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European Integration and Minority Languages¹

Linguistic rights

States consider it just natural that their citizens understand each other, use the same language, and that there is a single language to provide for the cohesion of the political and social structure of the state in the fields of culture, education and public life.

Yet, one also has to face the fact that, in a given state, the dominant language, which is often given an exclusive official status by the force of the constitution, may not be the mother tongue of all citizens. For some, the dominant language is almost like an innate ability: they receive it as their mother tongue. On the other hand, others, like members of a linguistic minority, who, as equal citizens of the same state, ought to be endowed with the same rights and obligations, have to learn the dominant language as a foreign language. Exactly this difference is supposed to be overcome by also granting the members of minorities special linguistic rights under international law. However, the determination of the sphere of minority language use is, in many parts, still a major problem: is it enough to ensure language learning opportunities (e.g. limited number of language classes at school), or should they be granted extensive mother-tongue teaching and the use of minority languages in the administration and public life.

There is by no means consensus concerning (minority) rights related to language and language use. Some regard free language use as a universal right that every person is entitled to regardless of being a member of an indigenous minority in a given county or a recent immigrant. Furthermore, free language use have to be facilitated in all fields of life and in one's relations with the state administration (e.g. with the help of interpreters).² Others insist that linguistic rights are not absolute rights but belong among the rights of national and ethnic minorities. Therefore, they can only be interpreted in the context of minority-related sections of constitutional or international law and, accordingly, they are institutional rights (e.g. the running of schools with education in the minority language is required).³

¹ Edited version of the speech held at the meeting of Anyanyelvápolók Erdélyi Szövetsége (Transylvanian Association of Mother Tongue Cultivation) in Sepsiszentgyörgy on 24 January 2004.

² About this linguistic human rights approach see, for example T. Skutnabb-Kangas, *Linguistic Genocide in Education – Or Worldwide Diversity and Human Rights?* Mahwah (New Jersey), 2000, Lawrence Erlbaum.

³ For the more traditional institutional approach of international law see, for example F. De Varennes, *Language, Minorities and Human Rights*. The Hague, 1996, Martinus Nijhoff.

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However, both approaches entail a problem that goes beyond law: how can the legitimacy of minority language use be convincingly justified? Today, many theoreticians of the dominant liberal democracy find it difficult to justify it from several respects. Nobody calls in doubt that all have the right to talk in the language they prefer. But the question is: does the state have any obligations in this regard?

Focusing on the notions of social equality and justice, some argue that language, similar to religion, can only be one's private business in a liberal democracy. Just as all can exercise their religion freely, all are free to choose the language they use in their private life. Accordingly, the dominant or non-dominant status of the languages depends on the number of their speakers, their diffusion, and the power of the individual linguistic groups. Just as no denomination can complain for not having enough members, the number of the people speaking a language cannot be relevant for the state. For whatever happens, the state should stay neutral as regards its citizens' individual linguistic identity. However, in the time of modern nation states this argument can easily be refuted, as nobody can imagine a linguistically "neutral" state: it is essentially a political decision to choose language for the administrative, judicial or educational systems of a given state, with the selection of one language meaning, in turn, the non-selection of the other languages and their exclusion from state life. Certainly, not every language spoken in a country can be an official language at the same time, but the more official languages there are in a state, the more democratic it can be considered.

Yet, the number of democracies with more official languages is few. Apart from a few exceptions (e.g. Spain or Belgium), it is not a typical arrangement in Western Europe either. This phenomenon is usually explained with two contradicting arguments. According to the first, many believe that language use is, in reality, not an identity forming factor, but merely a means of communication. Therefore, if everybody speaks the same language, a state has better chances to be effective without having to renounce its deeper religious, ethnic, and national identity. It is then a logical result of the rules of numbers that the language of the majority ends up being the common language. However, if nothing else, the example of several minorities of our region clearly seems to disprove this approach: in many cases exactly language has an identity forming power and it is never merely a means of communication, a relay of the dialogues of speakers, but also the carrier of a culture, in this case, minority culture.

The second, often asserted argument is based on the assumption that goes right in the face of monolingual states: according to it, national identity is based on language and, in the age of nation states, nothing else but the knowledge, the use, and the adoption of a state forming nation's language can serve as a measure of loyalty to the country. For example, John Stuart Mill regards all efforts aiming at establishing monolinguality in a state as expressly useful and state-strengthening phenomena. The loyalty toward the state can be primarily ensured through the adoption of the language and culture of the state, so the preservation of minority languages and identities is dangerous and can bring about the dissolution of the state.

