of one's choice,' these articles include, though only tacitly, 'linguistic freedom'.

While considering two Canadian cases, the HRC also dealt with the linguistic aspect of freedom of opinion and expression. Like Article 10 of the ECHR, Article 19 of the ICCPR does not specify the language(s) in which everyone has the right to freedom of expression. However, in contrast with Article 10 of the ECHR, Article 19 of the ICCPR sets forth that everyone has this freedom e.g. 'orally and in writing' which is impossible without using a language; therefore, it is not easy to avoid the question: in which language(s) does everyone have the right to freedom of expression? The answer of the HRC: 'A State may choose one or more official languages, but it may not exclude, outside the spheres of public life, the freedom to express oneself in a language of one's choice'. (HRC, 1993, para. 11.4.)

It seems that with this statement the HRC recognized freedom of language or 'linguistic freedom' and, at the same time, pointed out that this freedom does not extend to the spheres of public life. As for recognition of freedom of language, my argument is that 'the freedom to express oneself in a language of one's choice' is the freedom to choose the language to use, and this freedom includes, after all, the freedom

to maintain or to change one's own language. However, in this case, the freedom in question is not only the freedom to choose the language to use, but it is freedom of language, just as the freedom to 'have or to adopt a religion or belief of his choice,' together with the freedom 'to manifest his religion or belief' is called freedom of conscience and religion. Thus, just as freedom of opinion and expression, as well as freedom of thought, conscience and religion include the freedom to choose one's own opinion, thought, conviction and religion, so does freedom of language include the freedom to choose one's own language. And just as freedom of opinion and expression, as well as freedom of thought, conscience and religion include the freedom to express the chosen (and any other) opinion, thought and conviction or the freedom to practice the chosen religion, so does freedom of language include the freedom to use the chosen (and any other) language.

It must be added that language change or 'language shift' often takes place in reality, mostly among descendants of migrants and descendants of persons belonging to national or historical minorities or indigenous groups and that the CoE expressly lays down the obligations of the Parties concerning such voluntary language change and maintenance (Framework Convention, 1995, Art. 5).

The above-mentioned statements by which the ECommHR and the HRC seem to recognize freedom of language (and the similar statements of the ECtHR (ECtHR 2012, paras. 71-77.)) are incomplete and this is understandable to a certain extent: when considering a case it may hardly be the task of such bodies, for example, to define in detail a new freedom they deduct. This is already more a matter for commentators and (possibly) legislators. On the other hand, it is already debatable whether these bodies ought to have named the deducted freedom. However, since these bodies have refrained from doing so, the naming also awaits commentators and theorists; the problem is that they have not taken this task seriously enough so far. In any case, freedom of language is still a lesser-known freedom.

At the same time, it is clear from the statements of the ECommHR, the ECtHR and the HRC that freedom of language is a *private-life freedom*, insofar as it does not extend to the spheres of public life. It is also clear

from the same statements that this private-life freedom is everyone's freedom (mostly) everywhere in the world, since freedom of expression from which freedom of language derives is everyone's freedom (mostly) 'regardless of frontiers'.

Freedom of Language as a Partly Territorial Human Right

In the so-called Belgian linguistic case, the ECtHR explained why the right of education recognized in Article 2 of the First Protocol (P1) does not include the right to choose the language of education. In connection with this, the ECtHR noted that Article 14 on non-discrimination, '[...] even when read in conjunction with Article 2 of the Protocol (Art. 14 + P1-2), does not have the effect of guaranteeing to a child or to his parent the right to obtain instruction in a language of his choice'(ECtHR, 1968, B, para. 11.). 'Furthermore, to interpret the two provisions as conferring on everyone within the jurisdiction of a State a right to obtain education in the language of his own choice would lead to absurd results, for it would be open to anyone to claim any language of instruction in any of the territories of the Contracting Parties.' (ECtHR 1968, B para. 11.)

Most theorists and commentators came to similar conclusions. For example, de Varennes wrote that '[t]he state machinery must function in a language, or at most in a few languages, for most of its communication, work and service activities, making it impossible not to make any distinctions as to language. [...] this is an unavoidable situation, since no state has the resources to provide all of its services in every language spoken within its jurisdiction'. (DeVarennes, 1996, pp. 80 and 88.) The problem is commonly referred to as the official language problem and '[t]he theory of official languages echoes with pessimism as to whether any elegant solution could exist'. (Pool, 1991, p. 495.). According to most theorists, the reason is that there are only two ways through which '[a] solution that treats all speakers of all languages identically' could be reached: one is to officialize everyone's language in all states and the other is to make an entirely alien language official in all countries, but both are impractical (Pool, 1991, pp. 495-496.)

However, I think that the positions of the ECtHR and the theorists/commentators are improper because they all neglect that international human rights law recognizes territorial and in part territorial rights and that therefore, there exists a third solution to the problem and this third solution is the 'elegant' one which may even prove to be practicable.

What led me to discover this third and 'elegant' solution was, in particular, Article 21 of the UDHR. Para. 1 of this Article sets forth that '[e]veryone has the right to take part in the government of *his country*, directly or through freely chosen representatives' and para. 2 states that '[e]veryone has the right of equal access to public service *in his country*' (*emphases added*). The special feature of these rights or right-components is that everyone has them but only regarding one country or in one country only. In other words, these rights or right-components are territorial rights or right-components. From this, I concluded that official language rights must also be such rights because in this case it is sufficient if everyone has these official language rights in one state only. Consequently, the number of languages that each state should officialize would greatly be reduced and thus the official language problem would become resolvable.

Of course, the number, size and prevalence of (native) languages in each country varies, therefore, there would remain countries that should still officialize too many languages. However, there are certain ways to cope with these problems without compromise. For example, it is not necessary to make a language official in a part of a country in which the language is not really in use. For the problems that may remain after the application of this and other auxiliary measures, the governing rule could be what the ECtHR worked out in the Belgian linguistic case. The HRC adopted this rule and laid it down as follows: '[...] the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria of such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.' (HRC, 1989, para. 13.)

However, where do persons have the right to use their own language as an official language and, accordingly, where do persons have the right to have their own language as an official language? From an analysis of the

IBHR and its preparatory work (Andrássy, 2013, 148-173; Andrássy, 2017, 185-231.) and of certain theoretical sources such as Kymlicka's consent theory and its critique given by Patten (Kymlicka, 1995, Patten, 2006) (Andrássy, 2018), as well as from the UN Commentary (UN Commentary 2005, paras. 10-11.), the following main conclusions derive⁵:

1. Most people have the two official language rights in the state of which the territory includes the area where their own language has traditionally been spoken and they live belonging to the traditional speakers of their language in the area in question or they live elsewhere within the state but originate from the area and the said linguistic community. This obviously includes that persons belonging to historical linguistic minorities (whether these minorities are called e.g. 'indigenous', 'historical', 'autochthonous', 'traditional' or 'national' minorities), all have the two official language rights in this state and needless to say how important this is for them, even for those who already enjoy these official language rights pursuant to national law.
2. Those persons who live in a state as immigrants or descendants of immigrants and they originate from an area of another state in which their own language has traditionally been spoken, have the two official language rights in the state to which their area of origin belongs.
3. Those persons who live in a state as immigrants or descendants of immigrants and they or their ancestors have changed their own language (practicing their freedom of language), have the two official language rights in their new home state (provided that their new own language has been a traditionally spoken language there).⁶

Freedom of language and official language rights are closely linked. This follows mainly from their common characteristic: the 'own language'. Official language rights are everyone's rights regarding one's own language but freedom of language as a private-life freedom also includes one's own language as a fundamental component: the strongest right of this freedom is, as we have seen above, the right of everyone to change (or maintain) her/his own language. Therefore, freedom of language has a wider concept that includes not only freedom of language as a private

life freedom but official language rights, too. And because freedom of language as a private life freedom is a non-territorial right, at the same time official language rights are territorial rights, freedom of language in a wider sense is a territorially mixed right.

However, there is a serious problem with this result: it is that while its basis is the claim that the ECHR and the ICCPR (and the ICESCR) recognize at least some territorial and territorially mixed rights, such rights are practically unknown within the interpretation and application of the said instruments.

The Second Mistake of Legislators and the Related Errors of Bodies of Implementation

Pursuant to Article 1 of the ECHR and Article 2(1) of the ICCPR (and Article 2(3) of the ICESCR) each State Party must respect and ensure to all individuals within its territory and/or subject to its jurisdiction the rights and freedoms recognized in the ECHR and the ICCPR (and the ICESCR). From this, the ECtHR and the HRC conclude that *everyone everywhere* has the rights and freedoms recognized in the ECHR or the ICCPR (ECtHR 1968, B, para. 11; HRC 1986, paras. 2 and 7.). Accordingly, all the rights recognized in these instruments are conceived as non-territorial rights and this is the challenge for the 'elegant' solution to the official language problem.

On the other hand, the wording of certain rights of both the ECHR and the ICCPR contains references that suggest that everyone has these rights but not everywhere. In some cases, the HRC perceives the contradiction and therefore considers a 'general rule' that everyone everywhere has the rights and freedoms recognized by the ICCPR, but adds that there are some rights that comprise exceptions to this rule. The mistake the HRC makes in this case is that it conceives of these rights not as exceptions to the clause 'everywhere', but to the clause 'everyone'.

For example, the HRC holds that Article 13 right against arbitrary expulsion of aliens is not a right of everyone (in the State Parties): only aliens have it in each State Party, citizens of the given State Party do

not. I agree, however, I believe that the appropriate interpretation of the right is different and it is that everyone has this right but only in those states in which (s)he counts as an alien. The reason why I consider this the appropriate interpretation is that the right is really a right of everyone (because everyone becomes an alien if s/he leaves her/his own country) and only this interpretation reveals the compliance of the right with personal universality of human rights. To make the argument even more complete, let us take Article 12 (4) of the ICCPR that sets forth that '[n]o one shall be arbitrarily deprived of the right to enter his own country'. Obviously, this is a right of everyone as 'no one shall be arbitrarily deprived of' it; however, the HRC holds that 'mere aliens' do not have this right regarding any single country (HRC, 1999, para. 20). I agree again but I raise the question: how is it possible that a right of everyone is not a right of everyone regarding any single country? And my answer is that this is possible if and only if the right is an exception to the 'general rule', according to which *everyone everywhere* has the rights and freedoms recognized in the ICCPR and the point is that the right in question is not an exception to 'everyone,' but to 'everywhere'. In other words, everyone has this right but not everywhere and therefore, I call this and the similar rights territorial rights.

A more thorough analysis also reveals that at least 40 per cent of the rights recognized in the ECHR and the ICCPR (together with the ICESCR) are in full or in part territorial rights, i.e. rights that everyone has but not everywhere or rights that everyone has partly everywhere, partly not everywhere. Therefore, these rights are no longer exceptions; what we see is rather a territorial division of human rights and a corresponding classification of them (Andrássy, 2021). Nevertheless, this territorial division of human rights does not lead to a collapse of the interpretation given by the ECtHR and the HRC of the rights recognized in the ECHR or the ICCPR and the ICESCR; the interpretation in question is largely correct, only incomplete, and sometimes expresses the correct content by bad terms.

