Linguistic Rights in Education

Country reports

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1. HISTORICAL BACKGROUND

Belgium is situated at the border of the Romance and Germanic cultures. After the fall of the Roman Empire, the Frankish Empire had a Germanic language region in the North and a Roman language region in the South with the breakline going through present day Belgium.

French became the lingua franca in Europe from the 17th century onwards. It was increasingly used in the administration and courts in Flanders. The French revolution of 1789 originally considered that the State should address the people in their own language. From 1794 on however, in order to avoid disintegration, minority languages had to make place for uniformity. France annexed the territory of present-day Belgium in 1795. Until 1803 no central linguistic legislation was enacted till Napoleon made the use of French obligatory for administrative and official acts.

In 1815 present-day Belgium became part of the Netherlands. Dutch was spoken by 75 percent of the population and was the official language. Although French was not an official language, it continued to be used in the southern provinces of present day Belgium.

After the Belgian Revolution in 1830, the Constitution stated that: ‘The use of languages spoken in Belgium is free; only the law can rule on this matter, and only for acts of the public authorities and in judicial matters’, and that ‘all Belgians are equal before the law’. However, the administrative authorities spoke and used only French because officials and magistrates had the constitutional right to use French exclusively which in practice resulted in the denial of linguistic rights of Dutch-speakers which were in a numerical majority but barely represented in the state organs. Only in 1873 the law on the use of languages in administrative matters, in 1878 the law on the use of languages in criminal procedures, in 1883 the law on the use of languages in education introduced official bilingualism (French and Dutch) in Flanders. The southern French speaking provinces remained monolingually French. The law of 1898 recognised the official equality of French and Dutch in matters of national legislation. In practice, knowledge of French was necessary for professional advancement.

In 1923 Dutch became the teaching language at the University of Gent (in Flanders) but a percentage of the courses had to be taught in French. It was only by law of 5 April 1930 that Dutch became the only official language at the University of Ghent and that the Flemish got their own university.

In 1954, language facilities were introduced for the French-speaking minority in four previously unilingual Flemish municipalities (Drogenbos, Kraainem, Wemmel, Linkebeek). Municipalities with linguistic facilities are municipalities with legal provisions to protect the rights of the (Flemish, French or German) linguistic minority.

In 1963 Brussels was recognised bilingual French-Dutch. In 1830 more or less 85 percent of the Brussels population was Dutch-speaking. But with French the language of the government, the courts, culture, the media and education, Frenchification (the shift from Dutch to French among the local Flemish residents) took place over several generations. During the second half of the 20th century, Frenchification of Dutch speakers ceased with Flanders prospering economically and Dutch regaining its prestige, while Brussels became an increasingly international city, and this internationalization brought an influx of (mainly French speaking) foreign immigrants. In 2011 only around 15 percent is still Dutch-speaking.

In 1970, the Constitution was reformed. Article 4 states that Belgium comprises four linguistic regions: the Flemish-speaking region, the French-speaking region, the bilingual region of Brussels-Capital and the German-speaking region. Each municipality of the Kingdom forms part of one of these linguistic regions. The boundaries of the four linguistic regions can only be changed or corrected by a law passed by a majority of the votes cast in each linguistic group in each House, on condition that a majority of the members of each group is present and provided that the total number of votes in favour that are cast in the two linguistic groups is equal to at least two thirds of the votes cast.

French further proceeds in the suburbs around Brussels, which is called the Brussels ‘oil-stain’ in Flanders and Frenchification of municipalities in Flanders. Notwithstanding the constitutional principle of territoriality, French speakers in the Flemish suburbs around Brussels require these municipalities to join the bilingual Brussels-Capital region.

2. LINGUISTIC REGIONALISM IN BELGIUM

2.1. General introduction

The Constitutional reform of 1970 introduced the territoriality-principle in Belgium. The Flemish, the French and the German communities became competent for education in their region. Linguistic regionalism means that in principle regional and local authorities, including schools, in the Flemish Community, the French Community and in the German Community use the language of the region exclusively. Brussels is the only region recognised as bilingual French-Dutch. The territoriality principle is softened in 27 municipalities with language facilities, where national, regional and local administrations are obliged to speak the language, in which they are addressed by a citizen. In bilingual Brussels-Capital, the French Community is competent with regard to French-language schools, and the Flemish Community for the Flemish-language schools. Parents inhabitants of Brussels can freely choose to send their children to Flemish- or French-speaking schools, which means that the parents choose whether they are subjected to the laws of the Flemish or the French Community.
In the Belgian Linguistic Case, the European Court accepted the public interest to ensure that all schools financed by the State and located in a monolingual region use the regional language in education.

2.2. Applicable norms and laws

The law of 30 July 1963 on the use of languages in education (hereinafter: the Education Language Law) covers compulsory education (pre-primary, primary and secondary education). Also the use of language in post-compulsory education, is regulated by law. The decree of 4 April 2003 on the restructuring of higher education in Flanders describes the use of language in colleges and universities. Article 127, § 1, 1, 2° of the Constitution regulates the competencies in education. Article 129, § 1, 1, 2°, of the Constitution regulates the use of language in education. The territorial scope of both decrees are different.

Under Article 127 § 2 of the Constitution, the decrees of the communities on education have the force of law in the Flemish, French, and the German communities. In principle schools as well as regional and local authorities in the Flemish region, in the French speaking region and in the tiny German region use exclusively the language of the region.

In the bilingual region of Brussels-Capital, the decrees on education have the force of law with respect to the institutions that - depending on their activities - must be regarded as belonging exclusively to one of the communities.

The main exception are the municipalities with language facilities in the Flemish and French communities. The Constitution stipulates that the provisions on the use of languages in municipalities with language facilities can only be changed by a federal law adopted by a special majority.

Also the use of languages in municipalities with language facilities in bilingual Brussels-Capital, is - according to Article 129 § 2 of the Constitution - regulated by federal law only.

3. THE FLEMISH COMMUNITY

3.1. Foreign language education in primary education

The Law on language in education requires schools in the bilingual Brussels-Capital, the municipalities with language facilities other than those in the Brussels' suburbs and schools in the German-speaking Community, to teach the second language three hours per week in the second grade and five hours per week in the third and fourth grade.

Since the first of September 2004, Flemish primary schools in the municipalities without language facilities and in the schools located in 6 municipalities with language facilities of the suburbs of Brussels Capital are obliged to teach French in Flemish primary schools in the fifth and sixth grade.

In addition, all primary schools under the jurisdiction of the Flemish Community - including the schools in bilingual Brussels-Capital and the municipalities with language facilities - are allowed to offer initiation in a foreign language. If a school makes use of this right, the French language is the first language to be taught.

Foreign languages other than French are possible if more than one foreign language (French) is taught.

3.2. Education in the mother tongue and culture of the country of origin

Article 3 of the Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers states: ‘Member States shall, in accordance with their national circumstances and legal systems, and in cooperation with States of origin, take appropriate measures to promote, in coordination with normal education, teaching of the mother tongue and culture of the country of origin for the children referred to in Article 1’.

A number of Flemish schools, especially in Brussels, is conducting for some time experiments with teaching of the mother tongue and culture of the country of origin. It includes two systems: one system consists of up to 20% of the classes for teaching in the mother tongue. The other bi-cultural system consists of an active promoting of bilingualism with courses up to 50% in Dutch and in the ethnic minority language.

Teaching of the mother tongue and culture of the country of origin is only possible for those students with another native language than Dutch. The children participating in the project are studying in Flemish schools. They follow the regular curriculum in Dutch but receive additional support in their native language. This presupposes a sufficiently large group of pupils with another mother tongue and an additional program to be delivered by other teachers than the regular ones, and who are not financed or subsidized by the regular education budget of the Flemish Community. The main groups are Turkish, Spanish and Italian. In May 2011, the Minister of Education of the Flemish Community announced that he will stop these experiments.

Apart from teaching of the mother tongue and culture of the country of origin, the Flemish government has introduced support measures for non-native language speakers to learn the language of instruction. This includes additional teaching hours, mentoring and support for non-native language speakers.

4. THE FRENCH COMMUNITY

4.1. Foreign language instruction in de French Community
4.2. Immersion in schools of the French Community

In 1998 the French Community legislated the possibility to teach foreign languages in primary and secondary education through immersion. Immersion is an opportunity for schools, it is not an obligation. Schools ask the French Community permission to organize immersion education. The majority of schools offer immersion as a choice for students, alongside the traditional French courses. However, the decree makes it possible for schools to offer exclusively immersion course. About a hundred schools provide immersion education in the French Community.

Immersion means that some of the lessons of the curriculum are taught in the immersion language. From the age of 5 to the end of the second year of primary education, classes in the immersion language can be organized for at least 1/2 and maximum 3/4 of the timetable. From the third to the sixth year of primary education, this is at least 1/4 and maximum 2/3. In secondary education it can be maximum 1/4.

In the municipalities without language facilities in the French Community, the immersion language can be Dutch, German or English. In the municipalities with language facilities including municipalities with language facilities along the linguistic border of the Flemish Community, but also in the municipalities of Malmedy and Waismes, where German speakers enjoy language facilities, and in bilingual Brussels-Capital, only Dutch qualifies as immersion language.

Sign language can also be immersion education.

The organization of immersion education could constitute a constitutional problem. The Decree of 13 July 1998 that introduced the possibility of immersion education, assumed that this was an educational issue and not a language issue. Since the system of immersion allows schools to organise a majority of classes in a language other than the language of the community, it should have been regulated by the federal legislature and not by the government of the French Community for bilingual Brussels-Capital and for the municipalities with language facilities.

5. BILINGUAL BRUSSELS-CAPITAL

5.1. Foreign language education in bilingual Brussels-Capital

First foreign language teaching in bilingual Brussels-Capital is compulsory. This implies that the communities cannot unilaterally change the first foreign language education, which is Dutch for French-speaking schools, and French for Dutch-speaking schools.

5.2. Rehearsal classes

According to article 10 of the Education Language Law, foreign language teaching in the municipalities with language facilities in bilingual Brussels-Capital can include other courses of the curriculum. Some Flemish schools in bilingual Brussels-Capital can make use of this opportunity for organising rehearsal lessons in another language in Dutch-speaking schools in Brussels.

6. EXCEPTIONS: MUNICIPALITIES WITH LANGUAGE FACILITIES IN THE FLEMISH AND FRENCH COMMUNITIES AND IN THE SUBURBS OF BILINGUAL BRUSSELS-CAPITAL AND THE ESTABLISHMENT OF MINORITY SCHOOLS

In municipalities with language facilities the territoriality principle is softened and national, regional and local administrations are obliged to speak the language, in which they are addressed by a citizen. Only in the municipalities with language facilities, can schools using another language than the language of the region be established.

The Flemish (Dutch language) Community has 9 French-speaking primary schools established in the municipalities with language facilities. In the French language region there is only one Flemish primary school in the municipality Komen.

Article 6 of the Education Language Law regulates the situation in the municipalities with language facilities that provide education in the other official language of Belgium, which is however not the official language of that region. These schools were intended only for those children whose mother tongue is not the language of that region. The region is obliged to open a minority school in the other official language of Belgium, which is not the official language of that region, when sixteen heads of families in a municipality with language facilities request the opening of a minority school.