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These arguments are probably well-known to everybody, based on experiences in everyday life. So how can the right to minority language use be then justified with liberal arguments? Kymlicka, the renowned Canadian philosopher, rather convincingly, returns to the roots of liberal democracy in answering this, and asks: what makes a society just and what makes the members of society equal? He answers by giving an interpretation of real social equality.⁴ As opposed to formal equality (proclaimed as law-based and neutral), one can only talk about real equality when people can enjoy the rights they are entitled to as citizens within their very own social and national culture. Accordingly, the state institutions and policies have to reflect the features of society and, should society be multilingual, the state should reflect this and be multilingual as well. Naturally, not every single language spoken in a country can be asserted – but it is certainly not imminent that this should happen.

Within society, a linguistic minority community preserves its unique culture and language as long as it is able to. Examples prove that certain languages and linguistic communities wane, disappear, and assimilate even without outside coercion. This means that if, for example, a community lives too scattered, in smaller groups and, given its numbers, cannot ensure its own linguistic reserves in the educational and administrative institutions by not meeting the personnel needs the operation of these institutions requires, they would probably fall back on the majority language having lost the community advantage of the minority language. Yet, by providing for the institutional system, the state should make certain that all linguistic communities have equal opportunities irrespective of their size and proportion. The state must guarantee that educational, administrative, cultural, political, or judicial institutions are run in the mother tongue in the case of every linguistic community that is able to perform the tasks involved in its own language.

There can only be true equality among citizens regarding their language use if no person has to learn a language other than his or her mother tongue in order to exercise his or her fundamental rights as a citizen. This is natural for the state-forming majority, but those speaking a minority language are also entitled to this right.

Certainly, putting this in practice is not easy and the realisation may require different solutions in different states, but, evidently, it is not impossible either.

In the light of the argument above, what can be said about the international recognition of minority language use in Europe? To what extent do international minority protection initiatives reflect the notion of equality? Despite our tentative hopes, we will see that rather little.

The European Charter for Regional or Minority Languages is the most important document with respect to the international recognition of minority languages. The protection of minority languages came up at the Council of Europe as early as 1983,

⁴ See, for example, W. Kymlicka, *Multicultural Citizenship*. Oxford, 1995, Oxford University Press. On language use, see W. Kymlicka – F. Grin, 'Assessing the Politics of Diversity in Transition Countries' in: F. Daftary – F. Grin (eds.), *Nation-Building, Ethnicity and Language Politics in Transition Countries*. Budapest, 2003, LGI/ECMI. pp. 8–15.

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but the international document to pronounce this, the European Charter for Regional or Minority Languages (hereinafter Charter), was only adopted in 1992. Following its adoption, however, in lack of the necessary number of signatories, it could not enter into force until 1 March 1998. In any case, thanks to its diffusion and recognition today, it has become a document of major importance. (Despite that 13 of the 30 signatory states have not yet ratified it and integrated it in their national legislation.)⁵

Interestingly enough, the Charter started out not from the presupposition of linguistic equality, but from the fact that the disappearance of smaller languages may jeopardize the cultural heritage of Europe. It is a fact that non-official languages have ended up on the verge of extinction, in part due to government policies of assimilation or the indifference of the state and, in part, as the Explanatory Report says, due “to the inevitably standardising influence of modern civilisation and especially of the mass media”.⁶ Therefore, the Charter, as opposed to other international minority protection documents adopted by the Council of Europe and OSCE⁷, aims not at protecting the minority (in this case, linguistic minority), but seeks to protect and promote regional or minority languages. Having regard to the sensitivity of states the recognition of the value of minority languages manages not to declare that minority languages entail a minority community and, beyond the language, other politically sensitive (e.g. national) identity differences in a given country.⁸

The prevailing idea of the Charter is that regional or minority languages should be protected according to their rightful place with respect to the cultural function of language and in the spirit of multilingualism and multiculturalism.

The Charter is made up of three parts. The first includes general provisions, such as the definition of regional or minority language. The second enumerates the “objectives and principles” of the Charter, which are equally binding to all signatory states. The third part enumerates the measures undertaken broken down to specific activities in language use.

Yet, the power of the specific provisions of the Charter diminishes in the light of two factors: the “right to choose” from among the undertakings (the states, under certain conditions, can define which provisions they believe to be binding in their case), and the strong presence of flexible rules that expand the scope for action of the states.