To sum up, the second serious mistake made by UN and CoE human rights legislators was that they defined the obligations of the States Parties wrongly in Article 1 of the ECHR, in Article 2(1) of the ICCPR and in Article 2 (3) of the ICESCR. The reason was that the legislators assumed

that all the rights recognized by the ECHR, the ICCPR and the ICESCR were rights of everyone everywhere, i.e. that all these rights were non-territorial rights. On the other hand, the related mistakes of the bodies of implementation were that these bodies did not realize the mistake of the legislators, or if they realized it, they misinterpreted it.

Freedom of Language and the Issue of Minority Language Rights

At the beginning of this writing, I expressed my view that in connection with language rights two things are mainly missing from international law today: a) the explicit recognition of freedom of language in a well-defined form and b) a much more satisfactory definition of minority language rights. I added that both things are implicit in international law and are interlinked: minority language rights cannot be precisely defined in the absence of an express recognition of freedom of language in a well-defined form. The latter proposition is supported by an important thought of Capotorti and Thornberry and that of the HRC. Accordingly, the minority rights recognized in Article 27 must be interpreted as *additional rights* to the rights of everyone recognized in the ICCPR (Capotorti, 1979, para. 242, Thornberry, 1991, p. 180.). The HRC stated this thought both regarding all the three minority rights recognized in Article 27 and specifically regarding the language right:

‘The Committee observes that this article establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is *distinct from, and additional to*, all the other rights which, as individuals in common with everyone else they are already entitled to enjoy under the Covenant.’ (HRC, 1994, para. 1. *Emphasis added.*) ‘The right of individuals belonging to a linguistic minority to use their language among themselves, in private or in public, is distinct from other language rights protected under the Covenant. In particular, it should be distinguished from the general right to freedom of expression protected under article 19. The latter right is available to all persons, irrespective of whether they belong to minorities or not.’ (HRC, 1994, para. 5.3.)

It is clear that the language right the HRC refers to regarding freedom of expression is the right it recognized in the Ballantyne case, i.e. the right of everyone to 'the freedom to express oneself in a language of one's choice,' 'outside the spheres of public life'. From this perspective, however, we must realize a serious problem, namely that what Article 27 states as the right of persons belonging to linguistic minorities is less than the right of everyone the HRC deduced from freedom of expression recognized in Article 19. Because while Article 27 states that persons belonging to linguistic minorities have the right only to use their own language, Article 19, according to the HRC, recognizes the right of everyone to use both her/his own language and any other one, too. Then it is quite clear why Capotorti argued so persistently that all the implications of Article 27 "must also be understood" (Capotorti, 1979, p. iv and paras. 615 and 617.) and why Thornberry wrote the following: 'The point here is that, unless Article 27 is given a more forceful content, it adds nothing to the Covenant. Freedom of thought, conscience and religion is already protected by Article 18, and there is also, for example, as far as language and culture are concerned, the provision on freedom of expression in Article 19.' (Thornberry, 1991. p. 180.) Unfortunately, these 'implications' or the 'more forceful content' of Article 27 rights have not yet been derived completely so far.

In the above, I derived freedom of language as a right of everyone; therefore, the minority language right recognized in Article 27 must be distinct from, and additional to, just this freedom and, of course, the explicit linguistic right-components of Article 14 right. And if starting from this right of everyone to freedom of language and the linguistic right-components of Article 14 right, it is already possible to derive the implications or the more forceful content of the minority language right recognized in Article 27 and to provide a fairly precise definition of this minority right. It is worth noting that the content of this definition of Article 27 language right is likely to be more forceful than the explicitly stated content of most language rights recognized in the UN Minority Declaration or the Framework Convention. However, these issues are already beyond the scope of this study.

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Endnotes

- 1 This personal universality has been questioned, mainly in the context of the 'timelessness' of human rights (Beitz 2009, 30, 58.) but some have pointed out that the rights in international human rights law are '[...] synchronically universal [...]' or that they are '[...] universal – for us, today.' (Raz, 2015, 225; Donnelly, 2007, 288.)
- 2 Article 12 of Lauterpacht's Bill was the following: 'In States inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right to establish and maintain, out of an equitable proportion of the available funds, their schools and cultural and religious institutions and to use their own language before the courts and other authorities and organs of the State.' Article 46 of the Secretary Outline stated: 'In States inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right to establish and maintain, out of an equitable proportion of any public funds available for the purpose, their schools, and cultural and religious institutions, and to use their own language before the courts and other authorities and organs of the State and on the Press and in public assembly.'
- 3 The provision was as follows: 'No restriction shall be imposed on the free use by any Polish national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings.'
- 4 The full text of Article 27 is as follows: '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 practise their own religion, or to use their own language.'
- 5 I note that these conclusions are, to a certain extent in accordance with van Parijs' theory on linguistic territoriality, too (Van Parijs, 2011, 133-159.)
- 6 For more details, see Andrassy, 2016, 289-290.

THE INDIGENOUS STATUS OF THE HUNGARIAN LANGUAGE COMMUNITY IN THE CARPATHIAN BASIN. A HISTORICAL AND CONTEMPORARY INTERPRETATION

Gábor Tolcsvai Nagy

Abstract: The notion of ‘indigenous’ as described in international regulations and resolutions is adjusted to the situation of the Hungarian language community in the Carpathian Basin, with special reference to the Hungarian minorities in the countries along the Hungarian border. The regional communities of the Hungarian minorities beyond the borders should be seen indigenous groups since 1920, with the flexible semantic extension of ‘indigenoussness’. Significant parts of the Hungarian language community were annexed to the newly formed non-Hungarian states. The then new state borders cut through natural geographic, and mostly homogenous Hungarian ethnic, ethnographic, regional cultural and dialectal territories. Those left behind the borders became indigenous, while staying on their homeland. This interpretation is based on the linguistic and cultural features of the minorities in question, to point to the human side of their historical developments and present state.

Keywords: Hungarian minorities, indigenous, linguistic and socio-cultural factors, Paris peace treaty 1920

Introduction

In the present paper, I explain the notion of ‘indigenous’ adjusted to the historical and contemporary situation of the Hungarian language community in the Carpathian Basin, with special reference to the

Hungarian minorities in the countries along the Hungarian border. This interpretation is based on those socio-cultural and linguistic pragmatic factors that are activated by the description of indigenous peoples, although these politically based quasi definitions are constrained to the colonial empires and their post-colonial territories in the general legal discourse.¹ In my interpretation the notion of 'indigenous' described by the UN is extended to those peoples, territories and states which are not considered as colonies or former colonies, but show indigenous features in certain aspects. This situation can be experienced even in Europe, with many ethnic and linguistic minorities existing under nontypical 'colonial' rule with limited minority rights, suffering regular discrimination. I intend to interpret the notion of 'indigenous' adjusted to the circumstances of the Hungarian minorities beyond the borders, to better understand their situation and recognize their language rights, as well as minority rights in general. The Hungarian minorities beyond the borders, their regional communities should be seen indigenous groups since 1920, according to the description of 'indigenous', with its flexible semantic extension. Significant parts of the Hungarian language community found themselves overnight in newly formed non-Hungarian states, because of the Paris peace treaties that followed World War I in 1918–1920. The then new state borders cut through natural geographic, and mostly homogenous Hungarian ethnic, ethnographic, regional cultural and dialectal territories (even some villages were physically cut into two). Thus, communities existing in organic structures and practices for centuries were torn apart. Those left behind the new borders faced abruptly the expectations and laws of states with unknown, foreign cultures and languages as minorities. They became immediately indigenous, while staying on their homeland. This interpretation is based on linguistic and socio-cultural characteristics, focusing on the personal and communal fate of the given individuals and communities, and referring to the notion of territorial linguistic rights, defined by György Andrassy.

The present paper focuses on the indigenous features of the Hungarian minorities, other factors relevant in the linguistic and socio-cultural circumstances (e.g., like bilingualism, code switching, the relation to the state language and the other Hungarian variants) are not discussed here.

The historical situation of the Hungarian language community

The community of Hungarian mother tongue – apart from certain smaller groups – speakers lived in the Carpathian Basin, within the territory of the Hungarian Kingdom from the 10th century until 1920 (Fodor-Pók 2020). This situation continued to exist also during the Turkish occupation (the middle of the 16th century – the end of the 17th century), although the power relations and the inner dialectal and settlement structure suffered brutal changes.

From the perspective of indigenoussness, the following aspects are to be mentioned.

The territorial range of the Hungarian language community can be defined since the 10th century. This range changed during historical ages, but only to a smaller extent. On the other hand, the number of data increases through the centuries. The territorial range is not absolutely and not always homogeneous, still, the Hungarian language territory shows strong and stable homogeneity both in the linguistic and the ethnic aspect. Smaller inner and border regions with non-Hungarian ethnical and linguistic groups always belonged to the historical developments. To put it in another way: the greatest part of the Hungarian language territory in the Carpathian Basin is inhabited by Hungarian speakers since the 10th century.

Bilingualism among Hungarians during the original settlement is probable, a small part of the population (e.g. the military escort of the prince) spoke other languages. A considerable number of the certain ethnic groups (Cumans, Jazygians) immigrated into the Hungarian Kingdom during the Middle Ages, and though these groups preserved their ethnic identity and traditions, they changed their languages to Hungarian. On the other hand, the Saxons, settled on the northern and eastern parts of the Carpathian Basin preserved their German language. During the Turkish occupation of the middle parts of Hungary, later in the centuries of the Habsburg reign, and also during the Soviet occupation, the Hungarian language community maintained the Hungarian as the mother tongue without any uncertainty, in spite of the linguistic imperialism of the Habsburg and the Soviet empire.

This situation changed radically in 1918–1920. The newly formed states around Hungary severely constrained the rights of the minorities gained with the territories annexed to these states through their nationalistic and assimilative policies. The situation worsened by the communist political regimes because these ideologies neglected the rights of the minorities on internationalistic basis (for a general overview of the social consequences of the communist rule see Hankiss 1990).

The State Borders Set Up by the Trianon Treaty

The Paris (Trianon) peace treaty that closed World War I did not carry into effect the ideal (“national democratic states”) in most cases (Leonhard 2018: 11–28), the new borders created immediately severe tensions, and not only in the case of Hungarian minorities. The basic facts of the Trianon peace treaty are the following

The Treaty of Trianon forced Hungary to renounce two-thirds of its pre-war territory (its area decreasing from 282,000 to 93,000 square kilometers, not counting Croatia) and one third of the Hungarian-speaking population, 3,327,000 people, in favor of other successor states of the Habsburg Empire. (The population of the country was reduced from 18.2 to 7.6 million)” (Fodor–Pók 2020: 132, see also Romsics Ablonczy 2020a, b, 1999, 2007).