The language law provides for studying the language of the region in the so-called minority schools in municipalities with language facilities. The language of the region should be taught four hours per week in the second degree and eight hours per week in the third and fourth grade. The purpose is to teach the language of the region so that students are prepared after completing their secondary education to speak the language of the region they are living in.

In addition to the Education Language Law, minority schools in municipalities with language facilities are regulated by the law of 18 July 1966 on the use of languages in administration. That law applies to the administration of the school authorities of both public and private state funded schools. Private non-state funded schools are not subjected to the Belgian language laws.

In case 65/2006 of 3 May 2006, the Constitutional Court stated that the law on the use of languages in administration should be applied on teaching staff of the French schools in the municipalities with facilities in the suburbs of Brussels-Capital. The claim of the French
Community that freedom of education and freedom of speech would be violated, was rejected by the court. Article 4 of the Constitution states that ‘the language facilities do not affect the fundamental character of the monolingual Flemish-speaking region, which includes the suburbs’. This has important implications for the language requirements of the staff of the French-speaking schools in the municipalities with language facilities in the Flemish region. According to Article 14 of the Education Language Law personnel in these schools should demonstrate sufficient knowledge of Dutch. According to Article 27 of the law on the use of languages in administration, no person can be appointed in the schools located in the municipalities with language facilities in the suburbs of Brussels-Capital without sufficient knowledge of the Dutch language. The Constitutional Court explicitly states that all members of the teaching staff of these schools should have knowledge of Dutch to enable them to fulfil their obligations regarding the use of languages in administration, and not only the teachers of Dutch language.

The Flemish Community subsidizes 10 French-speaking minority schools in the Flemish Community. The Flemish school in Komen, which is a municipality with language facilities in the French-speaking Community, is contrary to what one should expect, not funded by the French Community but also by the Flemish Community. In 1979 the applications for the establishment of a Flemish primary school in Komen caused so much commotion that the French Minister of Education established the school in 1980 to close it again a year later. The Flemish Minister of Education decided to pre-finance the school and to ask reimbursement by the French Ministry of education, which – till today – was never made.

As stated above, the French speaking schools located in the municipalities with facilities in the suburbs of Brussels-Capital are fully financed by the Flemish Community. According to the decree of the Flemish Community, Flemish inspectors would have the authority to control the schools fully financed by the Flemish Community. In case 124/2010 of 28 October 2010, the Constitutional Court ruled that the decree of the Flemish Community on the inspection of the fully financed by the Flemish Community but French speaking schools located in the municipalities with facilities in the suburbs of Brussels Capital violated the Constitutional division of competences. In its ruling the Court stated that there is a lack of transitional period during which the French-speaking schools in the Flemish Community could request an exemption to apply the curricula of the French Community (in order to be funded by the Flemish Community, the school has to conform with the curricula of the Flemish Community except if the Flemish Government grants an exception). As a consequence, the inspection of the French speaking schools fully financed by the Flemish Community located in the municipalities with facilities in the suburbs of Brussels Capital remains in the hand of the French Community.

7. DEVELOPMENTS

In the Belgian Linguistic Case the European Court of Human Rights accepted only one of the six complaints. The accepted complaint concerned the accessibility of minority schools for children of parents living in the municipality with facilities. The Court ruled that this limited accessibility violated the equality principle in education in six municipalities with language facilities in the suburbs of Brussels-Capital. The Court ruled that the six benefited a bilingual status. As the Court had no problem with the limited accessibility of minority schools in municipalities with a monolingual status, Belgium remedied the violation in 1970 by explicitly placing the six in the Dutch-language region in order to not give them bilingual status. The Committee of Ministers declared itself satisfied with this solution which was not challenged till the beginning of the 21st century.

During constitutional reforms in the previous century, Belgian politicians took the decision in favour of territoriality and Belgian language laws are based on the territoriality principle. In the 21st century French-speaking politicians of Belgium request the introduction of more personal elements in the Flemish region thereby referring to human rights and minority conventions. Flemish speaking politicians responded that when those who settle in the Flemish Community must learn the local language and that no more exceptions should be made for French-speaking Belgians who settle in Flanders.

8. BIBLIOGRAPHY

For an extensive bibliography, see: Jan Clement, Taalvrijheid, bestuurstaal en minderheidsrechten. Het Belgisch model. Een constitutionele zoektocht naar de oorsprong van het territorialiteitsbeginsel en de minderheidsrechten in de bestuurstaalwetgeving, Antwerp, Intersentia, 2003, p. 956.

Endnotes

1. Gracienne Lauwers holds a PhD in Law and a Master in Slavonic Studies. She is director of the European Association for Education Law and Policy. She holds a post at the University of Antwerp (Belgium) teaching, researching and consulting on various aspects of educational legislation and policy. In 2010 she also joined the research team on fundamental rights at the Free University Brussels.
3. For the idea of the indivisible Nation in France, see the decision of 15 June 1999 of the Constitutional Court that France could not adhere to the European Convention on the Protection of minority languages http://www.legifrance.gouv.fr/citoyen/conscons.htm
4. Decree of 13 June 1803 (24 Prairial, year XI).
5. The official language in the Flemish Community of Belgium is Dutch (also the official language of the Netherlands). ‘Flemish’ is increasingly used to refer to standard Dutch spoken in Belgium. Although there are no spelling differences, pronunciation is different and certain words and adverbs are used in Flanders and not in the Netherlands.
6. Although the German-speaking Community is a region with less than 100,000 inhabitants, it has its own parliament, government, and administration, competent for culture and education in the German language region. It is composed of the German-speaking parts of the lands that were annexed in 1920 by Belgium following Germany's defeat in WWI and the Treaty of Versailles.
7. For the requests of the French to be recognised as a minority in Flanders, see the Venise Commission of the Council of Europe, which formulated a set of four criteria for determining if ‘a minority’ might qualify as a ‘national minority’. Two of those criteria are not satisfied for the French-
speakers in Flanders: lack of historic and peaceful relations between the minority and the national authority from which they request recognition, and a 'sufficient number'.

8. Article 4 Constitution: "Belgium has four linguistic regions: the French-speaking region, the Dutch-speaking region, the bilingual region of Brussels-Capital and the German-speaking region. Each municipality of the Kingdom is part of one of these linguistic regions".

9. In the 1970's Belgium was reformed in so-called communities and regions with autonomy in specific matters. The territory covered by communities (with competencies in culture and education) is different from the territory of the regions (with competences in conservation of sites and monuments, environment protection policy, transport, social policy, the financing of municipalities, spatial planning, city building and housing). The German-speaking Community has autonomy in cultural and educational matters, but is part of the (French speaking) Walloon Region. Belgium has at least 9 governments: one federal government, six regional governments (the governments of the Flemish Community, the French Community, the German-speaking Community, the Flemish Region, the Walloon Region, the Brussels-Capital Region. It has 589 municipalities: 308 in the Flemish Region, 262 in the Walloon Region, and 19 in the Brussels-Capital Region.

10. 1ECtHR, 23 July 1968, Belgian Linguistic Case.

11. Article 5, second and third paragraph of the Education Language Act, as inserted by the Act of July 26, 1971.

12. Article 90.


14. Secondary education is ruled by the general principles laid down in the law of 30 July 1963 on the use of languages in education (the Education Language Law). The first foreign language taught in schools in the Flemish Community is French. In 2010, the Minister of Education launched the idea to amend legislation to make English the first foreign language taught in schools in the Flemish Community.

15. Article 10, 1, Education Language Act.


17. Article 43, § 2, 2 Decree Basic Education.


21. Language immersion is a method of teaching a second language in which the target language is used as a teaching tool of instruction and not simply as subject material. As a teaching tool, pupils are surrounded or ‘immersed’ in the second language during (a percentage of) in-class activities and outside class activities.


27. In practice the Flemish Community subsidizes 12 minority schools (i.e. all classes in French) in Flanders, whereas the French Community subsidizes zero minority schools.

Language, Education and Linguistic Rights in Denmark

Karen Bjerg Petersen
Language, Education and Linguistic Rights in Denmark

Karen Bjerg Petersen¹

1. INTRODUCTION

While the European Convention on Human Rights and Fundamental Freedoms² (ECHR) from 1950 regulates general legal human rights aspects, the European Charter for Regional or Minority Languages - agreed upon by the member states of the Council of Europe in 1992 - regulates linguistic and language rights with respect to 'the protection of the historical regional or minority languages of Europe'. In the Charter it is among others stated that regional or minority languages of the member states are to be recognized 'as an expression of cultural wealth'. In addition, it is outlined, that the use of regional or minority languages has to be facilitated and/or encouraged 'in speech and writing, in public and private life' (ibid). The Charter thus regulates an area with respect to linguistic and language rights of regional or minority languages in Europe that historically has caused many debates throughout the history of Europe. According to the Charter, 'regional or minority languages' means languages that are:

a. 'traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and

b. different from the official language(s) of that State⁶.

What has though been mentioned by researchers⁶ and what besides might attract the attention today 20 years after the agreement upon the legal status of regional and minority languages in Europe - is the historical fact, that in the definition used in the European Charter from 1992, languages of migrants were not defined as minority languages. In the Charter it is hence outlined that regional and minority languages do 'not include either dialects of the official language(s) of the State or the languages of migrants⁷.

During the last decades nonetheless, not only countries in Europe but also other countries are becoming increasingly diverse in regard to origins, cultures, religion and languages of the population. Charts and statistics from both United Nations Population division and the World Bank etc. illustrate how global migration processes in the late 20th and early 21st century has led to an increased quantity of people moving from place to place⁸. In the period from 1960 to 2000 the total number of migrants increased from approx. 92 million to approx. 165 million. The largest wave of migration in this period took place to Western Europe and the United States respectively. As outlined by Özden et al. in this period 'the migrant stocks in the US and Western Europe grew by 24.3 million and 22 million respectively, constituting around 42% of the world total in 2000⁹. Rapid development in modern technology with respect to transportation and community combined with global migration processes has enabled major population movements, and accordingly an increasing complexity in population composition not only in Europe as a whole, but also in the different member states¹⁰.

In responding to the growing diversity countries in Europe however, face a number of challenges with respect to not only the sociological, political and social transformations taking place within each country but also with respect to the linguistic and language rights connected to this. The challenges of complexity have been met in different ways¹¹. Based on a case study of one of the member states of Europe, e.g. Denmark, in this article I want to discuss and suggest a broadening of the definitions in The European Charter for Regional and Minority Languages from 1992; in conclusion I will address some challenges for the future of a diverse Europe.

2. BACKGROUND - MIGRATION TO DENMARK IN THE PERIOD 1950-2010

As in most other European countries linguistics and language rights of minorities in Denmark as defined in the European Charter from 1992 - with regard to e.g. the German minority in the south of Denmark - has been regulated legally in the past. Conversely, linguistics and language rights specifically connected to the increased migration to the country and hence to the increased variety of other languages being spoken in Denmark has been an important issue of debate in the past decades.