⁵ E.T.S. No. 148. See at: The Treaty Office of the Council of Europe <<http://www.conventions.coe.int>>

⁶ Explanatory Report to the Charter (hereinafter: Explanatory Report) Section 2. See at: <http://www.coe.int/T/E/Legal_Affairs/Local_and_regional_Democracy/Regional_or_Minority_languages/>

⁷ Organization for Security and Co-operation in Europe – prior to 1994, Conference on Security and Cooperation in Europe (CSCE). With respect to linguistic rights, Articles 32.1 and 34 of the Document Of The Copenhagen Meeting Of The Conference On The Human Dimension Of The CSCE (1990) are of utmost importance. For other OSCE minority protection documents, see Majtényi B. – Vizi B. (eds.), *A kisebbségi jogok nemzetközi okmányai* [International Documents on Minority Rights]. Budapest, 2003, Gondolat Kiadó-MTA Kisebbségkutató Intézet. pp. 189–211.

⁸ On the importance of minority attributes cf.: P. R. Brass, *Ethnicity and Nationalism: Theory and Comparison*. New Delhi, 1991, Sage. pp. 11–41.

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The “as far as reasonably possible” and the “number considered sufficient” expressions occur among the specific provisions of the Charter on several occasions. They grant considerable freedom to the states in deciding what kind of measures they take with respect to minorities, and what minority demands they wish to recognise concerning language use.

Similar to most international minority protection documents, the implementation of the obligations undertaken by the states under the Charter is not complemented by an international court or any forcing and legally sanctioning mechanism. Therefore, states can only be called upon to account for the implementation on a political level at the most.

The significance of the Charter lies in the fact that it looks at the minority issue in a creative way; the spirit and wording of the Charter seeks to respect the fears of the states regarding the impairment of their territorial sovereignty and yet ensure proper protection and assistance to language use, one of the most essential elements of minority identity. The whole approach of the Charter aims at a balanced development of relations between speakers of majority and minority languages. It seeks to help the speakers of regional and minority languages integrate into majority society in a way that they also retain their own language during this process. However, as the Charter gives considerable freedom to the signatory states regarding the implementation of its provisions, it could not produce a breakthrough: those states seem to be more generous in their undertakings who have already been effectively promoting the protection of the rights of their minorities in their rules of law anyway.

Nevertheless, the Charter may assume special political significance, given that its approach to regional or minority languages is much in tune with that of similar initiatives within the European Union. One of the major challenges the EU faces is finding a balance between its scope of authority and the sovereignty of its member states (national sovereignty). With eastern enlargement, dealing with linguistic and cultural variety has only become more pressing. Before the enlargement 50 linguistic minorities lived within the EU and their number doubled afterwards.⁹ The scope of authority of the European Union, as we will see, continues to expand in the fields of cultural policies and the protection of human rights. Furthermore, several resolutions have already been adopted by the European Parliament to secure EU assistance to minority languages (even if most of these initiatives have not actually been turned into specific measures).¹⁰ Every such initiative has strug-

⁹ Cf.: <<http://www.eblul.org>>

¹⁰ There is one outstanding among the minority protection related resolutions of the European Parliament, the one tabled by MEP Gaetano Arfé, and also known as Arfé Resolution: “Community charter of regional languages and cultures and on a Charter of rights of ethnic minorities”, adopted on 16 October 1981, OJ 1981 No. C 287, p. 106.; “Resolution of the European Parliament On measures in favour of minority languages and cultures”, adopted on 11 February 1983, OJ 1983 No. C 68/103.; “Resolution on the languages and cultures of regional and ethnic minorities”, adopted on 30 October 1987, OJ No. C 318, p. 160.; and “Resolution on linguistic and cultural minorities in the European Community”, adopted in 1994, OJ 1994 No. C 61, p. 110.

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gled with the problem of formulating the responsibility towards minorities given that certain member states (e.g. Greece and France) refuse to recognise that national, ethnic, or linguistic minorities live in their territory.

At the same time, enlargement also revealed that the problems of minorities can influence European integration. Therefore, it is a major achievement that we have an international document today aiming at preserving the linguistic diversity of Europe and that it has also been adopted by the majority of the older, and, in the case of certain countries, under the pressure of the EU, most of the new member states as well. With respect to a more effective enforcement of the Charter, it can foreshadow some progress that, together with the Charter, the minority protection initiatives adopted by the EU also concentrate on the use and preservation of *minority languages*.