The resolutions of the winning powers have had serious and complex effects, for the Hungarian language community as well. Within the present argumentation, only some factors relevant from the perspective of indigenesness can be discussed here. These circumstances prevailed in 1918–1920, and determines the life of minority Hungarians today, too:

- the existence, daily life of the Hungarian language community on the given territories;
- the 1100 years continuity on the Hungarian language territory, including the ethnic genocide during the Turkish conquest, the mass migrations caused by the world wars and forced emigration or the

special situation of the Székely counties and the middle region of Erdély (Transylvania), these large regions having no direct geographical contact with the other parts of the Hungarian language territory; still, these conditions do not affect the indigenous character in any respect;

- the social, communal existence, language, culture, traditions and historical consciousness, formed and maintained through these 1000 years.

These circumstances clearly show that the state borders fixed in the 1920 Paris peace treaty cut through continuous Hungarian linguistic, ethnic economic regions, as well as geographic ones. The situation proves to be the same one hundred years later, along the Hungarian border, and in deeper areas, especially in Romania.

Slovakia (the Felvidék region): the border between Hungary and Slovakia is 668 km long. On the Slovakian side, there exists a 20–50 km wide region (Felvidék) from East to West with predominantly Hungarian population, produced by the 1920 peace treaty. The traditional, historical parts of this elongated region had their other halves, now on the other side of the state border, the border cut through traditional Hungarian ethnographic and linguistic regions. The southern region of Slovakia in question was almost totally inhabited by Hungarians since the 10th century: “in 1991 98,1% of the Hungarians [in Slovakia] lived on the Hungarian language territory in the strict sense” (Lanstyák 2000: 46). “It shows the dense character of the Hungarian settlement network, that the 77,2% of the Hungarians still lives in numerical majority” (Lanstyák 2000: 51).

Ukraine (the Kárpátalja region): “According to the 1989 census, the majority of the Hungarians in Ukraine, 95,4% live in Kárpátalja (Sub-Carpathia), Hungarians are indigenous people only in this county” (Csernicskó 1998: 33). “The Hungarian population in Kárpátalja formed a relatively homogenous block until the end of the 20th century, the settlement territory is one socio-cultural unit even today. [...] The ethnic Hungarians populate the southern, flatland zone. The ethnic distribution of the region began to dilute during the 1920–1930s, partly by planned, partly by spontaneous settling” (Csernicskó 1998: 34).

Romania (the Erdély region): “According to the historical developments and the dialectal distribution, [...] there are four regions in Transylvania, based on the data of the 2011 census: 38%-a (475 000) in Székelyföld in three counties, 20% (248 762) in central Transylvania, (in Maros county without the Székely parts and in Kolozs county), 25% (302 641) in the third region, in the Partium and in the zone along the Hungarian border and in Szilágy county, and finally 17% (216 000) in the northern and southern diasporas and in the Bánság with less than 10% Hungarian proportion” (Péntek–Benő 2020: 62). The Székely region is far from the Hungarian border, still the Hungarians are in numerical majority. The same situation prevails in the third region, in the Partium and along the border, with Hungarians in majority. In the other regions, Hungarians form a minority in their number. Viewing the overall picture, Hungarians are indigenous everywhere in Transylvania. The main phase of the Hungarian settling took place from the 10th century. The organization of the counties, the foundation of the Transylvanian episcopate (centered in Gyulafehérvár) took place at the beginning of the 11th century, during the reign of King Stephen (István) I (1000–1038). The Hungarian settling of Transylvania was completed in the 12th century. The immigration of Rumanians began in the 13th century, in southern Transylvania and in Máramaros (Péntek–Benő 2020: 62).

Serbia (the Vajdaság region): In Vajdaság “the second largest ethnic group is the Hungarian; their proportion was 339 491 (16,86%)” (Göncz 1999: 37). The majority (86%) of the Hungarians live on a continuous territory in northern Bácska, along the Tisza river, and the middle part of the Bánát in 23 settlements. Another 14% lives in 21 villages in ethnic islands.

In Croatia, Slovenia, and Austria there are Hungarian diasporas, too, with similar circumstances (see Fancsaly et al. 2016, Szépfalusi et al. 2012).

The censuses in the states mentioned here were completed with partly different methodologies, and in different times. Thus, the data taken from the individual countries cannot be compared in every detail. Nevertheless, it can be pointed out that the borders drawn in 1920 cut through continuous Hungarian ethnic and linguistic communities. These communities lived on the same territory for centuries, spoke the same Hungarian language and language variety, preserving their traditions, practically without the presence of other ethnic and linguistic groups. There is no ethnic and

linguistic continuity between the Székelyföld or Middle Transylvania and the other parts of the Hungarian linguistic territory, but all the other features are present. With the conditions mentioned above, the Hungarian language community resides in the given territories for 1100 years continuously, in preponderant majority. In this sense Hungarians are indigenous in the Carpathian Basin.

The General Interpretation of ‘Indigenous’, Focusing on the Linguistic and Cultural Factors

The Secretariat of the Permanent Forum on Indigenous Issues of the United Nations dealing with indigenous peoples works within the Department of Economic and Social Affairs.

According to the available documents, the discussions on the features of ‘indigenoussness’ and on unified formation of the actions plans began in the 1980s, mainly by the elaboration and presentation of the Martínez Cobo Study. It has to be noted that no definition of ‘indigenous peoples’ has been adopted by any UN-system body except by the ILO, generally accepted by those in question (as stated in UN 2021). Nevertheless, the descriptions quoted here are often used as such definitions.

Jose R. Martinez Cobo, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, states the following when discussing indigenous peoples:

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions, and legal system” (Cobo 1982, UN 2021).

The main factors of long term historical continuity of being indigenous are the following:

1. “Occupation of ancestral lands, or at least of part of them;
2. Common ancestry with the original occupants of these lands;
3. Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.);
4. Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);
5. Residence on certain parts of the country, or in certain regions of the world;
6. Other relevant factors” (Cobo 1982, UN 2021).

It is important that individuals recognize themselves as indigenous through self-identification, group consciousness, and they are accepted as members of the indigenous groups. “This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference” (UN 2021).

Further on, the activities of the United Nations aimed at indigenous peoples focused mainly on the investigation and improvement of human rights among these peoples. The General Assembly of the UN accepted the Declaration on the Rights of Indigenous Peoples in 2007, “giving prominence to collective rights to a degree unprecedented in international human rights law” (UN 2021).

The notion ‘indigenous’ is interpreted in a similar way in other international documents, for instance in the provisions of the Indigenous and Tribal Peoples Convention (1989):

“This Convention applies to:

[...]

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.” (C169).

The history of Central and Eastern Europe was rarely investigated from the perspective outlined above. The surveys approached the situation of minorities from the perspective of political history (e.g., Brubaker 1996), and discuss the main questions only broadly (Ekiert–Hanson eds. 2006) or outline the circumstances after 1920 with statistical data (Koulov 2013).

The Indigenous Features of the Hungarian Minorities

The excerpt quoted from the Cobo Study or the paragraph in C169 can be applied to European minorities without much modification. In these cases the term ‘autochthon’ is used as well, with similar interpretations – this is the case in the Explanatory Report for Regional or Minority Languages, elaborated by the Council of Europe (Explanatory Report 1992). From the legal perspective see the explanation of György Andrásy, for instance in his paper in the present issue.

The indigenous features outlined above can be recognized within the Hungarian minorities in specific forms. The regions left behind the borders were rural areas in general, with populations earning their living in agriculture, often in traditional self-sufficient livelihood. The factors of historical continuity in 1918–1920 were the following:

- the occupation of ancestral lands, in the legal, spiritual and emotional sense, with intimate relations to the land, to the country;
- the residing on the ancestral lands; the Hungarian minority communities have resided on the same land for centuries;
- the common ancestry of those Hungarians living there, and the conscious knowledge of being Hungarians both in the ethnic and linguistic sense, aware of the thousand-year descent;
- the Hungarian mother tongue, focusing on the centuries old and stable rural dialects used as the habitual means of communication in everyday local life, with definitely monolingual speakers until the power change in 1918–1920;

- the cultural traditions, mostly Hungarian folk traditions of the local rural communities, from instruments to social behaviour.

Along these factors, the Hungarians found themselves in 1920 in a situation, whereby the new states were taken as foreign and conqueror by the new minorities. The measures and laws of the new states qualified the above listed indigenous factors as secondary, even harmful for the new majorities, questioning or even denying the historical continuity, and considered the Hungarian and other minorities as intruder enemies, on their own ancestral land. This complex relation of relations prevailed after 1990, with diverse degrees of efficiency, depending on the given state and historical period.

In contrast with western European states and their colonies and their indigenous and postcolonial features, the European, more specifically the Central European situation show differences. On one hand, the new states formed by the Paris peace treaty occupied certain territories and population that belonged to the former Hungarian Kingdom, using their military and police. On the other hand, these developments took place not in remote and unfamiliar regions, but with the extension of the ethnical majority regions to areas populated by adjacent other ethnic groups. The majority and minority communities did not differ significantly in their traditions, social system, economy, and culture, these characteristics fitted into the general European (Central European) historical developments at the end of World War I. With all these characteristics, local cultural and linguistic differences were present and evident for the communities in question. Because of these circumstances, the minorities, Hungarians in particular and the state majority society isolated themselves from the others using asymmetric counter concepts (Koselleck 1979). The states in question did these actions in certain forms, for instance by the deprivation of the citizenship of the minorities not only in individual cases but collectively, or by the regular declaration of the presumed administrative and moral superiority, signs of majority dominance in political and administrative power. Also, stereotypical fictitious declarations about the minorities have often been expressed, stating for example that Hungarian minority people are originally Slovaks or Rumanians assimilated by the Hungarian conquerors.

During 1918–1920 those Hungarians who found themselves outside the new Hungarian borders, immediately faced constraints on mother tongue use, even its prohibition. The factors that affect indigenous peoples and listed in the description of indigeneness have their real importance here, on these practical level. The dialect is the vernacular of those living in one region, it is used in spontaneous informal situations, with the highest skills, and with the deepest emotional relation. The sudden, abrupt transition to another, largely unknown official language resulted in a shock of communication vacuum, and degraded the mother tongue, more precisely the vernacular to the state of secondary importance or uselessness in the everyday practice. The communicative undervaluing and cultural isolation of the local dialect proved to be a crude and aggressive intrusion into the everyday life of the new minorities. Since the local dialect, the local vernacular is not only the instrument of the communal life of a smaller community, a village, but the cognitive and active medium of the everyday activities, the consciousness of linguistic and communicative traditions, the restrictions have had serious consequences.