In recent history Denmark has been a rather homogenous country regarding both origin of inhabitants, costumes, history, religion and language. The increased diversity of the country has on the other hand, as in many other European countries, been subject to many legislative initiatives and for this reason been a continuous topic of the public and political discourse since the late 1970’s.

Compared to other European countries Denmark is a small country. In table 1 below the population in Denmark in the period from 1950 to 2010 is shown¹². Whereas the population in 1950 was approximately 4.2 million inhabitants, this amount increased to about 5.5 million 60 years later in 2010.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1950</td>
<td>4.2 million</td>
</tr>
<tr>
<td>2010</td>
<td>5.5 million</td>
</tr>
</tbody>
</table>

Table 1 Total population in Denmark 1950-2010

The immigration to Denmark in the same period has – as indicated in the above mentioned calculations of the World Bank and UN - been rather extensive. Yet, in the first decades after World War II until the early 1970’s merely relatively few immigrants lived in Denmark. According to information from official Danish statistics, 1959 is the first year in which foreigners are registered with an amount of 16.195 persons and a percentage of 0,4% of the total population. Included in this amount was a group of about 1400 Hungarian refugees coming to Denmark in the 1950s after the uprising in Hungary in 1956¹³. As it is evidenced in table 2 below, the immigration to Denmark – similar to other European countries – started in the late 1960s and 1970s.

Table 2 illustrates the number of persons – including refugees, migrants and their descendants¹⁴ – migrating to and living in Denmark in the period from 1950-2010.

<table>
<thead>
<tr>
<th>Year</th>
<th>Migrants and their descendants</th>
</tr>
</thead>
<tbody>
<tr>
<td>1950</td>
<td>1400</td>
</tr>
<tr>
<td>2010</td>
<td>165 million</td>
</tr>
</tbody>
</table>

Table 2 Migrants and their descendants in Denmark in the period from 1950 to 2010
In the late 1960s and early 1970s immigrants from mostly former Yugoslavia, Turkey, Morocco and Pakistan – very often through migration chains from Germany - came to Denmark to work. Apart from this also political refugees started coming to the country. The immigration of refugees since the 1970s and onwards is a result of Denmark in 1968 having ratified the Additional Protocol to the Geneva Convention about ‘respect for human rights in armed conflicts’ and refugees. The immigration to Denmark in the 1980s, compared to the previous decades – as evidenced in table 2 - increased significantly. The reasons were several; firstly, due to a slow-down in the economy the Conservative-led government tried to get the economy moving by inviting further immigrants to work in Denmark; secondly, from the mid 1980s due to the adaption of new immigration laws facilitating more refugees to seek asylum in Denmark, and laws giving immigrants living in Denmark the legal right to reunions with their families, the immigration increased rapidly. From the mid-1980s, a considerable immigration consisting of mainly adult immigrants with refugee status from non-EU developing countries received residence permit in Denmark. Primarily refugees from civil war-torn countries as Iran, Iraq and Lebanon (Palestinians) came to Denmark in this period.

In the 1980s the immigration to Denmark continued to increase as both the Conservative and Social-Democrat-led governments – despite some efforts to limit the immigration - more or less followed the political stance of previous decades. By 2000 the total amount of immigrants and descendants living in Denmark reached 378,464, which – indicated in table 3 below - equals 7 % of the total population, consisting of 4,7% immigrants and 2,3% descendants. As in the previous decade, immigrants coming to Denmark in the 1990s consisted mainly of refugees; both from EU countries, e.g. from Bosnia-Herzegovina and other Balkan countries due to the wars in Ex-Yugoslavia and from non-EU developing countries experiencing civil wars, e.g. Iraq, Somalia and Afghanistan. A change in government in 2001 and the announcement of a changed and restricted immigration policy in Denmark especially towards non-EU citizens changed the picture of persons immigrating to Denmark in the 2000s. Due to the economic boom before the financial crisis in 2008 many EU-citizens from both Germany and in particular from former Eastern European countries, e.g. Poland and the Baltic countries were encouraged to travel to Denmark to work. Hence, despite the political intentions to limit the immigration to Denmark from 2001 and onwards, the total amount of persons – immigrants and descendants - living in Denmark by 2010 increased to 542,738. Compared to the year 2000 – as it is shown in table 3 below - the percentage of migrants and descendants living in Denmark in the year 2010 increased to 10 %.

Table 3: Percentage of Migrants/Descendants of total population in Denmark in the period 1950-2010

Altogether, since the late 1970s an increasing number of residents from both EU and especially from non-EU developing countries have come to Denmark either to work or as political and/or humanitarian refugees.

By January 2011 the percentage increased to 10, 1% of the total population in Denmark; immigrants representing 7, 7% and descendants 2, 4% of this amount. Among the immigrants about 60 % are non-EU-citizens from so-called ‘non-Western countries’, whereas about one fourth of all immigrants living in Denmark are refugees. Table 4 shows the biggest migrant groups living in Denmark in 2010.

Table 4: Biggest Migrant/Descendants groups living in Denmark by January 2010

<table>
<thead>
<tr>
<th>Country of origin</th>
<th>Migrants</th>
<th>Descendants</th>
<th>Total</th>
<th>Percentage of Total</th>
<th>Language</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turkey</td>
<td>32,255</td>
<td>26,961</td>
<td>59,216</td>
<td>10,9%</td>
<td>Turkish/Kurdish</td>
</tr>
<tr>
<td>Germany</td>
<td>28,234</td>
<td>2,678</td>
<td>30,912</td>
<td>5,7%</td>
<td>German</td>
</tr>
<tr>
<td>Iraq</td>
<td>21,306</td>
<td>7,958</td>
<td>29,264</td>
<td>5,4%</td>
<td>Arab</td>
</tr>
<tr>
<td>Poland</td>
<td>25,443</td>
<td>2,958</td>
<td>28,401</td>
<td>5,2%</td>
<td>Polish</td>
</tr>
<tr>
<td>Lebanon</td>
<td>12,012</td>
<td>11,763</td>
<td>23,775</td>
<td>4,4%</td>
<td>Arab</td>
</tr>
<tr>
<td>Bosnia-Herzegovina</td>
<td>17,911</td>
<td>4,310</td>
<td>22,221</td>
<td>4,1%</td>
<td>Serbo-Croatian</td>
</tr>
<tr>
<td>Other African countries</td>
<td>17,054</td>
<td>4,586</td>
<td>21,640</td>
<td>4,0%</td>
<td>African languages</td>
</tr>
<tr>
<td>Pakistan</td>
<td>11,169</td>
<td>9,223</td>
<td>20,392</td>
<td>3,8%</td>
<td>Urdu</td>
</tr>
<tr>
<td>Yugoslavia (ex.)</td>
<td>11,021</td>
<td>5,938</td>
<td>16,959</td>
<td>3,1%</td>
<td>Serbian-Croatian</td>
</tr>
<tr>
<td>Somalia</td>
<td>10,127</td>
<td>6,704</td>
<td>16,831</td>
<td>3,1%</td>
<td>Somali</td>
</tr>
<tr>
<td>Norway</td>
<td>14,663</td>
<td>1,404</td>
<td>16,067</td>
<td>3,0%</td>
<td>Norwegian</td>
</tr>
<tr>
<td>Other countries in Asia</td>
<td>11,907</td>
<td>3,509</td>
<td>15,416</td>
<td>2,8%</td>
<td>Asian languages</td>
</tr>
<tr>
<td>Iran</td>
<td>12,098</td>
<td>3,111</td>
<td>15,209</td>
<td>2,8%</td>
<td>Farsi</td>
</tr>
<tr>
<td>Sweden</td>
<td>13,233</td>
<td>1,921</td>
<td>15,154</td>
<td>2,8%</td>
<td>Swedish</td>
</tr>
<tr>
<td>Vietnam</td>
<td>8,919</td>
<td>4,959</td>
<td>13,878</td>
<td>2,6%</td>
<td>Vietnamese</td>
</tr>
<tr>
<td>Great Britain</td>
<td>11,832</td>
<td>1,221</td>
<td>13,053</td>
<td>2,4%</td>
<td>English</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>9,966</td>
<td>2,664</td>
<td>12,630</td>
<td>2,3%</td>
<td>Pashto/Dari et al.</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>6,715</td>
<td>4,088</td>
<td>10,803</td>
<td>2,0%</td>
<td>Tamil</td>
</tr>
<tr>
<td>South- and Mid America</td>
<td>9,352</td>
<td>870</td>
<td>10,222</td>
<td>1,9%</td>
<td>Spanish/Portuguese</td>
</tr>
<tr>
<td>Morocco</td>
<td>5,140</td>
<td>4,691</td>
<td>9,831</td>
<td>1,8%</td>
<td>Moroccan</td>
</tr>
<tr>
<td>China</td>
<td>8,506</td>
<td>1,182</td>
<td>9,688</td>
<td>1,8%</td>
<td>Mandarin</td>
</tr>
<tr>
<td>North America</td>
<td>8,773</td>
<td>908</td>
<td>9,681</td>
<td>1,8%</td>
<td>English</td>
</tr>
<tr>
<td>Thailand</td>
<td>8,849</td>
<td>562</td>
<td>9,411</td>
<td>1,7%</td>
<td>Thai</td>
</tr>
<tr>
<td>Philippines</td>
<td>8,377</td>
<td>930</td>
<td>9,307</td>
<td>1,7%</td>
<td>Philippine</td>
</tr>
<tr>
<td>Iceland</td>
<td>7,876</td>
<td>1,090</td>
<td>8,967</td>
<td>1,7%</td>
<td>Icelandic</td>
</tr>
<tr>
<td>Other countries</td>
<td>81,684</td>
<td>12,126</td>
<td>93,810</td>
<td>17,3%</td>
<td>Other languages</td>
</tr>
</tbody>
</table>
A closer look at the immigrants and descendants living in Denmark in 2010 — shown in table 4 - reflect the immigration policy in Denmark throughout the past decades. It is obvious, that members of the ‘old’ non-EU citizen migrant groups in Denmark — those who came to Denmark in the 1970’s to work - constitute a big part of the migrants and their descendants still living in Denmark by 2010. The group of Turks is the biggest group continuously living in Denmark constituting 10, 9 % of the total amount, whereas the group of Pakistani represents about 3, 8 %. However, also non-EU citizen refugee groups and especially their descendants, coming to live in Denmark in the 1980s and onwards represent a rather big amount of persons still living in Denmark in 2010. The group of persons from Iraq — in particular remarkable is the growing group of descendants -constitutes 5, 4 %, whereas immigrants and their descendants from Iran — likewise coming to Denmark in the 1980s — represent 2, 8% and immigrants from Lebanon represent 4, 4% of the total. It is furthermore obvious that many of the refugees, who came to Denmark in the 1980s and 1990s, remained in the country. In 2010 the migrants from Bosnia-Herzegovina cover 4, 1 %, Somali constitute 3, 1 %, Afghanian 2, 3 % and Tamils from Sri Lanka 2, 0 %.