On EU policies that also affect minorities

The minority policy approach of the EU is ambivalent in several respects: even though the EU has been paying special attention at pronouncing its unity in cultural, linguistic, and regional diversity since the adoption of the Treaty on European Union in Maastricht in 1992, in practice it is difficult to assess as to what extent the policies of Brussels can prevail over the policies of the member states in questions related to linguistic minorities.

Since Community law makes no mention of minorities, the anti-discrimination policy of the EU is especially important from the point of view of the minorities living in its member states. The prohibition of disadvantageous discrimination gives rise to freedom and equal opportunities at the labour market in accordance with the economic principles of the EU and, at the same time, entails the extension of social rights. Accordingly, the Council was under great pressure to introduce an anti-discrimination clause. This came about in the Amsterdam Treaty, which entered into force on 1 May 1999. Article 13 authorises the Council to “take appropriate action to combat discrimination based on sex, racial or *ethnic origin*, *religion* or belief, disability, age or sexual orientation” [italics by the author]. It is worthy to note that discrimination based on one’s belonging to a linguistic community does not figure in the enumeration above even though linguistic minority communities that often suffer disadvantageous discrimination as regards their language use and acquisition of their mother tongue, live in great numbers in the member states of the EU.¹¹

¹¹ Cf.: *EUROMOSAIC Report*, Brussels, OOPEC, ISBN 92–827–5512–6. Nevertheless, it proves the significance of Article 13 that the Commission submitted an anti-discrimination package to the European Parliament in 1999 aiming at elaborating three Council directives. One of these, the Racial Equality Directive, focuses on discrimination based on racial or ethnic origin. It is to note that the Directive sets out that “The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular racial or ethnic origin.” (Article 17) This means that positive discrimination applied to protect the rights of minorities does not infringe the individual’s right to equal treatment.

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At the same time, the Charter of fundamental rights of the European Union, adopted in 2000 and inserted in the constitution of the European Union, explicitly promotes the cultural and linguistic diversity of the member states. Its Article 22 sets out that “the Union shall respect cultural, religious and linguistic diversity.”¹²

Minority languages and linguistic minorities

Within the EU one is likely to find the most auspicious actions with respect to the linguistic rights of minorities (more exactly, with respect to minority languages).

In the field of cultural policy, the EU has a complementary jurisdiction with respect to the member states, that is, it can effectuate community measures in matters not regulated by the member states. Article 151 of the Amsterdam Treaty calls upon the Community to “contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity”. The Article also states that the “Community shall take cultural aspects into account in its action under other provisions of this Treaty.” Yet, many are very critical about what this actually mean in practice and implementation, and many argue that the respect for cultural diversity does not obviously involve the respect for minority cultures.¹³ In any case, it is important to note that presenting multicultural Europe as a value politically can also have a positive effect on minorities.

As regards culture, several programmes have been launched (in part, prior to Maastricht), which, among others, provide financial assistance to research related to minority language and educational and translation projects that seek to preserve and develop these languages.¹⁴

However, language and language use in present-day Europe have not only cultural but also considerable social and economic significance. The relative weakening of the states and the corresponding strengthening of the role of individuals and organisations in this field may render the Community-level regulation of issues regarding language use especially important.

Some believe that the failure of previous minority protection measures of the EU is due not simply to the lack of political will but to an underlying indifference: as regards the essence of the EU, which is economic integration, it makes no differ-

¹² For an analysis of the Article and the Charter’s further possible relevance to minority protection, see Schwellnus, Guido, “*Much ado about nothing?*” *Minority Protection and the EU Charter of Fundamental Rights*. Constitutional Web-Papers, ConWEB No. 5/2001. <<http://es1.man.ac.uk/conweb>>

¹³ Cf.: Biscoe, *op. cit.* pp. 92–93. For more on the role of culture in integration, see Mitsilegas, Valamis, Culture in the Evolution of European Law: Panacea in the Quest for Identity? In: Bergeron, J. H. – Fitzpatrick, P. (eds.), *Europe’s Other: European Law Between Modernity and Postmodernity*. Dartmouth, 1998, Ashgate. pp. 111–129., and De Witte, Bruno, The Cultural Dimension of Community Law. In: *Collected Courses of the Academy of European Law*, 1995. Vol. 4. Book 1. pp. 229–299.