The circumstances outlined above accounts for the application of the notion ‘indigenous’ in the description of the minorities’ language rights in Central Europe. On one hand, the states around Hungary with Hungarian minorities accept international resolutions on Human rights, on minority rights, including the rights of indigenous people, or even the indigenous status of the minorities on their territory. But on the other hand, in practice the situation often differs. To take one example, in Slovakia, Ukraine or Romania, all pupils have mother tongue classes from the first grade. From the majority perspective these classes are Slovakian, Ukrainian, or Rumanian mother tongue classes, for majority and minority pupils uniformly. For long decades, the Slovakian, Ukrainian or Rumanian mother tongue classes were and are taught with one basic methodology for every pupil, planned for pupils with Slovakian, Ukrainian or Rumanian mother tongue. Minority pupils are taken as if they would speak the language of the majority on the mother tongue level, like pupils who have these languages as their mother tongue. There is one curriculum, one textbook for all. Since minority children do not speak the state language as well as the Slovakian, Ukrainian or

Rumanian pupils, this system leads to frustration, low level bilingual knowledge and serious drawbacks in professional training, finding a job and in social integration in general. The other result of this practice is the hidden process of assimilation: the pupils with Hungarian (or other minority) mother tongue and Hungarian indigenous status are changed implicitly into Slovakian, Ukrainian or Rumanian indigenous persons, since they have the mother tongue classes elaborated for the others (for an outline of the question see Vančo 2017). Therefore, all descriptions, investigations and regulations should concentrate on the practice that comes from general legislation. The actual state of the socio-cultural factors in the everyday life of minorities may show serious deficiencies, even besides the adoption of general laws.

Summary

In my linguistic and socio-cultural interpretation of the minority Hungarians, the notion of 'indigenous' as described in international regulations and resolutions is adjusted to the historical and contemporary situation of the Hungarian language community in the Carpathian Basin, with special reference to the Hungarian minorities in the countries along the Hungarian border. The notion of 'indigenous' described by the UN is extended to those peoples, territories and states which are not considered as colonies or former colonies, but show indigenous features in certain aspects. The Hungarian minorities beyond the borders, their regional communities should be seen indigenous groups since 1920, according to the description of 'indigenous', with its flexible semantic extension. Significant parts of the Hungarian language community found themselves overnight in newly formed non-Hungarian states, because of the Paris peace treaties that followed World War I in 1918–1920. The then new state borders cut through natural geographic, and mostly homogenous Hungarian ethnic, ethnographic, regional cultural and dialectal territories (even some villages were physically cut into two). Thus, communities existing in organic structures and practices for centuries were torn apart. Those left behind the new borders faced abruptly as minorities the expectations and laws of states with unknown, foreign cultures

and languages. They became immediately indigenous, while staying on their homeland. This interpretation may not harmonize with the strict legal interpretation of 'indigenusness', although it is based on the linguistic and cultural features of the minorities in question, to point to the human side of their historical developments and present state.

As for the indigenous or autochthonous developments, reflections, and self-reflections in Europe, it can be stated that the tensions originating from the indigenous status in the majority – minority relations were not dissolved by globalization, multilingualism, nor by intercultural or interlingual developments, or by democratic political systems (see the investigations presented in Gardner–Marilyn eds. 2012). The multilingual approach in the literature applies indigenusness to individuals, thus atomizes the communities, although language and culture only exist in communities. The situation in south Tirol or among the Sami show that the socio-cultural factors included in the concept of indigenusness are as strong as the majority language and culture or the effects of globalization (see Pietikäinen 2012). Linguistic and cultural decisions are usually local acts, based on the traditions, and cultural memory of the local ethnic or language group. And this is the everyday and long-term practice in the case of the minority Hungarians.

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Endnotes

- 1 In the present study, 'postcolonial' is a non-activist, non-critical term used for the scientific description of the discussed historical situation with a process-like character.

(LINGUISTIC) HUMAN RIGHTS AND/OR SECURITY POLICY

Miklós Kontra

Abstract: Current international Human Rights obligations and language rights declarations have not proved particularly effective. For a *crime against humanity* a person may be sentenced to life imprisonment (e.g., Ratko Mladić for the Srebrenica massacre), but other perpetrators often go unpunished: for instance, most of those States which assimilate their linguistic minorities through submersion education programs.

In his call for this conference, Professor György Andrassy urged us to find new arguments that might help to raise international language rights standards, and clarify the role of arguments in general. In this context I will address a wider issue: Does security policy pose a threat to minority language rights?

These challenges have been highlighted by conflicts in Ukraine over the past five years. If the Council of Europe, the European Union, and NATO become complicit in Ukraine's erosion of regional and minority languages, a precedent may be set whereby a linguistic minority can be deprived of the rights they previously enjoyed in their State. The example of Ukraine may be followed by other States in building homogeneous nation-states and could well lead to new conflicts in Europe. In this paper I will show that what has created a serious international conflict and paralysis in NATO could be handled quite straightforwardly by linguists.

Keywords: linguistic human rights, crimes against humanity, security policy, additive language teaching, Ukrainian language policy

Linguistic Human Rights are individual and collective linguistic rights that every human being possesses in order to satisfy their basic needs and to be able to live a dignified life. In theory, Linguistic Human

Rights are so inalienable that neither a State nor an individual can violate them, see Skutnabb-Kangas & Phillipson eds., 1994, Kontra et al. eds., 1999, Skutnabb-Kangas 2000, Skutnabb-Kangas & Phillipson eds., 2022.

Crimes Against Humanity

In 2017, Ratko Mladić was sentenced to life in prison for committing war crimes and *crimes against humanity* by the International Criminal Tribunal for the Former Yugoslavia in The Hague. In 2010 sociolinguist Tove Skutnabb-Kangas and Human Rights lawyer Robert Dunbar published a book in which they analyze educational policies and practices, carefully documented on five continents, which can be called *crimes against humanity* in the legal sense of the phrase. According to The Hague Recommendations Regarding the Education Rights of National Minorities issued by OSCE in 1996, “Submersion-type approaches whereby the curriculum is taught exclusively through the medium of the State language and minority children are entirely integrated into classes with children of the majority are not in line with international standards” (p. 14). Such submersion-type educational programs are enforced by most States from the USA through Hungary to China or from Sweden to Australia.

As a linguist, not a lawyer, I would like to take the liberty of stating that one difference between one crime against humanity and another is that for one a person may be sentenced to life imprisonment (e.g., Ratko Mladić for the Srebrenica massacre), but other perpetrators often go unpunished: for instance, most of those States which assimilate their linguistic minorities through submersion-type education programs.

One could ask the question: Why do most States tolerate such education programs? After all, Skutnabb-Kangas & Dunbar (2010) have convincingly demonstrated that submersion-type education “may constitute crimes against humanity” and “at least certain forms of submersion education [may] attract criminal liability in international law” (p. 90). The authors also quote Thomas & Collier¹ (2002: 7) who have shown that “the length of mother tongue medium education is more important than any other

factor (including socioeconomic status) in predicting the educational success of bilingual students, including their competence in the dominant language” (p. 11). As regards considerations of economics, Grin (2003: 26) has argued that “there are strong grounds to suppose that protecting and promoting regional and minority languages is a sound idea from a welfare standpoint, not even taking into consideration any moral argument.” Skutnabb-Kangas & Dunbar (2010: 73) assert that “If states want to act rationally, the question whether states can afford mother-tongue based multilingual education (MLE) should rather be: can ANY state afford *not* to implement MLE?” However, they are not naïve. They cite a number of reasons: the majority of speakers of dominant languages are insensitive to the troubles of minority language speakers since they are ignorant of linguistic oppression; in the debates on indigenous/tribal languages such speakers are very rarely asked and heard; *linguicism*² is a much more sophisticated way of preventing the use of a language than brutal, open and visible prevention through jailing, torture, etc.; governments are aware of the negative effects of forcing dominant language education on minorities, but succeed in claiming that they are not.

Human Rights Obligations and Language Rights Declarations are not Effective

Most if not all European States turn a blind eye to the violations of refugee rights from the Greek–Turkish border through the Serbian–Hungarian border to the Italian–French border and elsewhere (URL1, URL2). Fiala (2018) has recently demonstrated that the Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities and the Committee of Experts of the European Charter of Regional and Minority Languages evaluated Slovakia’s performance under these two treaties very differently in recent monitoring cycles. For instance, the Committee of Experts monitoring the Charter concluded that provisions of the State Language Act and other laws which allow sanctioning of the use of minority languages are not in compliance with the Charter. It called upon Slovakia to amend its relevant laws according to the principles

of the Charter, which promote and facilitate the use of minority languages. “In contrast, the Advisory Committee monitoring the Framework Convention did not even mention the imposed sanctions” (Fiala 2018: 11). Concerning these two most important standard-setting mechanisms of the Council of Europe, Nagy (2021: 140) has concluded that their expert committees’ “repeated recommendations often fall on deaf ears”. As a final example, I quote Wardyn and Fiala (2009: 173) about the 2009 amendment of the Slovak State Language Law: “it is clear that the new law is a significant step backwards from the agreed-upon and accepted international standards established by the Charter (CRML) and the Framework Convention (FCNM)”.

In his call for this conference, Professor György Andrásy urged us to find new arguments that might help to raise international language rights standards, and clarify the role of arguments in general. In this context I have chosen to address a wider issue: Does security policy pose a threat to minority language rights?

These challenges have been highlighted by conflicts in Ukraine over the past five years. In 2017 a new law on education (LL2017) was adopted, and in 2019 it was followed by the Law “On Supporting the Functioning of the Ukrainian Language as the State Language” (LL2019). This law makes it an obligation to use the state language in all spheres of life. Concerning the 2019 law, Csernicsekó et al (2020: 92) have concluded that “if it is to be applied in practice, Ukraine will not be able (and probably will not want) to meet its international commitments – voluntarily undertaken by ratifying the Charter.” Csernicsekó & Tóth (2019) have demonstrated that for a century and a half, between 1867 and 2017, the right to mother-tongue medium education in what is today Transcarpathia, Ukraine was guaranteed by all the six states to which the region was affiliated. The 2017 law on education allows mother-tongue medium education for minorities only in kindergarten and grades one to four. In her Afterword to the book, Skutnabb-Kangas (2019a: 69) has stated this among other things: “If implemented, the law will certainly cause human trauma, forced language shift and massive linguistic genocide in education³”.

International Reactions⁴

The 2017 law on education and the 2019 law on the Ukrainian state language do not comply with international minority rights norms ratified by Ukraine. The laws have restricted existing rights, which violates Article 22 (3) of the Constitution of Ukraine whereby the narrowing of rights is unconstitutional. When enacting new laws, it is prohibited to curtail existing rights. However, existing rights *are* curtailed – “Ukraine is not a state based on justice and integrity in the Western sense, and, similarly to other laws, laws regulating language use are not applied consistently either” (Csernicskó & Fedinec 2016: 579).

One question worth posing now is: How far can Ukraine go in failing to observe European and UN covenants? We know that “Many states sign up for covenants and make no effort to implement them” (Phillipson & Skutnabb-Kangas 2017: 6). International covenants are often toothless when it comes to implementation, see Skutnabb-Kangas 2003, 2019b, the late UN Rapporteur on the Right to Education Katarina Tomaševski’s (2005) “behind-the-scenes account”, or the section titled “The global system: human rights endtimes?” in Phillipson and Skutnabb-Kangas (2017: 6–8).

Ukraine has signed and ratified the European Charter for Regional and Minority Languages. However, the provisions of LL2019 on the Ukrainian state language “have virtually eliminated the possibility of using regional or minority languages (a term that is not applied in the Law) in social and public life. As a result, this law made it impossible to apply the Charter in Ukraine” (Brenzovics et al. 2020: 88).