3. IMPORTANCE OF LANGUAGE IN NATION-BUILDING AND LANGUAGE RIGHTS - EDUCATION IN THE NATIONAL LANGUAGE

Not only in Scandinavian but also in recent European debates the importance of language in nation building has been emphasized. The Swedish researcher Damsholt has illustrated how the national language and school text books have played an important role in the self-determination and building of e.g. the Scandinavian nation-states in the 19th century as ‘an important means of dissemination of the idea of a nation’27. While primarily essentialist notions of national identity, nationhood and nation have been forwarded in European policy contexts — and have e.g. been evidenced in naturalization tests and curricula from both the Netherlands and Denmark— the theoretical concepts of a fixed national identity connected to mostly one standardised language however seem to be challenged through the increased complexity and diversity of modern societies38. During recent decades theories about national identity in terms of constructivist and relativist theoretical positions being related to particular social interactions, individual belongings and hence being seen as objects to change in terms of e.g. ‘liquid identity’ have been promoted39. According to sociologists and anthologists not only the concept of individual identity but also the understanding of national identity need to be reconsidered and reconstructed in order to respond adequately to the challenges of increased diversity of modern societies. This entails, as Vasta highlights: ‘an acceptance and affirmation of the fluidity of the national identity, which in any case continues to change through the process of globalisation and the interaction of ‘cultures at local level’30. Despite theoretical discussions of the fluidity of national identity however - parallel to the increase in migration to e.g. Denmark - the national language and the education of migrants and descendants in the national Danish language and culture continue to be of great importance41. In Denmark the significance and importance of in particular adult immigrants learning Danish language and culture as a right and a tool and means to cope with the life in the national Danish community has been highly prioritized since the early immigration to Denmark.

4. DANISH FOR ADULT SPEAKERS OF OTHER LANGUAGES – NON-NATIONAL EU-CITIZENS AND NON-NATIONAL NON EU-IMMIGRANTS AND REFUGEES WITH VALID RESIDENCE PERMIT

The historical development of language and culture education of adult immigrants in Denmark – the so-called Danish for speakers of other languages32 (DSOL) – hence, is closely connected with the migration to Denmark during the last decades, beginning with the migration to Denmark in the 1970s of the workers from Turkey, Pakistan, former Yugoslavia and Morocco. Unlike other countries in Europe such as Germany and France, the government in Denmark from the beginning of the immigration to Denmark was aware of the importance of adult education for both non-national EU citizens and for non-national non-EU citizens – third country immigrants and refugees - with valid residence permit; the majority of the adult immigrants coming to the Denmark since the 1970s have as a result participated in this education33. Hence, already in a ministerial initiated report from 1971 it was suggested that adult immigrants in Denmark should be offered free language and culture education and that they freely could chose and themselves organise language schools. The language education was seen as an important precondition for adult immigrants to cope with the Danish society34. Consequently, from the 1970s and onwards DSA and DSOL education of adult immigrants was set up within the framework of the Danish welfare state based on an education policy framework introduced for the entire Danish public education project and implemented according to the ‘Civic’ and ‘Leisure Law’ from 196835. For this reason, the understanding in laws and curriculum documents with respect to the education of adult immigrants from the 1970s and onwards have been focusing on adult immigrants’ personal development and democratic involvement, promoting multiculturalism, participatory and awareness raising activities in adult immigrant education and teacher education36. A comprehensive adult language education system has been developed since the 1970s including language and culture education, curricular guidelines and assessments37. Since
2003 adult immigrants receiving any kind of social or economic support from the state – both EU and third country immigrants with a valid residence permit - have the right and obligation - within 3 years to attend Danish language and culture education, based on CEFR standards including ongoing and final assessment.

However, - as outlined by e.g. the British researcher Vasta and others - in the past decades changes and reforms with respect to adult immigrant education and integration policy have been undertaken, not only in Europe but also in Denmark. During the past decade – according to Vasta - a ‘retreat’ from multiculturalism ‘both in policy and in public discourses’ has taken place in many European countries. Policy approaches have been promoted representing a ‘pervasive view that pluralist or multicultural approaches to immigrant inclusion have failed’. As a result, a number of European countries, among these also Denmark, in the 2000s has introduced more assimilationist policies including e.g. stricter requirements for citizenship, residence, etc. Furthermore, a number of European countries have introduced so-called ‘Britishness’ or ‘Dutchness’ tests as a condition to obtain citizenship. Similar trends have been observed in Denmark in the 2000s. In 2006 naturalization tests and in 2010 residence tests focusing on Danish only subjects in continuation of rather essentialist understandings of culture, history and nationhood have been introduced in order for adult migrants in Denmark to obtain citizenship. Furthermore, e.g. in Denmark in 2003 a new curriculum for the teaching of adult immigrants was adopted in which Danish culture and history in essentialist perceptions were made mandatory replacing former focus on cultural awareness raising approaches in language and culture teaching for adult immigrants. Studies of the language and culture education policy towards adult immigrants and foreigners in Denmark in the 2000s illustrate that a primarily mono cultural discourse has been promoted and excluded former multicultural approaches.

5. DANISH FOR SPEAKERS OF OTHER LANGUAGES WITHOUT A RESIDENCE PERMIT – ASYLUM SEEKERS

While Danish language and culture education is a right – and obligation - for adult immigrants and refugees with a valid residence permit, asylum seekers above 18 years without a residence permit -often living in special centers- have fewer possibilities to learn Danish. It is however stated that asylum seekers while living in Denmark are obliged to participate in education provided in the centers. The education often consists of English language, native language education as well as education in ‘subjects helping the asylum seekers to obtain employment or start own business in home countries’. Children of asylum seekers aged 7-16 years are offered special education in the centers. The children are taught Danish, English and other subjects taught in primary and secondary school. The weekly number of lessons corresponds the lessons given in the equivalent grade in school. Some children attend classes in a regular school class.

How then is the situation for immigrant children and children of descendants in Denmark with a valid residence permit with respect to learning Danish as the national language of the country?

6. DANISH FOR CHILDREN OF OTHER LANGUAGES IN PRIMARY SCHOOLS

While adult immigrants with valid residence permit have been provided with language and culture education in Danish since 1971, children of immigrants in 1976 - with the adoption of the first executive order - got the right to receive lessons in Danish as a second language in primary school. For children not knowing Danish, the lessons are offered in classes, often located in the primary school provided for non-national learners. Children knowing some Danish language were furthermore, offered additional lessons in parallel to their participation in the daily teaching for all children in the primary school. The right to receive education in Danish as a second language in primary school has continued to exist from 1976 and onwards. The description of the content and curricula for bilingual and multilingual children in primary school in Denmark has furthermore continuously been developed. Goal of the teaching is that bi- and multicultural children are able to follow the ordinary classes in primary schools.

The quality of the teaching has however been discussed by both teachers and researchers. Whereas a master’s degree at university level is compulsory for teachers of adult immigrants, the situation for teachers in primary school is different. Only in 2007 – after 5 years of piloting - Danish as a second language was decided to be an independent subject in Danish teacher education. Studies and evaluations from 2011 nevertheless indicate that only 16 % of all teachers in Denmark have the skills to undertake the education of bilingual learners. Yet, in 2012 the government proposed a new teacher education, in which the subject Danish as a second language has been removed as an independent subject in the Danish teacher education and replaced by common ideas of language in all subjects.

Whereas the teaching of Danish for speakers of other languages in primary school thus seem to be less stressed, a growing awareness of the fact that language knowledge is a precondition not only for coping with the national language but also with other subjects such as math’s, physics, science, history, geography has been prevalent in the discourse of the 2000s. Based on Danish and international research, promoted in didactics in primary school since the 2000s the focus of the national language in other subjects has been prioritized by the government.

Despite that teacher qualifications in undertaking education of bilingual children have been less emphasized in the 2010s, the importance of the national language in primary school nevertheless has been highly prioritized since the early immigration to Denmark of migrants and their children from the 1970s and onwards. In comparison, the policy with respect to the rights of bi- and multilingual children to receive native language or mother tongue education conversely, has varied significantly throughout the past decades; it has furthermore been subject to many and intense discussions and debates in Denmark. Before I turn to these debates, I will shortly introduce the Danish language support for preschoolers, established at a legally base from the 1990s.

7. DANISH LANGUAGE SUPPORT FOR PRESCHOOLERS

In the 1990s an ongoing debate about many immigrant children’s lack of knowledge of the national language Danish when starting primary school resulted in an additional paragraph in the Education act of primary schools, called § 4 a. From 1996 onwards Danish language support, the so-called language stimulation or language support for preschoolers was
introduced for immigrant children from the age of 3 years. In the beginning this Danish language support was voluntary, in 2004 however, the language support for preschool children was made compulsory. In a ministerial website from 2012 the following is stated as an explanation:

‘In primary school the language of instruction is Danish. It is therefore of importance that children already when they start primary school are good at speaking Danish (...)’. Language stimulation in continuation of § 4a is aimed at bilingual children getting extra help to achieve a sufficient level in Danish before they start school.

Different actions, publications and measures in language assessment, language screening and language support for three year old children onwards have been developed by most counties and communities throughout Denmark.

As evidenced in the previous sections Danish as the national language thus has played and still plays a very important role in the building of the Danish nation and the educational system - from preschool to primary and adult education. In comparison, the formal recognition of other languages and their status in Denmark is different.

8. THE FORMAL RECOGNITION OF THE VARIOUS LANGUAGES AND THEIR STATUS IN DENMARK

In continuation of the European Charter of 1992, mentioned above in the introduction, only relatively few minorities in Denmark in a historical perspective have got a right to speak and learn their own language. The German minority in southern Jutland is referred to as an example of this. With the Greenland Home Rule Act Greenlandic in 1979 was formally recognized as the official language besides Danish in Greenland. However, as outlined in the Act, Section 9, 1 from 1979 ‘Greenlandic shall be the principal language; Danish must be thoroughly taught’. Since 2009 Greenlandic is the only official language in Greenland. On the Faroe Islands the Faroe language is the official language, while Danish is taught in primary schools.

9. LANGUAGE RIGHTS IN COMPULSORY AND NON-COMPULSORY EDUCATION

In this section the introduction of language rights in compulsory education is focusing on immigrant languages and the right of children to speak and learn their native language - in official Danish legislation mostly called ‘mother tongue education’. In the history of immigration to Denmark this particularly area has been subject to changes in legislation and intense debates.

In the above mentioned first executive order from 1976 about immigrant children’s right to learn Danish, it was additionally stated that municipalities in Denmark were obliged to offer foreign children ‘education in their mother tongue’. This right for children in compulsory education to learn their native language has been a legal right since 1976 and was confirmed in 2001.

The language education was often undertaken by adult immigrants, sometimes teachers themselves from their own country of origin. Sometimes however, the teachers were less educated, which has been subject to debate. In the period from the 1970s to the early 2000s Denmark nevertheless, followed the policy of the other Scandinavian countries with respect to native language education, in particular Sweden and Norway.

In 2002 however, as part of a changed policy by the newly elected government, a new Act was adopted. In the ‘Act of mother tongue education in public schools for children from the Member States of the European Union (...)’ it was stated that children of EU-citizens, of citizens from the European Economic Community, e.g. Norway, from Greenland and the Faroe Islands at a legally base should be offered about 3-5 lessons in their native language.