¹⁴ CULTURE 2000 Programme provides the context. It brings together ARIANE, which encouraged book publishing and especially translations, RAPHAEL, which promoted the protection of European cultural heritage, and KALEIDOSCOPE, which assisted co-operation between countries in the fields of art and culture. http://www.europa.eu.int/comm/culture/eac/c2000-index_en.html

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ence what language one uses. As opposed to this, it is not to be forgotten that local communities are more directly connected to the EU's market networks today when communication has assumed new heights of importance. As, for example, the 1996 *Euromosaic* study¹⁵ indicated, economic relations do affect language use and this set limits especially to the chances of survival of endangered minority and regional languages. Since member states are not able any more to eliminate the unfavourable consequences of an ever deepening integration on their own, the intervention of the top economic regulator in this field, the EU, is not merely a question of good will but that of legal responsibility (if we take the preservation of linguistic and cultural diversity seriously).

Besides, the implementation of the *acquis communautaire* have certain "side effects" that, in the life of the people, are of utmost importance. It is anything but of no consequence in this field, i.e. culture, where community policies and those of the member states complement each other, how the objectives of the EU get across in the policies of the member states. Not every member state has reached the point where it would extend the responsibility of the promotion of regional and cultural diversity to include national or linguistic minorities. Although this issue has already made it into the political parlance of the EU institutions, it is still difficult to say what specific instruments will be used in the end despite the EU's shortcomings of legitimacy and democracy.¹⁶

Despite several initiatives – such as the establishment of the European Bureau for Lesser Used Languages (EBLUL) under the financial assistance of the European Commission, or the launching of research and educational programmes, e.g. MERCATOR, which deals with the use of minority languages, or the *Euromosaic* study on the situation of linguistic minorities in the EU –, the EU institutions do not expressly stand up for the use of minority languages.

The basic problem present with respect to minority languages corresponds to the insecurity present in the operation of the European Union: where is the EU heading, what will the future of integration bring? Considering that the development of a superstate, a European federation, is rather unlikely even in the long run, the fundamental question persists: what will fall under the scope of integration and what will remain under the member states' sovereignty. At present, the sharing of powers between the EU and the member states in the field of cultural and linguistic policies results not in effective and clear, but rather incoherent efforts. Although over decade has passed since the Maastricht Treaty introduced shared powers in cultural policies, EU initiatives in this field are rare and still strike one as novelties. The Commission points to the principle of subsidiarity,

¹⁵ European Commission, *Euromosaic: The Production and Reproduction of the Minority Language Groups in the European Union*. (Luxembourg, Office for Official Publications of the European Communities, 1996)

¹⁶ Niamh Nic Shuibhne, *EC Law and Minority Language Policy*. The Hague, 2002, Kluwer Law International. pp. 33–60.

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while member states are happy to retain control over the majority of cultural and linguistic policies. This, however, is nothing more but political division, since the EU bodies would have the right under law to intervene more effectively.

Similarly, although it would be possible to extend the rights related to EU citizenship without fundamentally modifying the institution of national citizenship, the efforts aiming at this have not succeeded so far. Although the interests of integration would require the EU institutions to take action for the promotion of linguistic diversity wherever they have a chance to do so, it is clear that member states are able to assert their political will successfully even against the interests and objectives of integration and, their promoters, the Commission and Parliament that are to promote and represent these interests and objectives.

It is not by chance that the argument went slightly off track after the introduction on linguistic rights. The Linguistic Charter of the Council of Europe and the ambiguous position of the EU on the language use of minorities clearly reflect a state-centric model. This might even be considered natural.

However, this has an important consequence: in an international context, the promotion of the use of minority languages falls under consideration not based on the equality of citizens but, at best, on cultural diversity. And this is a great difference. The realisation of the effective equality of citizens is a fundamental and inviolable principle of modern democracies. If this, according to the above, were unambiguously extended to language use, it would ensure a multilingual institutional system in every state that considers itself a democratic state. As against this, the notion of linguistic diversity seems to reflect the opinion that minority languages deserve respect and protection as any other cultural field, e.g. as archaeological finds or folklore. In this respect, it is up to the states in which fields of life they guarantee this respect and protection to linguistic minorities. Naturally, it is indisputable that the persecution and the prohibition of minority languages would be unacceptable in the eyes of international public opinion today and, considering the experiences of the past century, this is a considerable achievement in itself. However, the rights associated with the language use of minorities are far from being at the place they deserve: among the constitutional guarantees that ensure effective equality among citizens.