In a detailed analysis of conflict prevention or human rights promotion, Fiala-Butora (2020, p. 258) states that “Ukraine has long ignored the recommendations of the Council of Europe under the Framework Convention of National Minorities and the European Charter for Regional or Minority Languages” because international bodies responsible for enforcing international human rights norms have not put more pressure on the country. Despite criticism and recommendations of the Council of Europe’s Venice Commission concerning the LL2017 and the LL2019, the Ukrainian government shows no sign of easing the restrictions.

In February and April 2018 Hungary blocked the meeting of the NATO–Ukraine Commission, arguing that it is impossible to support the country’s bid to join NATO after Ukraine adopted the controversial education law “brutally mutilating minority rights.” At the NATO summit in London in December 2019, the Hungarian foreign minister said “We ask for no extra rights to Hungarians in Transcarpathia, only those rights they had before.”⁵ Hungary received criticism from other NATO members, which considered the issue of minority rights to be outside NATO’s remit. “Secretary General Jens Stoltenberg called upon the two parties to find a solution through negotiation, reconciling the protection of minority rights and Ukraine’s goal of promoting its national language” (Fiala-Butora 2020: 245).

To us linguists, what has been causing serious diplomatic tensions and a headache for NATO could be fairly easily solved. By introducing mother-tongue-based bilingual education of the additive⁶ kind instead of subtractive Ukrainian-only education, Ukraine would avoid massive linguistic genocide in the education of some of its minorities, namely those with kin-states in the EU, and also many of its Russian speakers. From the point of view of foreign policy and security, such an educational policy would largely take the wind out of Russia’s sails because they could no longer claim that Russian speakers’ human rights are violated. As Skutnabb-Kangas (2019b: 1) has shown, the devastating results of submersion programs have been known since the mid-1700s, yet “these submersion programmes using the dominant language as the only or main language [of instruction] continue all over the world.”

Conclusion

We agree with Pavlenko (2013: 267–268) that the European Charter was articulated for protection and promotion of languages used by traditional minorities (such as the Transcarpathian Hungarians in Ukraine). We also agree with her that the non-traditional Russian-speaking minorities (such as the Russian-speakers in Ukraine today) highlighted the need to dissociate concerns about language endangerment (*language rights*) from *speakers’ rights*, for instance

the right of speakers of all languages to use their mother tongues. Mother-tongue-based bi- or multilingual education programs, rather than impatient nation-state projects, offer a good solution.

Should European international organizations remain passively complicit in the erosion of the Ukrainian education network in regional or minority languages, a precedent will be set, as a result of which the rights of minorities previously ensured in the legal system of the State that they are citizens of can be curtailed at any time. States which aim at building homogeneous nation-states may then be encouraged by the Ukrainian example, may take similar steps, thus inevitably leading to new conflicts in Europe. In Ukraine, according to the Transcarpathian Hungarian lawyer Mihály Tóth (Lengyel 2020: 43), the consequences would bring chaos, discrimination, the marginalization of the Hungarian language, and anti-Hungarian harassment and hate crimes.

If the current laws are implemented, Ukraine will be restricting the rights of its minorities that they enjoyed while resident in various states in different political systems. Secondly, Ukraine, as a newly independent State, will be repealing those rights of the minorities that were enjoyed by Ukrainians when they were themselves a minority earlier.

A confrontation and clash between Linguistic Human Rights and security policy can only have devastating results. However, asserting the close linkage between Linguistic Human Rights and security policy seems to be the best way to deal with and avoid conflicts. The vital question is: How to get those in power to listen to linguists who are concerned to bridge the gap between informed education policies and security policies?

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Endnotes

- 1 This is the largest longitudinal study in the world on the education of minority students, involving a total of more than 210,000 students, including in-depth studies of both urban and rural settings in the USA, and with many different types of educational models.
- 2 Racism, ethnicism and linguicism have been defined as ideologies, structures and practices which are used to legitimate, effectuate and reproduce an unequal division of power and (both material and non-material) resources between groups which are defined on the basis of
 - «race» (biologically argued racism),
 - ethnicity and culture (culturally argued racism: ethnicism),
 - LANGUAGE (linguistically argued racism: linguicism) (Skutnabb-Kangas 1988: 13).
- 3 “In subtractive language learning, a dominant or majority language is learned at the cost of the mother tongue. Subtractive teaching subtracts from the children’s linguistic repertoire (instead of adding to it). The children undergoing this type of education, or at least their children, are forcibly transferred to the dominant group linguistically and culturally, and the education can cause them mental and physical harm; both are defined as genocide in the United Nations Genocide Convention. The most decisive educational factor in causing negative statistics of indigenous ‘performance’ is the use of the wrong teaching language.” (Hough & Skutnabb-Kangas [2005]: Abstract). See also Skutnabb-Kangas (2000).
- 4 The second part of this paper beginning here is mainly based on Csernicsekó & Kontra (forthcoming 2022).
- 5 <https://www.reuters.com/article/us-ukraine-nato-hungary/hungary-to-block-ukraines-nato-membership-over-language-law-idUSKBN1Y823N> (accessed 20 August 2021).
- 6 In additive language teaching/learning a second (dominant) language is taught/learned in addition to the learners’ first language (mother tongue), not at the cost of the mother tongue. Cf. note 3 for subtractive teaching/learning.

THE ROLE OF LANGUAGE TECHNOLOGIES IN PROMOTING THE PARTICIPATION OF LINGUISTIC MINORITIES IN SOCIAL, POLITICAL AND ECONOMIC LIFE

Petra Lea Láncos

*“Every new technology drags behind it the inequalities of the world,
and usually contributes to them in ways nobody thought to foresee.”
(Sayers et al., 2021)*

Abstract: While the recognition of language rights is slow to progress, with the incremental development of language technologies, an increasing number of solutions makes the enforcement of fundamental rights of members of linguistic feasible. Although these developments are to be welcomed, such technologies are inherently 'biased' in the sense that these are developed primarily for 'larger' or more powerful minorities. This situation opens new cleavages besides already existing divisions between majorities and minorities, producing different categories of 'privileged' and disenfranchised minorities. The present paper provides an overview of the development of language technologies that may be harnessed for the enforcement of rights. Mapping the different linguistic minorities affected by these developments, the paper seeks to elucidate how new technologies reshuffle power and interest representation opportunities between language groups. Finally, the paper takes a brief look at the challenges of assimilation of minority languages and cultural appropriation.

Keywords: language rights, development of language technologies, assimilation of minority languages

Introduction

The establishment of official or quasi-official languages¹ reinforced or privileged linguistic majorities and led to the emergence of some near mono-lingual states and regions. These developments clearly impacted on the social, political and economic status of linguistic majorities and minorities, respectively. Appointing and enforcing an official language for a political community has several advantages. It ensures the efficient communication of political messages (Mill, 1972: 392), streamlines administration (Spolsky, 2009: 147), promotes the security and development of trade (Ammon, 2007: 322). Namely, political mobilization across linguistically diverse groups is very costly and often unsuccessful; in order to remain effective, administrations must rationalize internal and external communication (Spolsky op. cit. 170); finally, the volume of trade within a language group outweighs that between language groups due to the costs of linguistic mediation and the low degree of mutual trust (Foreman-Peck, 2007; Fidrmuc et al., 2006: 5). All these factors substantiate the benefit of establishing official languages, while at the same time it creates an uneven playing field for the speakers of the different languages within the same political community. The exclusive position of official languages also makes them 'highly resourced languages', with funds and resources channelled into standardizing, documenting, processing, researching and teaching these languages (Ombui & Muchemi, 2015). Members of linguistic minorities may suffer multiple disadvantages in the context of the social, political and economic system underpinned by the official language: in addition to their native tongue they must learn the official language, an effort that may take away capacities and time from investing in further studies.² This, coupled with a possible accent will make it harder for them to compete with the linguistic majority for jobs and political positions, or to promote the political interests of their respective group. In the case of haptic or signed languages, information is readily available in their official spoken and written modality. However, making languages available in the signed or haptic modality is more expensive and cumbersome. This makes progress in these areas slow and patchy, disenfranchising linguistic minorities communicating in these language modalities. The factors mentioned above contribute to the 'secondary' social, political

and economic status of linguistic minorities, leading to possible instances of discrimination in the framework of education, health care, access to justice etc.

While the initial progress in the recognition and protection of language rights (themselves vehicles for the enforcement of other rights) on an international level has gradually lost impetus,³ the emergence of language technologies has had the intended or side effect of helping linguistic minorities overcome some of the disadvantages outlined above. Starting from hearing aids and braille translators, different language and speech communities have benefited from the emergence of language technologies. The development of these technologies has been incremental, gaining particular impetus in the new millennium. While many of these language technologies are initially or primarily developed for military, intelligence or humanitarian purposes, they gradually find their way into civilian uses, benefitting language communities and the economy at large (Hardach, 2021).

Language technologies facilitate communication between speech communities (regional, bilingual, learner, professional etc.), across languages and language modalities (written, spoken, signed, haptic etc.). Today, language learning with a virtual teacher, speech to text programs, including automatic subtitling, computer assisted and machine translation solutions and automated interpreting devices are already a reality (Sayers et al., op. cit.: 7). Future developments point toward augmented reality software, integrating virtual visual and auditory objects into our experience, incorporating solutions for the automated processing, translation and interpretation of 'foreign' speech and text, opening up new opportunities for hitherto disenfranchised linguistic minorities.

Notwithstanding the clear benefits of providing solutions for members of linguistic minorities to participate in social, political and economic life, the development of these new technologies may open new cleavages between speech communities and language groups. In fact, such technologies will not cater to all linguistic minorities, for lack of economy of scale, market failure, lack of profitable civilian demand etc., resulting in a reshuffling of power and interest representation opportunities between language groups.

Building heavily on the LITHME (Language in the Human Machine Era) Forecast Report, the latest study on the future and effects of language technologies, I describe categories of new and emerging language technologies and the ways in which these may assist members of linguistic minorities in overcoming erstwhile disadvantages suffered in the social, political and economic realm. Next, I turn to the issue of the shifting layers of disenfranchisement between previously disadvantaged linguistic minorities in light of the development of language technologies. Finally, I discuss the question whether language technologies may contribute to the assimilation of linguistic minorities or cultural appropriation, and if so, in what sense. For reasons of space, this paper can only provide a brief overview of the language technology landscape and concomitant threats and opportunities.

In this paper, I shall refer to all speech communities and language groups that are not native speakers of the official language of their state of residence, including those groups whose members share a disability owing to which one or all channels of their communication is impaired (e.g. deafness, deaf-muteness, muteness, blindness, deaf-blindness or conditions otherwise leading to visual and/or hearing impairment) as linguistic minorities. Of course, referring to these diverse groups as linguistic minorities is necessarily reductive, since they are usually at the same time national, ethnic or religious minorities etc. Yet it is their disenfranchisement in communicating with authorities and the wider public that allows us to consider them linguistic minorities for the purposes of this paper.