But in the same Act, it was also stated that the former rights for all bilingual children – among those immigrant children from non-EU countries – was no longer in force. What happened in 2002 was thus that the rights of EU-citizen immigrant children were made compulsory, whereas it was made voluntary for the municipalities to offer native language education for children of non-EU citizen immigrants in Denmark.

In combination with the earlier mentioned voluntary Danish language support for preschoolers being made compulsory in 2004, a result of the act from 2002 was that many municipalities chose not to provide native language education for non-EU citizen immigrant children. Hence, since 2002 the Danish policy towards the language rights of non-EU citizen immigrant children in compulsory education has differed from the policy in other Scandinavian countries, in particular from Sweden.

In the following overview three debates with respect to languages and linguistic rights in Denmark from the 2000s will be outlined. The first debate is connected to the above introduced legislation and right to native language education for bilingual/multilingual children of EU and/or non-EU citizens. The second debate connected to the first is an ongoing debate in Denmark since the early 2000s about bilingual children’s lower performance in results from Pisa studies, while the third debate from the beginning and mid 2000s concerns legal aspects in two different cases with respect to Roma children’s rights in Denmark.

10. AN OVERVIEW OF CURRENT DEBATES

The question of immigrant children’s right to native language education in compulsory education – whether coming from EU or from non-EU member states – has been subjected to a variety of more or less intense debates in Denmark since the 1970s and onwards. In the debates different points of views have been presented pro and contra native language education in compulsory education. The arguments in favor of the right to native language education have been several.

Firstly, fundamental rights – in continuation of UN–declaration from 1950, article 2 and 26, the ECHR and the UN 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities – have been presented as arguments for all mono- and bi-respectively multilingual children to having access to native language education in the compulsory education.

From 2002 and onwards secondly, arguments have been stated about the discrimination of immigrant children from non-EU countries in Denmark compared to children of parents with EU-citizenship. It has been critiqued that only 5000 children from EU-member states compared to approximately 70.000 children from non-EU countries have been receiving compulsory native language education since 2002. It has in addition been emphasized that
many non-national children from non-EU countries might be in even more need of native language education than others\textsuperscript{62}. Thirdly, comparisons with other countries, first of all with Sweden have been made as arguments for equal possibilities for immigrant children in Scandinavian countries.

Further arguments - outlined by researchers - concerning the question about native language acquisition/education supporting bilingual children's academic development and achievements in the second language, e.g. Danish, have been intensely debated throughout the recent decades. From the 1980-1990s it has been the general opinion among researchers - under the influence of both American and Canadian studies indicating direct correlations between cognitive academic language proficiency (CALP) and developed native language/mother tongue proficiency in contrast to basic interpersonal communicative skills (so-called BICS) that native language/mother tongue education contribute to bilingual children's academic skills\textsuperscript{63}.

Arguments raised among others by politicians against the native language education have emphasized other positions.

Firstly, economic aspects combined with the questioning of the value of native language education and secondly, proposals to spend the money on Danish language training instead of mother tongue education are a main argument. The municipality of Copenhagen – the capital of Denmark – has been one of the municipalities in Denmark continuing to offer native language education after 2002. In 2011 the Conservative vice chairman of children and youth committee in the municipality of Copenhagen criticized the economic planning in the following way: 'It is completely wrong that the municipality for years have spent so much money on mother tongue education. Instead, the money should be used for Danish lessons'\textsuperscript{64}.

Thirdly, in political and economic debates the evidence of the importance of native language/mother tongue education has been questioned. From the 2000s and onwards politicians have been rather unwilling to accept the arguments of the importance of native language/mother tongue education for bilingual children. Discussions about immigrant parents sending their children to Muslim private schools has however led some politicians to discuss whether native language education should be reintroduced in primary school\textsuperscript{65}. In 2012, the Danish minister of children and education - after the change of government in 2011 - proclaimed that native language education or 'mother tongue' education is on the agenda of the newly elected Social-Democrat government\textsuperscript{66}. However, no actions have so far been taken to submit new orders suggesting native language education to be compulsory for all bilingual children in Denmark.

Additionally, studies in the late 2000s from Sweden - where native language education for all bilingual children as mentioned earlier has been compulsory all the time - reported that native language education had positive effect on the scores of bilingual children in Sweden. However, in Denmark it has been discussed whether the positive achievements could be justified by the native language education or by other factors; as a result of the reports from Sweden it has been suggested to conduct further investigations in Denmark\textsuperscript{68}. Thus, pro and contrs concerning native language in compulsory education combined with the academic achievements of bi- and multilingual children in PISA studies remain to be important subjects to debate in Denmark in the 2010s.

The third debate to be referred in this section – similarly influencing legislation in Denmark - is from the beginning and mid 2000s concerning the rights of \textit{Roma children and their parents living in Denmark}. The Roma population in Denmark - consisting of immigrants and their descendants mostly coming from former Yugoslavia to Denmark in the 1970s - has different educational and socioeconomic background. The group of Romas in the center of the debate was former workers at a Danish shipyard in a city to the north of Copenhagen, however since the mid 1980s due to the close down of the shipyard unemployed receiving economically and social support by the state/municipality.

In the \textit{first case} to be referred, a municipality in Denmark – approximately from the mid 1980s - started gathering Roma children in special classes with the explanation that many of the children did not go to school at a regular base and thus were difficult to integrate in normal classes. In 2002 a complaint was send to the legal Danish authorities criticizing the 'segregation (racial separation) of Roma children by isolating them in ethnic based separate classes'\textsuperscript{70}. In the complaint it was firstly stressed that the Roma classes did not follow legal principles of the Danish Primary School Education Act and, secondly it was outlined that the establishment of separate Roma classes conflicts with international human rights prohibiting segregation based on ethnicity\textsuperscript{71}. The case was juridical reviewed and, among others in 2005 stressed by the Committee of Ministers of the Council of Europe in a resolution about the 'Implementation of the Framework Convention for the Protection of National Minorities by Denmark', outlining that 'concern remains about the equality of education for Roma children taught separately in a class for Roma children with high rates of absenteeism\textsuperscript{72}. In January 2005 the classes were closed by the municipality\textsuperscript{73}. The \textit{second case}, also related to the education of Roma children in Denmark in the same municipality concerned the fact that the municipality from February 2000 decided to shorten the social economic support by a certain daily amount of Roma parents to children, who did not show up in the school class. The case was subject to debate. In 2002 it was stated by legal authorities that 'this practice was illegal' and the municipality had to repay the money to the Roma parents\textsuperscript{74}. Since 2002 this practice is no longer used by the municipality.

11. LANGUAGE RIGHTS IN NON-COMPULSORY EDUCATION (ESPECIALLY HIGHER EDUCATION)

While the debates about children's language rights in Denmark hence, have been subjected to intense debate in Denmark in recent decades, the question of language rights in non-compulsory education and especially higher education has not been subject to similar
discussions. In higher education in Denmark most teaching is undertaken in Danish. International students are encouraged to evidence their knowledge of English before entering higher education. Students of other languages conversely, as other adult immigrants in Denmark, described in the previous sections – have the right to learn Danish while studying. Furthermore, students of other languages have the right to write their exams in English, and, if they choose to write the exams in Danish they may have the right to have additional time to finish their assignments. In 2011 students from the United States, China and Turkey constituted the largest number of international students in Denmark.

12. IN CONCLUSION - CHALLENGES FOR THE FUTURE

As it has been evidenced in this article Denmark during the past decades has turned into an increasingly diverse society in terms of culture, origin and religion, and languages spoken by the people living in the country. Previously rather homogeneous societies like Denmark – similar to other Scandinavian and European countries - have been influenced by the global migrations processes and, this has challenged the concepts and self perceptions of these countries as being homogeneous. What has happened to Denmark as to other immigration countries throughout the world is likely to be a situation, observed by Schurken, in which ‘migration not only changes the migrant, but it changes the society of emigration and the society of immigration’.

However, in responding to the growing diversity modern societies like EU member states and among those Denmark – as it has been evidenced in this article - face a number of challenges with respect to language education, to language and linguistic rights of the children and adults living in the country. It is illustrated that the national language education of Danish for speakers of other languages plays a crucial role in the efforts to integrate the new citizens in the country – adults as well as children. It is however furthermore evidenced how current debates with respect to children's right to learn their native language has been hand-led differently in Denmark in comparison to other Scandinavian countries, in particular Sweden.

With respect to language and linguistics rights in Denmark, it could - in continuation of Guus and Gorter’s investigations from 2001 - be outlined, that ‘the definitions of minority languages in the European Charter on Regional and Minority Languages are challenged. A widening of its scope is proposed in order to include rather than exclude immigrant languages in the range of European minority languages’.

As the British researcher Vasta outlines with respect to European policy - applicable also to the Danish policy of the past decade - ‘the shift away from multiculturalism’ has had negative impact on former cultural recognition of immigrants and has furthermore, ‘led to a move away from the right to pursue immigrant's 'own language, traditions and culture in favor of an emphasis on those of the dominant culture’ (ibid). In other words according to Vasta a sort of ‘engeneering’ an assimillative discourse has taken place in Danish and European policy towards immigrants in the 2000s.

However, as emphasized by several researchers and politician neither 'Danishness tests' nor other national tests and demands for increased assimilation seem to be able to solve the problems and challenges facing European countries. Efforts to link foreigners to the countries they have settled in through specific tests focusing on traditional national culture in essentialist terms do not appear to be an appropriate response to the increasing cultural diversity in the population composition of European countries. As Vasta outlines ‘social solidarity or immigrant participation cannot be achieved without immigrants and ethnic minorities developing a sense of belonging. But this cannot be produced through the likes of Britishness or Dutchness tests or a policy shift towards assimilationism (...) In other words 'social cohesion' cannot be engineered’.

A reconceptualisation of concepts like culture, national identity, multiculturalism and citizenship might be suggested as a way to address the diversity and complexity of modern societies. Broadened concepts as an alternative to the imagined homogeneity of many European countries in the past therefore, according to several researchers, politician and others, must embrace not only what the majority puts into law and action in order to assimilate immigrants but needs to set the conditions for the transformation of the entire spectrum of modern diverse societies as 'a philosophy and policy that promotes an acceptance of cultural diversity' by also 'encouraging the recognition of immigrants and their children as legitimate citizens by the society and its institutions'. Also concepts of citizenship and civic coexistence, according to Terrén, are in a need to be reconceptualised. As outlined by Terrén ‘citizenship in increasingly complex and heterogeneous civil societies implies rethinking legal rights, but also the attitudes and representations that condition the experience of intercultural contact in daily life. Citizenship is thus deeply implicated in the cultural dimension of civic coexistence, as it always implies some kind of collective identity and a certain sense of belonging’.

As optimistically highlighted by Terrén, ‘reassessing our feelings of belonging and the attitudes we develop toward culturally diverse people is a process that, when based on the common denominator of intercultural coexistence, can lead to a stronger democracy’.

In the future, the continuous cultural diversity not only in Denmark but also in other EU member states and in EU as a whole may thus at best contribute to the further development of stronger democratic societies.