Language Technologies and New Frontiers

In line with the definition of language technology advanced by LITHME, for the purposes of this paper, I consider language technology to be any technology that can process language passing between humans, or communicate directly with humans. Or, as LITHME puts it, any technology humans can speak through or to (Sayers et al., op. cit.). The former enables translation, interpreting and facilitates the processing of information, while the latter allows us to interact with technology through communication.

As the Report of the Office of the United Nations High Commissioner for Human Rights entitled *Factors that impede equal political participation and steps to overcome those challenges* (para 2) underlines,

“Political and public participation rights play a crucial role in the promotion of democratic governance, the rule of law, social inclusion and economic development, as well as in the advancement of all human rights. The right to directly and indirectly participate in political and public life is important in empowering individuals and groups, and is one of the core elements of human rights-based approaches aimed at eliminating marginalization and discrimination. Participation rights are inextricably linked to other human rights such as the rights to peaceful assembly and association, freedom of expression and opinion and the rights to education and to information.”

Recommending measures to overcome language barriers to promote participation for all members of society, the Report focuses primarily on political participation and expressly includes “the provision of electoral information and voting papers in a range of accessible formats and languages” as well as the provision of “information and educational materials in accessible formats and languages that present the political process” (ibid. paras 13 and 95).

Expanding the participation perspective to encompass also access to public services, justice, education and health care, language technologies have the potential to improve linguistic minorities’ socio-economic status (Eva, 2014; Joshi et al., 2019). They can promote political participation and increase linguistic minorities’ presence in domestic and international economic life (Thomas et al., 2001: 27). As such, language technologies may contribute to social justice, democracy and economic growth in general, while at the same time empowering linguistic minorities and facilitating the enforcement of individual rights (information rights, political rights, social and cultural rights, freedom of enterprise etc.) of their members, in particular.

For linguistic minorities, the main use of language technologies may be to ensure their effective participation in social, political and economic life through providing solutions for inter- and intra-language translation and interpreting, and facilitating language learning. Important technologies

in the realm of inter-lingual translation benefitting among others also members of linguistic minorities are website translators (e.g. WeGlot, Google Translate) and machine translation software (e.g. Google Translate, DeepL, Amazon Translate), promoting the enforcement of language rights by making information in foreign languages accessible. Screen readers (e.g. NVDA, Orca) provide an important service to blind or visually impaired readers of online resources, helping to switch from written into the spoken modality, while smart gloves are the first attempt to translate sign language into written text.

In the realm of text to text machine translation, statistical machine translation (SMT) analysing the source language based on statistical models has given way to neural machine translation (NMT), an AI seeking to incorporate characteristics of human thinking by trying to 'understand' meaning. NMT uses so-called vector representations for words, continuously learning such representations via training through millions of sentence pairs. The ongoing training of NMT also means that its neural networks are continuously changing and improving. Newly developed encoders render NMT more 'context aware', improving its ability to generate more accurate translations.

Automated interpreting devices are also available, such as VERBMOBIL financed by the German Federal Ministry of Research and Technology, developed for the purposes of interpreting between industrial actors in German, English and Japanese. Interpreting demand in warzones has also triggered the development of speech to speech translation software, such as MASTOR, a dialect sensitive solution to mediate between English and Arabic. The Phraselator, a weatherproof hand-held device developed by Applied Data Systems and VoxTec is also used for military purposes and translates English into 40 languages. Finally, Jibbig Translator 2.0 is a free app that translates both speech and text between more than 20 languages (Horváth, 2015). Such devices and software can be of excellent use for members of linguistic minorities, provided that their languages are included in those in which these solutions are made available.

Chatbots (or 'conversational AI') represent important opportunities for accessing services, in particular, where such chatbots are available in minority languages (Sayers et al., op. cit.: 18). Anticipating questions

and responses of their counterpart, chatbots retrieve pre-compiled responses or carry out actions requested. As such, chatbots may be a cost-effective solution to cater to linguistic minorities in certain areas of public service, but may also be a viable addition to foreign language instruction. Finally, these technologies may be supplemented by speech to text or text to speech functions to accommodate persons with disabilities and impairments, facilitating data input and their translation into the required target language and/or modality. Technology in the area of speech technology is moving towards recognizing not only dialects, but context and emotional nuances of utterances (sarcasm, happiness, sadness etc.) (ibid: 20).

The language technologies referred to above promote access to essential public services, such as public service broadcasting, health care, public administration and education. As such, these technologies are an important contribution to the enforcement of fundamental rights of linguistic minorities, in particular, if these technologies are made freely available or are affordable to the members of these communities and are integrated in health care, education and public administration systems. Hence, the development of language technologies may be a vehicle for enforcing citizenship rights, working towards a democracy premised on participation and equal opportunities. At the same time language technologies also facilitate making use of further services provided by private undertakings, including but not limited to assisted living, private health care provision, private and corporate media services and private education etc.

Besides promoting participation of linguistic minorities on a near equal footing in social, political and economic life with majorities, language technologies may also serve to help protect and promote linguistic minorities' culture and language. The documentation of minority languages helps their preservation (Bird, 2020: 3505), as well as their processing and research, bolstering efforts at their revitalization through new technologies, such as new media (Eisenlohr, 2004: 25). While technologies such as television and radio were long considered triggers of language shift, automated subtitling ensures access in own language. The fact that (majority) language learning is not a must, since mediation takes place,

allows for the possible preservation of language and culture. Conversely, majorities will also have access to these minority cultures, helping build bridges between neighbouring and remote cultures, possibly enriching cultural life and forging mutual understanding.

Unequal Opportunities for Linguistic Minorities

While speakers of widely used languages such as English benefit from intensive research and development going into language technologies, ‘under resourced’ languages will yet again become disenfranchised in the human-machine era. Beyond the financial inequalities in access to new technologies, linguistic minorities will have different opportunities to benefit from emerging language technologies, depending on their headcount, linguistic proximity to ‘large’ or official languages, available resources and the volume of data sets in these languages.

The number of ‘speakers’ of a given language matters, since this underscores the relevance of such communities for investment and the potential number of future consumers of the language technology to be developed (Thomas et al., *op. cit.*: 24). Linguistic proximity plays a role in the quality of the translation and interpreting tools developed: linguistic distance affects the accuracy of mediation between languages (and cultures) in language technologies available to date (*ibid.* 58-59). The availability of resources, such as funds, time, as well as expertise and relevant data in a given language are also decisive for the successful development of language technologies. Finally, the volume of data sets (such as linguistic corpora, speech databases, electronic dictionaries), and in particular, the availability of translations from and to a given language are key. For example, multilingual jurisdictions such as the European Union or Canada provide ample data sets in their official languages and on the topics covered by their legislations, respectively. Meanwhile, minority languages rarely have sufficient data sets to enable the development of applications (*ibid.*).⁴ These factors will determine whether technologies will be developed for these languages and in what quality, resulting in a situation where the great dividing line is no longer between official – non-official languages, but between languages with access to new language technologies and those without. As the Mercator Centre’s study

put it: “the gap between language technology-rich communities and the rest will widen and widen. Languages in which people cannot interact with computers over the Internet will come to be considered inferior, pre-technological” (Thomas et al., op. cit.: 24). For linguistic minorities neglected by language technology development, this will mean a further cementing of their ‘secondary’ status in the social, political and economic fabric of society and a possible push towards language shift (Sayers et al., op. cit.: 11; Sayers & Láncoş, 2017: 42; Thomas et al., op. cit.: 25).

Thus, linguistic minorities will not be affected by the development of language technologies in the same way (Joshi et al. 2020). For example, while a linguistic minority of their state, certain language groups already benefit from the fact that their mother tongue is the official language in their kin-state, e.g. receiving cultural, political or economic opportunities from such state, or benefitting from the EU official language status of their native language (e.g. Hungarian) (ibid: 30; Láncoş, 2012: 95-96).⁵ Similarly, such linguistic minorities will see the advantages of the private or public investment made into the development of language technologies for these official languages.

Meanwhile, as early as 2000 the Mercator Centre highlighted with respect to the smaller and minority languages in the EU that

“a larger number of languages which lack the full array of language resources – linguistic corpora, electronic dictionaries etc. – are in danger of being excluded not from the Internet as it is now, but from many of the processes, including machine translation and other language processing functions, that will increasingly be carried out over the Internet. (...) The development of language technology and language resources for all European languages is therefore essential from the point of view of citizenship and equal opportunity in the information society” (Thomas et al., op. cit.: 5, 7).

The importance of language technology is echoed by Kaleimamoowahinekapu Galla, who stresses in her study on Hawaiian language revitalization,

“In spite of technological advancements and the proliferation of digital technology, many Indigenous peoples do not have equal and sustained access and infrastructure to digital technology

in comparison to the global world. It is quite difficult to imagine the survival of Indigenous languages without support from digital technologies, with their ability to record, preserve, analyse, manipulate and transmit languages in a myriad of ways” (Kaleimamoowahinekapu Galla, 2018: 100).

But as the LITHME forecast report underlines, even official languages may find themselves in a disenfranchised position, where the small number of speakers does not attract investment (e.g. Latvian) (Sayers et al., op. cit.: 9). Official languages’ dialects (e.g. Austro-Bavarian) or national varieties (e.g. Moroccan Arabic), or different registers for distinct speech groups or uses may be also disadvantaged. These may have no standard written spelling (e.g. Swiss German, varieties of Romani) (Thomas et al., op. cit.: 18) or only relatively small available data sets (e.g. so-called Low Resource African Languages) (K4all.org, 2021). Since language technologies currently rely on Natural Language Processing, most non-standard forms of language (and, as a corollary, most ‘speakers’ of these languages) are disenfranchised, since “language processing with such language as input suffers from low accuracy and high rates of errors” (Sayers et al., op. cit.: 8).

Finally, it is not only non-standardized languages that are disadvantaged in the process of language technology development. As of yet, solutions for signed and haptic languages have as of yet yielded poor results. ‘Smart gloves’ for example are still of poor quality, due to the fact that sign language does not merely consist of hand signals, but include facial gestures and body movements and posture (Quer & Steinbach, 2019: 2, 5), which such gloves cannot read. In addition, since signed and haptic languages have their own standard national versions (e.g. Slovak Sign Language) or varieties (e.g. depending on the deaf school or club attended) (ibid: 4), or are language-specific (e.g. French Braille) or even domain-specific (e.g. literary Braille, pharmaceutical Braille etc.), and the number of their ‘speakers’ is relatively low, developing technologies for these languages seems particularly slow, difficult and underfunded (Sayers et al., op. cit.: 13). Meanwhile, these linguistic minorities do not have the opportunity of modality shifting with the consequence of remaining disenfranchised.

Do Language Technologies Promote Assimilation and Cultural Appropriation?

A pertinent question arising in connection with linguistic minorities' increased participation in social, political and economic life is whether such tendencies may render them more amenable to assimilation and cultural appropriation. At this point however, the diversity of linguistic minorities and its all-embracing concept employed in this paper make it difficult to discuss the issues of assimilation and cultural appropriation from a general perspective.

In fact, linguistic minorities whose language is an official or majority language coded in a signed or haptic form are actually members of these majority cultures, possibly with their own particular cultures (e.g. deaf culture). Meanwhile, other linguistic minorities will access new cultures through the vehicle of language technologies, including the possibility of language learning, making cultural and linguistic assimilation and language shift possibly imminent. It is in these cases that policy decisions targeting the revitalization and preservation of under resourced minority languages are well placed to prevent language loss through, among others language technology intervention (Dooly, 2010).

Fears of cultural appropriation in connection with the digitalization of minority languages are also prevalent (Kaleimamoowahinekapu Galla op. cit.: 106). Making minority languages accessible through technology also makes the cultures such languages 'encode' accessible and, consequently, vulnerable to appropriation, allowing for the potential exploitation of minority communities. One example would be the traditional knowledge appropriated from minorities through access to their language and culture. As MacPherson explains, local communities hold important knowledge about their immediate environment encoded in their languages. Appropriating this knowledge for industrial and commercial purposes without sharing the benefits with such local communities would be a form of cultural appropriation through the vehicle of language facilitated by language technology. While political participation and access to justice boosted by language technologies may allay these threats, more research is needed on how to protect minority cultures in parallel with the empowerment of their individual members through the development of language technologies.

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Endnotes

- 1 Not all jurisdictions enshrine the official status of the language(s) they use in administration formally in law, e.g. the USA has no federal official language, and only certain States have codified the official status of English.
- 2 In *Ádám and Others v. Romania* (Application no. 81114/17 et al) the European Court of Human Rights considered the applications of students' belonging to the Hungarian minority alleging discrimination in the Romanian education system which required that students studying in their mother tongue take an additional two exams in Romanian language and literature to complete their baccalaureate (school leaving qualifications). The Court found that „the fact remains that pupils in the applicants' situation have to pass two more exams than pupils studying in Romanian. That is however the direct and inevitable consequence of the applicants' conscious and voluntary choice to study in a different language and the State offering them such an opportunity. In this connection, the Court observes that the law recognises a right but does not impose an obligation on pupils belonging to a national minority to study in their mother tongue (para 101).
- 3 1948 Universal Declaration of Human Rights (Article 2); 1966 International Covenant on Civil and Political Rights (Article 27); 1989 ILO Convention No. 169 on Indigenous and Tribal Peoples (Articles 28, 30); 1990 Copenhagen Declaration of the OSCE (points 32-34); 1992 UN General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Articles 1, 2, 4); 1992 European Charter for Regional or Minority Languages; 1995 Framework Convention for the Protection of National Minorities; 1998 Oslo Recommendations regarding the Linguistic Rights of National Minorities of the OSCE.
- 4 But even languages with millions of speakers but scarce data sets such as for example the African languages Wolof, Yoruba and Ewe are less amenable to developing language technologies, giving rise to a collaborative project with the ambition of building data sets to serve as resources for language processing tools (K4all.org).
- 5 It is worth mentioning however the early, 1996 LE-PAROLE Project funded by the EU, which aimed at building a large-scale harmonized set of corpora and lexica for EU languages. The project not only included selected official languages of the EU but also Catalan (Cordis.europa.eu).

THE LAW OF COEXISTING LANGUAGES EXAMINING THE QUARTET OF LANGUAGE POLICY FIELDS

Balázs Szabolcs Gerencsér

Abstract: This study examines the citizen-to-citizen and citizen-to-state relationship focusing on the use of different languages in society. According to the basic assumption, there is necessarily a kind of competition between the different languages spoken in one state, which determines the relations between the languages. The development and maintenance of peaceful coexistence between languages (thus social groups of different languages) is part of the protection function of the state. This study examines the four key points of intervention needed to develop appropriate language policy and legislation, which it summarizes as the “law of coexisting languages”.

Keywords: language rights, human rights, public administration, governance, language policy, USA, latinos

Competing Languages

Language is a particularly important medium for human communication. It conveys messages, makes connections. Yet it is more than just a channel of communication: it is a part of the personal identity. It is also suitable for defining ourselves and distinguishing others.

Borders of languages and countries typically differ from each other. If several languages are spoken within a country, the languages begin to interact with each other. A competition will evolve and as a result, we can discover differences: languages of many and of few, *lingua francas* and local languages, as well as surviving and extinct languages.

Approaching all this not from linguistics but from jurisprudence, we can see that all historical eras have raised the question of whether the legal and political system needs to reflect on the phenomenon of multilingualism. In the modern and postmodern age, we consider the state's so-called "defense function" (Patyi, 2017, 29.) to be important, by which the security of the society (in various respects) has received special attention by today.

However, what should the state do if its residents speak different languages? By making the use of a dominant language compulsory, it may only facilitate its own operation. On the other hand, the part of the population that does not speak the official language begins to be disadvantaged or subordinated.

A good and humanistic solution is therefore probably not in the direction of mandatory monolingualization. However, the state will need some legal or political response in order for the languages spoken in the country to coexist in peace, thus strengthening the security of the population - in physical, legal, economic and political terms.

In the following pages, I present one of the results of my empirical research in the Carpathian Basin (Gerencsér, 2015) and the United States of America (Gerencsér, 2019) in the field that seeks to answer the following question: what are the areas and points of intervention that promote the peaceful coexistence of the different languages spoken in a given country?

The Case of the Multilingual USA

The largest non-native English-speaking ethnic group in the United States is the Spanish-speaking Latino community. They make up 18.5% of the whole population (cca. 60 of 320 million) and their numbers are growing year by year.¹ Today, they have become a determining political and economic factor, it is inevitable to take into account their situation, whether it is in relation to voting, healthcare, education, the labour market or the protection of human rights.

To understand the US language policy we should state that the United States is a multilingual country. The linguistic diversity of its residents "is not an irregularity", but a fact. (Moleski, 1988, 29.) Another specificity

of the United States is that it is, at the same time, an English-dominated country, while other languages are also used in both the private and public spheres. One of the observations I concluded in my research that *it is a monolingual and multilingual country at the same time*. It is monolingual when we are speaking of the primary language (English) of public bodies, the bureaucracy, and all public service bodies, also used by the federal government and state governments. On the other hand it is also a multilingual country when the state wants to address its citizens whose mother tongue is not English and enables the use of public services in multiple languages, often without any normative authorization.

The literature classifies the languages that appear on this continent into three categories. (Moleski, 1988, 34)

- (i) The first group are the indigenous, *native languages*. Before the conquests, there was a great linguistic diversity on the North American continent. The Indian tribes developed their own languages and dialects which ebbed gradually away (irreversibly, as we can say today) as European settlers were conquering more and more territories. It is, therefore, not a coincidence that the *Native Language Act of 1990*² tried to protect and preserve the handful Indian languages with legal means. Such a statutory framework can, however, only slow down the process that resulted in the dramatic shrinking and relocation of the natives by the end of the 1800s, especially in the northern part of the USA.
- (ii) The second language category is that of the so-called *colonial languages*. These are the languages of the first settlers: Spanish, English, French, and German. Among them, English was dominant already at the founding of the United States. Its leading role was not really challenged during the history of the country either. Besides the four largest colonial languages, the relevant literature regards Russian, Swedish, and Dutch as belonging to the same type. (Wiley, 1998, 213) It is an interesting example, that the Amish population still speaks a specific dialect of Dutch even today.³
- (iii) Finally, the third category of the languages of the USA are the *languages of immigrants*. This category includes the languages of groups having been immigrating since the 19th century. The relevant academic

literature applies this class from the founding of the independent United States (1776). (Moleski 1988, 35.) Naturally, one cannot draw a sharp separating line between certain colonial and immigrant languages. An especially good example of this is Spanish, which clearly belongs to both categories.

Language Policy and Regulatory Assumptions

As we see, there are many languages in the United States and these developed or appeared on the North American continent at different times. From the three categories mentioned in the previous chapters, the native languages are the ones that developed organically in the North American continent. (Unlike the languages of colonies and immigrants.) These are the languages of the native Americans, which have drifted to the brink of disappearance by now; they, however, resemble most of the European minority languages to the extent that those are also languages with a long past, few speakers, and isolated. The European Union also tried to save lesser used languages⁴; however, the EU do not demonstrate such a commitment in this regard as the one we can see in the United States to the preservation of Indian languages and dialects. As regards all the measures and actions in connection with linguistic rights and the protection of language, the American law is only consistent in terms of native Indian languages; it declares the protection of these languages at a high level, and also specifies that on the lower level of execution. As regards all the other languages, legislation is encouraged rather by practical considerations such as social inclusion, the functioning of the democratic institutional framework or economic interests, and not the expressed protection of languages.

This also demonstrates that American law distinguishes between “protected languages” and other “minority languages”, or “heritage languages”. It provides stronger support to Indian languages; still, it reflects on the presence of languages other than English as well. The two categories are not separated by a straight and clear line, there are major overlaps in regulation.

In my study, I could still find proof of the fact that the American law is good and flexible in treating differences between the saving of the languages of native tribes and the Spanish needs of the Latinos.

I found regulations on the use of language by Latinos mainly in the administrative legislative corpus, i.e. among the lower levels of regulations concerning governance. This implies that the use of the Spanish language is to be investigated on the part of administrative bodies (agencies). I could also establish that the regulations on the Spanish language and the languages of immigrants primarily serves the normal integration of these minority groups.

When I examined the comparability or incomparability of European and U.S. linguistic laws, I discovered a new and complex approach in the regulation of minority languages, which I called “*the Law of Coexisting Languages*”. This can be the common ground to compare the legal regulations concerning language, and it also goes beyond the traditional approach of linguistic laws, because it is not a single field of law, but much rather a method of regularization which combines different approaches.

The Law of Coexisting Languages is not a “language law” that in some way identifies one or more languages and lays down a set of rules. Rather, a mixed set of legal norms and policy objectives that can adapt flexibly enough to societal changes. As each country considers its own characteristics when designing the legal environment of languages, we cannot talk about uniform models here either. In the following, I undertake to attempt to identify four areas that are crucial in defining the language policy of each country, highlighting the example of the United States as an illustration, but keeping in mind the known experiences of European countries too.

To ensure the stability of the theoretical model, I make two objective and one subjective presuppositions:

- (i) I regard the languages (minority languages) that are present and spoken in any country as *a matter of fact*. The existence of a minority language is not justified by the law or any decision of the state but by the fact that a precisely measurable, demonstrable, and definable community speaks a certain language. Both the language and the minority have objective criteria which are measurable. The protection under the law

should, therefore, adapt to the geographical, social, historical, and other characteristics of a given non-dominant language. The state must be aware of these conditions to properly determine the conditions for the peaceful coexistence of dominant and non-dominant languages. Strong social cohesion is a well-understood common interest of all states. Regulations facilitating peaceful coexistence regard the language as a resource and not as a problem. Needless to say, this is in connection with the mutual recognition of cultures as well.