13. BIBLIOGRAPHY


Undervisningsministeriet ([Ministry of Education]) (1976), **Bekendtgørelse af 8. marts 1976 om folkeskolens undervisning af fremmedsprogede elever**, Undervisningsministeriet, København;


Undervisningsministeriet (2001), **Bekendtgørelse nr. 536 af 12. juni 2001 om folkeskolens modersmålsundervisning for tospregede elever**, Undervisningsministeriet, København;

Undervisningsministeriet (2002), **Bekendtgørelse nr. 618 af 22.7. 2002 om folkeskolens modersmålsundervisning af børn fra medlemsstater i Den Europæiske Union, fra lande, som er omfattet af aftalen om Det Europæiske Økonomiske Samarbejdsområde, samt fra modersmålsundervisning af børn fra medlemmer af EU**. København;

Undervisningsministeriet (2006), **Bekendtgørelse nr. 350 af 2006 om folkeskolens undervisning i dansk som andetsprog**, Undervisningsministeriet, København;

Undervisningsministeriet (2008), **Sproget med i alle fag – andetsprog og didaktik i folkeskolen**, Undervisningsministeriet, København;

Undervisningsministeriet (2009), **Fælles mål – Dansk som andetsprog. Faghæfte 19**, Undervisningsministeriet, København;


Østergaard, U. (2001), Europas ansigter: nationale stater og politiske kulturer i en ny, gammel verden, Rosinante, København;

Endnotes

1. Dr. Karen Bjerg Petersen, Aarhus University, Denmark from the Department of Education at the Faculty of Arts holds a Ph.D. in 'Developmental Trends in Adult Immigrant Education in Denmark' and has written several articles within the field of immigration, diversity, language and culture education, linguistic rights and, the development of education policy, in particular in Denmark. Karen Bjerg Petersen is editor of the Journal of the International Society of Teacher Education. Apart from being a lecturer and researcher she holds the position of the educational leader of the Department of Education, Campus Aarhus at the Aarhus University.


3. Council of Europe (1992), **European Charter for Regional or Minority Languages**, Council of Europe, Strasbourg;


5. Council of Europe (1992), **European Charter for Regional or Minority Languages**, Council of Europe, Strasbourg;

6. E.g. Guus, E. and Gorter, D. (eds) (2001), The Other Languages of Europe: Demographic, Sociolinguistic and Educational Perspectives, Multilingual Matters, New York;

7. Council of Europe (1992), **European Charter for Regional or Minority Languages**, Council of Europe, Strasbourg;


12. Data and charts are generated based on official Danish statistical information (Danmarks Statistik 2000, 2011).


14. In this article the definitions of ‘migrant’ and ‘descendent’ follow the definitions in official Danish statistics; e.g. ‘migrants/immigrants’ are defined as persons ‘born overseas. None of the parents are both Danish nationals and born in Denmark’ whereas ‘descendants’ are defined as ‘born in Denmark. None of the parents are both Danish nationals and born in Denmark. When one or both
parents born in Denmark acquire Danish citizenship, their children can not be classified as descendants, but as persons of Danish origin’ (Danmarks Statistik 2011:12).


18. Ibid; Danmarks Statistik [Statistics Denmark] (2011), Indvandrere i Danmark [Immigrants in Denmark], Danmarks Statistik, København;


20. Danmarks Statistik [Statistics Denmark] (2011), Indvandrere i Danmark [Immigrants in Denmark], Danmarks Statistik, København;

21. In official Danish Statistics from 2011, p. 12 ‘Western countries’ are defined as ‘All EU-countries plus Andorra, Island, Liechtenstein, Monaco, Norway, San Marino, Switzerland, The Vatican State, Canada, USA, Australia and New Zealand’, whereas ‘non-Western countries’ are defined as ‘all other countries’. See: Danmarks Statistik [Statistics Denmark] (2011), Indvandrere i Danmark [Immigrants in Denmark], Danmarks Statistik, København;

22. Danmarks Statistik [Statistics Denmark] (2011), Indvandrere i Danmark [Immigrants in Denmark], Danmarks Statistik, København, p. 7;


26. In this article I use the term ‘national language’ as the official language/languages spoken in the described country, e.g. Danish in Denmark, whereas I use the term ‘native language’ - in parallel to the official Danish use of the term ‘mother tongue’ - as the language spoken by speakers of other languages living in the country, e.g. non-national EU-citizens (EU migrants) and non-national non-EU-citizens (third country migrants) living in Denmark.


30. Vasta, E. (2009), ’Engaging with Diversity: Europe Between Imagined Homogeneity And Enduring Cultural Difference’;


32. In this article, in reference to international literature - I use the abbreviation DSOL ‘Danish for speakers of other languages’ in parallel with the term ‘Danish as a Second Language’ or DSA.

33. E.g. Andersen, O.S. (1990), ’The Danish tradition of folkopeysing - a tool of autonomy and integration’, Journées de Sevres (2004), L’intégration linguistique des adultes migrants en Europe, Ministère de la culture et de la communication, Paris;

34. Arbejdsmisteriet [Ministry of Employment] (1971), Betænkning nr. 589 om udenlandske arbejderes forhold i Danmark [Report on the conditions of foreign workers], Arbejdsmisteriet, København;

35. Ibid;

36. Ibid; Andersen, O.S. (1990), ’The Danish tradition of folkopeysing - a tool of autonomy and integration’;

37. Petersen, K. B. (2011), ’Cultural Awareness or a National Monocultural Discourse?’ – Struggles and Influences in DSOL curriculum and teacher education’;


41. Ibid;

42. Ibid, p. 28;


44. Ny/Danmark.dk (2012), Asyl, Ansgernes vilkår, Ny/Danmark.dk;

45. Ibid;


48. Since 1999 a University Masters Degree in Danish as a Second Language has been mandatory for teachers of adult migrants in Denmark.


51. Ibid; Undervisningsministeriet (2008), Sprog i alle fag – andetsprog og didaktik i folkeskolen, Undervisningsministeriet, København;
The policy and the fact that immigrant preschool children from the age of three years are being included in acts of primary school has among others been discussed by e.g. Kristjánsdóttir; B. S. (2006), ‘Indvandrerforskab – assimilatorisk indvandrerpolitik frem for uddannelsespolitik’, UFE-nyt, 77, Undervisere for tosprogede elever, Danmarks Lærerforening, København;

53. Finno.dk (n.d.), Sprogstimulering af tosprogede småbørn, Undervisningsministeriet, København;

54. E.g. Aarhus kommune (2012), Sprogvurdering og sprogstimulering af 3-årige, Aarhus Kommune, Aarhus;

55. Prime Minister’s Office (1978), The Greenland Home Rule Act, Act No. 577 of 29 November 1978 (Translation), Prime Minister’s Office, Copenhagen;


57. Undervisningsministeriet (2001), Bekendtgørelse nr. 536 af 12. juni 2001 om folkeskolens modersmålsundervisning for tosprogede elever, Undervisningsministeriet, København;


59. Undervisningsministeriet (2002), Bekendtgørelse nr. 618 af 22.7. 2002 om folkeskolens modersmålsundervisning af børn fra medlemsstater i Den Europæiske Union, fra lande, som er omfattet af aftalen om Det Europæiske Økonomiske Samarbejdsområde, samt fra Færøerne og Grønland, Undervisningsministeriet, København, § 8, stk. 2;

60. Ibid;

61. UN (1947/2012), The Universal Declaration of Human Rights, United Nations; Council of Europe (1950), European Convention on Human Rights and Fundamental Freedoms; UN (1992), Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;


65. Frank, L. (2012), ‘Radikale vil have modersmålsundervisning’, Folkeskolen.dk;

66. Ibid;


68. Ibid;


70. Romnet.dk (2012a), ‘Romaklassen i Helsingør’, Romanet.dk;

71. Ibid;

72. Committee of Ministers of the Council of Europe (2005), Resolution ResCM(2005)9 on the implementation of the Framework Convention for the Protection of National Minorities by Denmark;

73. A full description of all details including the legal reviews and decisions can be seen on Romnet.dk (2012a), ‘Romaklassen i Helsingør’, Romanet.dk;

74. Romnet.dk (2012b), ‘Romaerne i Helsingør’, Romanet.dk;

75. NyDanmark.dk (2011), Markant flere udenlandske studerende i 2011;


82. Ibid, p. 81;
Linguistic Rights in Education in Estonia

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1. BACKGROUND

1.1. The importance of language in nation-building

The key factors which have shaped language policy and rights in Estonia are its history, geopolitical location and small population. The Eastern-Baltic region with important ports has been highly coveted by all Northern European powers, especially since the thirteenth century. Estonian history since the thirteenth century is a history of numerous conquests by Germans, Danes, Swedes and Russians who fought against Estonians and among themselves for the control over this territory, each one having a turn in ruling and consequently in influencing the development of Estonians. In fact, when Estonia declared its independence from the Soviet Union in August 1991 (marking the end of fifty years of Soviet occupation), for only the second time since the beginning of the thirteenth century, Estonian soil was free of foreign conquerors and its local inhabitants were able to determine their own fate. It needs to be emphasised that the culture and languages that conquerors brought along enriched Estonian language and culture. However, in some occasions use of indigenous language in public sphere and especially in education was suppressed. For example, at the end of the nineteenth century (during the Russification period) religious education was the only subject which was allowed to be taught in Estonian. This remained the case even at the beginning of the twentieth century.

The independent Republic of Estonia was born in the aftermath of World War I (1914-1918). The date of Estonian independence is 24 February 1918. Despite Estonia’s turbulent history, it was one of the first countries to provide guarantees to minorities especially regarding their language, culture and religion. The First National Minorities Cultural Autonomy Act was adopted as early as 1925, and was quite unique in Europe at that time. According to that law, all the largest minorities were entitled to form cultural autonomies (self-governing organisations). At the time the largest national minorities were German, Russian, Swedish and Jewish. The right to cultural self-government was granted to Germans in 1925, and Jews in 1926. Swedish and Russian communities did not manage to create their cultural self-governments before 1940. However, as these communities were geographically located in certain areas, it was easy for them to manage problems related to national minorities through their respective local governments. All cultural self-governments were liquidated in 1940 by the Soviet authorities. The outbreak of World War II disturbed the peaceful development of the country, which was subsequently occupied by the Soviet Union (1940-41, 1944-91) and Nazi Germany (1941-44). A resurgence of Estonian national identity began in the late 1980s, leading to independence in 1991.

At the beginning of the 1990s, the Estonian state clearly expressed its desire to join the EU. Estonia joined the EU on 1 May 2004. Estonia is also a member of many international organizations, including the United Nations, Council of Europe, Organization for Security and Cooperation in Europe (OSCE), and Organisation for Economic Co-operation and Development (OECD), and has ratified key conventions relating to the field of education and specifically to linguistic rights.

Estonian history, especially the period of Soviet occupation, has drastically shaped not only the ethnic composition and use of languages in Estonia, but also societal attitudes regarding language rights and nation-building. This in turn, has heavily influenced the language policy of the country today. The current population of Estonia is approximately 1.3 million, with about 67.9% Estonians, 25.6% Russians, 2.1% Ukrainians, 1.3% Byelorussians, 0.9% Finns and 2.2% of other nationalities. This can be compared to the pre-war statistics. Before World War II the native population formed almost 90% of the population, and the largest minority, Russians, formed approximately 8%.