- (ii) I place the Human Being in focus of regulation, who has both individual and social (political) characteristics. Furthermore, I view the person as a *citizen* not in isolation, but in his network of multiple relations.
- (iii) If we look at the development of minority law of the 20th century in either Europe or the USA, the mandatory monolingualism introduced from above can, from time to time, put the minority language in the background, but all such methods remain ineffective against the living languages. Similar to the subjective criteria of the minority identity (Heintze, 1997, 81), with regard to language use, we can state that there is a strong social cohesion force that must be taken into account by law, in other words: which language *want* to be spoken, it *will* be spoken. This is also supported by examples of still-alive small European minority languages (such as Frisian, Breton, or Middle and Eastern European minority languages).

The Complex Way of Thinking: Law of Coexisting Languages

As an outcome of all these, I have gained, using the method of comparative law, a complex approach in which I distinguish four factors underlying the development of proper linguistic policies and legal regulations. The four elements of the theory of the law of coexisting languages are the following. A good language-policy reflects the language as a matter of

- (i) Human Rights,
- (ii) functioning democratic institutional framework,
- (iii) way the governance and administration,

(iv) security policy.

- (i) Several factors need to be considered to develop sound regulations in the field of language law. We can regard the use of the mother tongue as a matter of *human rights*. In this connection we investigate the human rights status of the language and its relationship with other fundamental rights (Skutnabb-Kangas, 2012, 238–240).⁵

Language rights, also referred to as the right to own language, is a human right not recognized by international legislation today. Fundamental international law instruments on human rights do not expressly declare or refer to it. Although first line authors have made several efforts to recognize this right (Varennnes, 2012. Andrásy, 2012. Kontra et al 1999), it still remains to be a fact that no specific protection is provided for the use of own language in global international fora. (Gerencsér, 2015, 67.)

Great tension lies, however, in the fact that although the use of language is not a protected right in itself, most “interfaces” are protected. Freedom of speech, the right to education, to fair trial, to human dignity or to identity – just to mention a few examples – are all well-protected fundamental rights in themselves, and at the same time they concern spheres of life where language is a key factor. This, however, concerns, not “any language” but “the language” which the person has chosen to be the communication channel, and which he can use for his self-expression.

So the use of language has a direct human right aspect, while it also has a characteristic similarity to civil rights. The latter characteristics go beyond human rights: an example for this can be the language-sensitive employment of a native speaker public servant or a doctor with language competences, or the possibility of establishing special language educational facilities.

Exercising fundamental rights concerned with the use of own language, however, are often fragile. Now, let me bring here a European example to unfold what I mean. The case law of the European Court of Human Rights (ECtHR) may provide interesting experiences for us.

Although we are aware that the ECtHR is not a court established for the protection of minorities, even less it is a court aimed at language rights. The ECtHR examines cases violating provisions of the European Convention on Human Rights (ECHR) that, however, does not contain any provisions on the protection of minorities. Still, this case law is important for the interpretation of the pan-European protection of minorities and language rights (Kovács, 2004, 692-700.).

In the case law of the ECtHR the protection of minorities relates to the infringement of another human right. Accordingly, a minority or language right dimension can be discovered particularly in cases relating to some fundamental political right, social right, procedural right or anti-discrimination.⁶ The ECtHR often rejects those applications, which are based on minority rights and not on the ground of human rights.

All this means that the infringement of minority rights do not definitely result in the infringement of human rights, and the judgements of the court may serve the aim of protecting minority rights or language rights only in a secondary way.

On the other hand, if a human right is combined with use of languages (language right), it is *no more protected the same way*. Education of minorities is a good example for this phenomenon. It is not self-evident that a minority-language-student has equivalent right to access education as the majority student. This *internal conflict of human rights* has a significant negative impact on the vulnerable part of the societies and has to be solved.

Moria Paz, professor at the Stanford University has pointed out that international institutions devoted to protecting human rights, especially ECtHR or the United Nations Human Rights Committee do not provide universal protection for language rights, but similarly to the American model, they let the states decide about whether they recognize minority languages or not (Paz, 2014, 495.).⁷

It is particularly interesting that cases involving both the issue of use of language and fundamental rights have to pass a stricter test.⁸ This means that these international institutions give a narrower interpretation for

cases of fundamental rights with dimensions of use of language, while they use a wider interpretation for “ordinary” cases of fundamental rights in order to provide a wider protection for fundamental rights. The linguistic characteristics in this way nearly “undermines” the value of fundamental rights, and due to the non-universal recognition of the use of language fundamental right implications can be asserted in a more difficult way in such cases. So I agree with professor Fernand de Varennes, who is of the view that general human rights still need to be supplemented as far as language protection is concerned (de Varennes, 2012. 43-52).

The countries of Europe are in a special situation because the European Charter for Regional or Minority Languages (ECRML) ensures special protection for regional and minority languages, allowing a better follow up of language-protection systems.

- (ii) Language is also an important factor in the *functioning of democracy* and at the same time it is linked to fundamental rights through the universal suffrage. The United States is a good example for us, where the Spanish-speaking community has been a constant political target since the 1960s. The aim of the functioning of the democratic institutional system is to involve the citizens and to increase their political activity. An issue that has been on the agenda in the US since 1965 (Voting Rights Act) is the viability of a bilingual (English and Spanish) ballot paper.

Peter M. Tiersma, a former researcher at the Loyola University of Los Angeles, mentioned three groups of public services that are key for language groups. (Tiersma, 2012, 255-257) In his opinion, the states provide pretty few bilingual public services. There is, however, a group of public services in case of which federal competences are more accepting toward other languages (especially Spanish), so that they are easier to use for the citizens. The three most common public services or functions with bilingual components, in his opinion, are *public education*, *public health* (social administration), and *voting rights* (bilingual ballots).

The suggestion is therefore topical and direct: the use of the mother tongue must be ensured in areas where the quality of life of citizens (including political relations in the case of democracy) can

be directly supported. Moreover, the part of the population, which does not enjoy its democratic rights due to language barriers, has a political deficit, so there are several arguments in favour of their political integration.

All this includes the language of the local (municipal) bodies as well. If the community can conduct their local affairs in its own language (e.g., charring board meetings, making decisions), it can also serve social integration and political stability.

- (iii) The issue of the *language of the governance and public administration* is related to the preceding point. The prerequisite to proper, reliable, and efficient governance and administration is that the state is aware of the specificities of the languages used in its territory. The purpose of governance is to ensure the functioning of its inhabitant and the country, which is, due to the previously mentioned factual conditions, related to the language spoken by the citizens.

Laws regulating the peaceful coexistence of languages should, on the whole, consider the above four factors. In my opinion, any regulation concerning the law can be effective and proper if it serves the purpose that the individuals speaking the minority language can exercise their rights and fulfil their obligations like the citizens speaking the dominant language can do, and they can also take part in the functioning of democratic institutions, while their language and culture remain preserved.

States, for making public services equally accessible, must take into account the language competencies present in society and provide flexible access to the necessary interfaces (such as health care or education). An excellent tool for the legal regulation of all this is the ECRML, which promotes precisely this differentiated access.

- (iv) At last, language can be a matter of *security policy*. We do not need to go far for an example; during the events in Ukraine during 2014 and 2015, political instability was eventually a result of linguistic tensions. (Gerencsér, 2015, 153–154.) In the twentieth century, a bombing attack or other aggressive actions could also raise the

question if security in the majority of the West-European autonomous regions: South Tirol, Åland, the Basque Country, just to mention the most-known ones (Hannum, 1996, 263, 370, 432).

Establishing a legal environment, which encourages the peaceful coexistence of dominant and non-dominant languages is probably the most important task of legislation. This is fact that even the UN reflects on in the 47/135 declaration saying:

“Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live...”

Internal stability is a priority for all states, which is also served by the peaceful coexistence between different social groups. Proper regulation of language use and its integration into the legal system can be a tool to reduce potential social tensions and increase physical (and even military) security.

Conclusion: a Multipolar Approach to Peaceful Coexistence

The Human Being is both an individual and a communal being. Just as (i) human rights are due to their human nature, so (ii) their social and political relations are also decisive. As a citizen in his/her relations with the state (iii) she/he is a subject to the functioning of the state, on the other hand (iv) to the stability and security policy. Overall, therefore, the rules on the peaceful coexistence of languages should take these four factors into account. In my opinion, a language law regulation is effective and appropriate only if it serves the purpose of enabling persons speaking a minority language to exercise their rights (even at the local level) and fulfil their obligations in the same way as citizens who speak the dominant language - while preserving their language and culture.

European countries are in a special position in that the ECRML provides special protection for regional or minority languages, which makes language protection systems traceable. Looking at the language regimes of other continents, the Language Charter is really appreciated, which is becoming the key to European language protection (and linguistic research) today.

The multipolar approach explained above thus also facilitates a change of attitude, which no longer expects a solution from a rigid normative rule (language law), but looks at society and intervenes in a differentiated way - taking into account necessity and proportionality. Therefore it is able to establish law supporting the peaceful coexistence of languages.

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Endnotes

- 1 Data of August 2021 see US Census Bureau <https://www.census.gov/quickfacts/fact/table/US/PST045219>
- 2 25. USC 31. § 2910-2906.
- 3 The Amish belong to a Christian small church with Swiss German anabaptist roots. They are known for their close-to-nature lifestyle, strict internal rules, and outstanding quality artisan products. I had the chance to see it with my own eyes that the families living in Ohio still use their particular language of German and Dutch origin among themselves.
- 4 European Bureau for Lesser-Used Languages (EBLUL) 1982-2010. Though the network has been already wound up and replaced by a cooperation such as the European Language Equality Network (ELEN). <https://elen.ngo/>
- 5 SKUTNABB-KANGAS goes further saying we can distinguish internal (core) and external language rights, moreover, the collective character of the language rights also have to be underlined.
- 6 See, in particular: *Bideault v. France* No. 9106/80 (1998); *Conka v. Belgium* No. 51564/99 (2002); *Isop v. Austria* No. 808/60 (1962); *Zana v. Turkey* No. 18954/91 (1997); *23 inhabitants of Alsemberg and Beersel v. Belgium* 1474/62 (1963); case „Relating to Certain Aspects of the Laws on the use of languages in education in Belgium” v. Belgium Nr. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64 (1968); *Inhabitants of Les Fourons v. Belgium* 2209/64 (1974); *Roger Vanden Berghe v. Belgium* Nr. 2924/26 (1968); *Skender v. FYRM* Nr. 62059/00 (2001); *Fryske Nasjonale Partij and other v. the Netherlands* Nr. 11100/84 (1985); *Inhabitants of Leeuw-St. Pierre v. Belgium* Nr. 2333/64 (1965).
- 7 Moria Paz makes special reference to that the protection of languages is too expensive, which expenses are not borne by the states. Thus international organizations do not wish to allocate costs to states by setting up universal regimes for language protection.
- 8 In the *Diergaardt v. Namibia* case “the UN Human Rights Committee has confirmed that states cannot reject a request for the provision of services and information in a minority language if it is not well justified.” *Diergaardt v. Namibia* (No.760/1997), UN Doc. CCPR/C/69/D/760/1997 (2000).