The changes in the composition of population are due to the extensive in-migration administered by the government of the Soviet Union after the Second World War. Although new arrivals represented over one hundred ethnic groups, they formed a community with a common language - Russian. As a result, Estonia has a considerably large Russian speaking minority today. Main groups are from diverse origins from regions of the former USSR: 74% Russians, 18% Ukrainians and Byelorussians. Thus, the use of Russian language is not necessarily connected to ethnic background and/or national identity of these people.

As the above statistics show, from the total population, approximately one third are from an immigrant background. This large minority has had and does have an effect on demographics and politics in Estonia. Three characteristics of this minority need to be mentioned: a higher fertility rate compared to the native population, a higher rate of marriages, and very few mixed marriages between the two groups. Population growth since 1945 is entirely attributable to immigration, with a profound influence on the age and ethnic structure of the population (new immigration after the collapse of the Soviet Union at the beginning of 1990s has been insignificant). The children of immigrants are highly segregated. It also needs to be noted that there is an uneven regional distribution of the immigrant population with up to 90% concentrated in urban areas and in certain regions. These factors make integration of this minority into Estonian society more complicated. However, as Rannut has pointed out, the main dividing factor has not been ethnicity as such, but rather the mother tongue, representing the main source of information and opinion and value creation (also through media). Language has been the main filter to various societal goods and values and the channel to societal mobility and economic well-being. Soviet language policy promoting monolingualism in Russian created a barrier based on language use. "This language barrier was not broken by political changes leading to the restitution of Estonia's sovereignty."

After the collapse of the Soviet Union, Estonia started to rebuild its legal order on the principle of restitution, while at the same time acknowledging the changes over time in the European legal order and thinking. In this regard, it needed to look back at the legal framework of 1918-1940, while acknowledging new circumstances and developments in
Europe. As to citizenship, on 26 February 1992, the Supreme Council of the Republic of Estonia enacted the Citizenship Act of 1938. Pursuant to this law every person who possessed or whose parents possessed Estonian citizenship before 16 June 1940 (the day of the Soviet ultimatum followed by the annexation of Estonia) had a legal claim to Estonian nationality. Many non-Estonians thereby acquired Estonian citizenship. Russians and others who came to Estonia after 16 June 1940, almost one third of the entire population in 1992, were automatically excluded from Estonian nationality.

To this date there is a large number of stateless people in Estonia. However, it needs to be mentioned that in the last four years the numbers have declined from 112 422 to 94 397. At the beginning of 2012, Estonian population is divided as following: 84% Estonian citizens, 7% citizens of the Russian Federation and 7% without any citizenship (commonly termed in Estonia as owners of grey passports).

Estonia steers, although somewhat reluctantly, towards integration of the existing community into Estonian society. The reluctance is evident in quite strict language policies and requirements set up for acquiring citizenship. There is very slow access to citizenship for people of an immigrant background. This policy seems to be directly related to controversial concerns about loyalty of the immigrant population to the State, but also to the preservation of the Estonian language. Only in 1998 an amendment was introduced to the 1995 Citizenship Act. This amendment was introduced, keeping in mind the rights of children of the existing immigrant community. According to the amendment, a minor under 15 years of age who was born in Estonia after 26 February 1992, may now acquire Estonian citizenship if his or her parents apply for Estonian citizenship for him or her; and if the parents have legally resided in Estonia for at least five years at the time of submission of the application, and are not deemed by any other state to be citizens of that state.10

1.2. The formal recognition of the various languages and their status

According to Article 6 of the Estonian Constitution (adopted in 1992) official language of Estonia is Estonian.11 However, according to law, a few exceptions are possible. According to Article 9 of the Language Act (Keeleseadus) in local governments, where at least half of the permanent residents belong to a national minority, everyone has the right to approach and receive responses from state agencies and local government authorities in the language of the national minority beside responses in Estonian. A permanent resident of a local government for the purposes of the Language Act is a person who is an Estonian citizen, a citizen of the European Union who has a permanent right of residence and family members thereof, or an alien residing in Estonia on the basis of a long-term residence permit. The law also provides for use of foreign languages including languages of national minorities in local governments. According to Article 11 of the Language Act in local governments where the majority of permanent residents are non-Estonian speakers, the language of the permanent residents constituting the majority of the permanent residents of the local government may be used alongside Estonian as the internal public administration language of the local government on the proposal of the corresponding local government council and by a decision of the government of the Republic.12 According to the Local Government Organization Act, in this case, the local government may also decide to translate part or whole of its sessions into the language of the national minority.13 The permission granted on the proposal of the local government council pursuant to § 11 of the Language Act to use the language of the majority of the permanent residents of the local government entity as the internal working language of the local government is valid until the term of office of the corresponding council expires.14 All permanent residents, regardless of citizenship and knowledge of language, are eligible to vote in local elections.

Further recognition of various languages is provided in the Constitution which makes a specific provision for ethnic minorities, granting a degree of autonomy and cultural self-government to them. However, when Estonia ratified the Framework Convention on the Protection of National Minorities it declared that members of the national minorities must be citizens of Estonia. In Estonia, minorities which are registered in the national register of national minorities may submit an application for national cultural autonomy (self-government).15 The autonomy granted would include in particular, the right to organise education in the mother tongue and form minority cultural institutions. The monitoring organs of the convention have suggested that the National Minorities Cultural Autonomy Act (Vähemusrahvuse kultuuriautonoomia seadus) contains elements that are not suited to the present situation of minorities in Estonia and needs to be revised or replaced in order for them to be effective.16 This pertains in particular to the application of the act only to citizens. The limitation of the right to form cultural autonomies only to citizens appears unjustified, especially in the context of Estonia where a significant number of non-citizens have been residing for a long time. This limitation has caused frustration particularly among the Russian speaking population and has not contributed to the promotion of tolerance in Estonian society. It should be noted, however, that non-citizens can participate in the activities of national cultural autonomy. They cannot found the cultural self-government and actively participate in the election of governing bodies of the organisation.

1.3. An overview of current debates

In immediate aftermath of regaining independence from the Soviet Union, in 1990s, the main political debate regarding linguistic rights concentrated on issues such as: possible recognition of two official languages – Estonian and Russian, abandoning or mitigating language requirements for citizenship especially having in mind the large Russian speaking immigrant community (part of which has resided in Estonia already for a couple of generations). Today language debate is focused on integration and specifically on integration through education. The most vehemently debated issue is the transition to Estonian-medium education in all public upper secondary schools (gymnasiums).

The main issue regarding language rights in education system today has concentrated on use of two languages at educational institutions – Estonian and Russian. This is due to the aforementioned fact that Russian is commonly used by various Slavic people and other ethnic groups from former Soviet Union representing the largest minority language group in Estonia. The transition to Estonian in all gymnasiums has not been welcomed by the Russian speaking community.
Currently besides Estonian-speaking gymnasiums there are a few Russian speaking ones. According to the Basic Schools and Gymnasiums Act (hereinafter BGS) all gymnasiums have to gradually become Estonian speaking by 1 September 2013 (BGS Article 89 (4)). The school is considered Estonian speaking if 60% of the curriculum is taught in Estonian. Theoretically, a pupil finishing his/her studies at a basic school has to be fluent in Estonian. This is necessary (or going to be necessary) for continuing his or her studies in gymnasiums (upper secondary schools) where 60% of the curriculum is taught in Estonian and in some cases for pursuing higher education in Estonia. However, the level of Estonian (and teachers of Estonian) in Russian speaking basic schools varies and is a problem especially in the North-East of the country where there is a higher concentration of Russian speakers (in urban areas). There are also limited opportunities to practice Estonian in everyday circumstances.17

Although individual cases may vary, the above problems do have an effect on the prospects of Russian speaking students. Economic factors may also aggravate the problem if parents are not able to provide for extra language or subject specific tuition when needed. Recently the Advisory Committee on the Frameworl Convention for the Protection of National Minorities in its third opinion on Estonia (1 April 2011) has also pointed out that Estonia should ensure that the on-going transfer to Estonian as the main language of instruction in Russian-language schools is implemented gradually and with due regard to the quality of education offered in Estonian as well as Russian language. It also emphasised the need to expand the availability of relevant teacher training courses including bilingual and multicultural education.18

Exceptionally, with the permission of the government, it is possible, in upper secondary schools, to carry out teaching in some other language (BGS Article 21). However, it has proven to be difficult to obtain the permission. The application needs to be submitted by local government (BGS, Article 21 (3)). The applications of two city councils (Tallinn and Narva) were declined by the government. These municipalities are going to take the matter to the court. Depending on the decision of the court they are also considering registering the Russian speaking gymnasiums as private schools, where the requirement of Estonian language does not apply.19 The latter possibility has triggered a new political debate over extending the Estonian language requirements to private schools to avoid all Russian gymnasiu. The reasons for refusing to grant exemptions to these schools are summed up in the Governmental Order from 2012. Firstly, the government points out that the requirements for transition to Estonian-medium upper secondary school education were laid down already in a Governmental Order from 2012. Secondly, and perhaps most importantly, the government stresses that every society needs for its normal functioning and coherence, a common language. The Constitution provides that this common language is Estonian. In that regard the State needs to promote Estonian language in all areas including culture, education, business, media and etc. According to government this also justifies setting restrictions on use of foreign languages. The government is aware that Articles 49 and 50 of the Estonian Constitution emphasise the need to respect every persons right to national identity and cultural rights which include the right to use his or her mother tongue to communicate within his or her national minority. The government points out that the commentaries to the Estonian Constitution explicitly state that Estonian language has to become a common language facilitating communication between different language groups in Estonia. To guarantee the principles set forth in the Constitution one needs to learn Estonian and the best way to do it is through formal education.22 However, this perfectly reasonable explanation should be compared to recently conducted studies which may point to complications in the relationship between knowledge of language and integration. For long there has been a (political and popular) belief that integration, identity/sense of belonging and also loyalty to the Estonian state are related to being fluent in Estonian language. Hence the political decision about transition to Estonian-medium education in upper secondary schools at the first place. However, recent studies point out that knowledge of the Estonian language does not necessarily mean identification with Estonia. It is a broader problem related to integration questions. Regarding general education, Prof. Lauristin, rightly suggests that the focus should not be on language only, but on civic education and the quality of teachers.22 The study also suggests that there is a category of the Russian speaking community whose Estonian language skills are minimal, but their identification with Estonia is strong. Lauristin suggests that there is a need to start to see differences within the immigrant community and address them accordingly.

2. LANGUAGE RIGHTS IN COMPULSORY EDUCATION

2.1. The Structure of Schooling

The general education schools are basic schools and gymnasiums. Compulsory school attendance begins when a child reaches the age of seven. Article 9 (2) of the BGS sets forth: ‘A person who has reached the age of seven years before October 1 in the current year is subject to the duty to attend school.’24 Basic education school is divided into three stages of study: stage I - grades 1-3 (7-10 year olds), stage II - grades 4-6 (10-13 year olds) and III - grades 7-9 (13-16 year olds). After basic school students may attend upper secondary school (gymnasium), a secondary vocational school or enter a profession. Only basic school is compulsory.

The Estonian school system consists mainly of public schools (municipal and state schools). The majority of schools are owned by the municipalities. There are also a few state schools. For example, many special needs schools (e.g. for mentally or physically handicapped etc.) are State schools.

2.2. General Legal Principles

Article 21 of the BGS sets forth the general principle providing that in basic schools the language of instruction is Estonian. However, in a municipal basic school instruction may be in any language on the basis of a decision of the council of the rural municipality or city government relying on a proposal of the board of trustees of the school. In a state basic
school the language of instruction may be any language on the basis of a decision of the Minister of Education and Research. Thus, basic education can be provided in whichever language, provided that the basic school complies with national curriculum and other requirements set forth in law.

In upper secondary schools the language of instruction is Estonian. As noted above, in municipal upper secondary schools instruction may be in another language. The permission to pursue studies in another language or bilingual studies is granted by the government of the republic on the basis of an application of a rural municipality or city government. However, as already mentioned, it has been proven to be difficult to obtain this permission.

In a basic school where the language of instruction is not Estonian, it is compulsory to teach Estonian as of the first grade. In such a school the school should, according to the BGS, ensure the organisation of teaching Estonian at a level that allows the graduates of the basic school to continue their studies in an Estonian-medium educational institution. The law also makes a provision for minority languages. A school shall organise language and cultural teaching for students acquiring basic education whose native language is not the language of instruction or who communicate at home in a language different from the language of instruction, which is the native language of at least one parent, provided that no fewer than ten students with the same native language or with the same language of household communication request it. So far not many language communities have taken advantage of this provision. However, Ukrainian community can be pointed out. This provision may become more important in case of new immigration to Estonia which currently is minimal.

The following provides a brief overview of principal laws important in the field of linguistic rights in education. Article 37 of the Estonian Constitution creates the basis for the entire school system. In addition to the Constitution there are three principal laws that regulate provision of basic and upper secondary education in Estonia. Firstly, the Education Act (Erakooliseadus) sets forth the objectives and levels of education. Secondly, as mentioned above the new Basic Schools and Gymnasiums Act was adopted on 9 June 2010 (in force from 1 September 2010). The BGS replaced the previous BGS adopted in 1993. The new BSG introduced a few changes to the school system in Estonia generally. There are many aspects to this new law which are unclear and need to be tested out in practice, including provisions affecting language rights. Thirdly, the Private Schools Act (Huvikooliseadus) (hereinafter PSA, Erakooliseadus) regulates the establishment of private educational institutions including basic schools and gymnasia. The BGS is applied to private schools to the extent the PSA does not regulate differently.

The BGS has delegated certain issues to be regulated at the governmental level. The Ministry of Education and Research has adopted two important regulations on 06 January 2011: the National Curriculum for Basic Schools (Põhikooli riiklik õppekava) and National Curriculum for Gymnasiums (Gümnaasiumi riiklik õppekava). The Ministry of Education and Research has also adopted the regulation on qualifications of teachers. There is a regulation on home schooling which was adopted by the Ministry of Education and Research (Koduõppe ja haiglaõppe tingimused ja kord) on 11.08.2010 (in force 01.09.2010). Although this paper focuses primarily on general education provided by basic schools and gymnasiums it may need to be mentioned that there are a further six principal laws that regulate the field of education: the Pre-schools Act, Hobby Schools Act, Vocational Schools (Educational Institutions) Act, Adult Education Act (Täiskasvanute koolituse seadus), Higher Education Act (Ülikooliseadus) and Professional Higher Education Act (Rakenduskõrgkooli seadus).

The laws on general education are also shaped and influenced by political documents such as the Estonian Education Strategy 2007-2013 (updated version for 2011-2013) (Üldharidussüsteemi arengukava aastateks 2007-2013*, periodiks 2011-2013). This document takes into account strategies developed at the European and international level (e.g. Lisbon strategy, Education for All (EFA)-UNESCO, EU Strategic Framework for Education and Training (ET 2020), etc.).

### 2.3. Special Categories

According to Article 9 of the Estonian Constitution, the rights, freedoms and duties of each and every person, as set out in the Constitution, are equal for Estonian citizens and for citizens of foreign states and stateless persons in Estonia. This would include the right to education as specified in the Article 37 of the Constitution. Article 37 of the Estonian Constitution sets forth that:

1. Everyone has the right to education. Education is compulsory for school-aged children to the extent specified by law, and shall be free of charge in state and local government general education schools.
2. In order to make education accessible, the state and local government shall maintain the requisite number of educational institutions. Other educational institutions, including private schools, may also be established and maintained pursuant to law.
3. Parents shall have the final decision in the choice of education for their children.
4. Everyone has the right to receive education in Estonian. The language of instruction in national minority educational institutions shall be chosen by the educational institution.

As noted above citizenship in Estonia does not necessarily mean that a person can speak Estonian. There is a category of citizens who cannot speak Estonian or whose Estonian is relatively bad. As also indicated before, there is a large group formed by citizens of Russian Federation and stateless people permanently residing in Estonia. Majority of this group has arrived or are descendants of immigrants from former Soviet Union and who speak a common language - Russian. New immigration is still insignificant, but has also been discouraged although all forms of immigration are possible, like family reunification, immigration for work and study purposes, and asylum and protection from inhuman treatment. Only since 1997 it is possible to apply for asylum in Estonia as the country joined up to the 1951 UN Refugee Convention and introduced its first Refugee Act. In 2006 the Refugee Act was replaced by the Act Granting International Protection for Aliens.
According to research carried out by the Estonian Migration Foundation the prevailing political view seems to be that as Estonia has already a significant number of immigrants (as a result of the administered migration during the Soviet occupation) it needs to deal with the integration problems of this group before liberalising its immigration rules. However, there have been debates about liberalising immigration rules and reducing exam requirements for citizenship, because of the ageing population and the emigration shortage of skilled labour which emerged during 2006/2007. The number of asylum seekers is not significant. Estonia receives around 10-40 asylum applications per year. Asylum seekers and immigrants come from various countries and various linguistic groups. There appears to be a tendency that new immigrants treat Estonia as a country of transition from where they try to move on to other wealthier European states. Growing numbers of immigrants in other European states and economic factors may put the pressure on Estonia to open up for immigration in the future. So far there have been no court cases directly concerning language rights of any specific categories of people (citizens, non-citizens, asylum seekers and etc.) in educational settings. Estonia has several acts that regulate immigration and rights of immigrants. The main legal provisions regulating the field are contained in the State Borders Act (Riigi piiri seadus), Aliens Act (Välismaalaste rahvusvahelise kaitse andmise seadus) and Obligation to Leave and Prohibition of Entry Act (Väljasõidukohustuse ja sissesõidukeelu seadus). Other acts relevant in this field are the Citizen of European Union Act (Euroopa Liidu liikme seadus), and Citizenship Act (Kodakondsusseadus). Additionally there are several government regulations that deal with residence permit issues.

According to Article 8 of the Pre-School Act schooling and education at a child care institution is conducted in Estonian. However, instruction can be in another language on the basis of a decision of the local government council. As indicated above, the National Minorities Cultural Autonomy Act entitles citizens of Estonia who belong to minorities, to establish cultural self-governments. As noted, non-citizens can participate in the activities of national cultural autonomy. They cannot found the cultural self-government and actively participate in the election of governing bodies of the organisation.

3. LANGUAGE RIGHTS IN NON-COMPULSORY EDUCATION (ESPECIALLY HIGHER EDUCATION)

According to law, the language of instruction at public universities and institutions of professional higher education is Estonian. The use of other languages at the university is decided by the university council. The use of other languages in professional higher education institutions is decided by the Ministry of Education and Research.

The Private Schools Act regulates the establishment of private educational institutions of all types at all school levels (pre-school, basic, secondary, vocational and higher education). According to Article 15 of the Private Schools Act the language of instruction is specified in the statutes of a private school.

4. CONCLUSION

The legal framework in Estonia provides a sufficient basis for guaranteeing the right to education. However, there are aspects in the new BGS which need to be tested in practice, especially regarding transition to Estonian-medium upper secondary education. There are many practical problems related to this transition, including the quality of Estonian teaching in basic schools. There are also political issues related to the integration of the Russian speaking community more generally. The nation building in Estonia is deeply influenced by its history, and specifically by the Soviet occupation which changed the ethnic composition of the country and introduced a large Russian speaking community to Estonia. These historic factors will influence the policy on language and education for years to come.

5. BIBLIOGRAPHY


Endnotes


3. Estonia became part of the Russian empire at the beginning of the eighteenth century (as a result of the Great Northern War). It needs to be admitted that the concept of ‘Russification’ is a somewhat confusing. However, it encompasses a series of administrative and cultural reforms, which were intended to unite the Baltic provinces more closely than before with Russian Empire. Raun, T. (2001), *Estonia and Estonians*, 2nd edn., Hoover Institution Press, Stanford, p. 59.


8. See also below s. 2, *Language Rights in Compulsory Education.*


11. RT I 1992, 26, 349.

12. RT I, 18.03.2011, 1


14. Ibid.


20. RT III 03.02.2012, 16.

21. *Eesti Vabariigi põhiseadus – kommenteeritud väljaanete* (2008), Juurva, Tallinn. It needs to be noted that the commentary is not a legally binding interpretation of the Constitution.

22. RT III 03.02.2012, 16.


24. BGS, Art. 9 (2).

25. RT I 1992, 26, 349.


27. RT I 2010, 41, 240 (entered into force 01.09.2010, some provisions, however, enter into force at a later date).


30. RT I 14.01.2011, 1.


32. RT I 2010, 6, 22.

33. RT I 2010, 56, 367.


35. RT I 2007, 4, 19; RT I 2010, 41, 240 (last amended).


37. RT I 1993, 74, 1054; RT I 2010, 41, 240 (last amended).

38. RT I 1995, 12, 119; RT I, 28.06.2012, 16 (last amended).


44. Ibid. Since the end of the Soviet occupation (1991) Estonia experiences a quite troubling net out-migration. This means the loss of an educated and skilled labour force and a decrease in its native population, which currently is approximately 1.3 million.

45. Ibid.

46. RT I 1994, 54, 902 (has been amended several times).

47. RT I 2010, 3, 4.

48. RT I 2006, 2, 3.


50. RT I 2002, 102, 599.

51. RT I 1995, 83, 1442.


53. RT I 2010, 41, 240.


55. RT I 1995, 12, 119; RT I, 28.06.2012, 16 (last amended).


57. RT I 1995, 12, 119; RT I, 28.06.2012, 16 (last amended).


59. RT I 1993, 74, 1054; RT I 2010, 41, 240 (last amended).

60. RT I 1995, 12, 119; RT I, 28.06.2012, 16 (last amended).

61. RT I 2010, 41, 240.


63. RT I 1995, 12, 119; RT I, 28.06.2012, 16 (last amended).

64. RT I 1995, 12, 119; RT I, 28.06.2012, 16 (last amended).

65. Ibid.
Linguistic Rights in Finnish Primary Education

Pentti Arajärvi
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1. NATIONAL LANGUAGE LEGISLATION

Finland is a bilingual country. Some languages have further been given the status of a minority language and people speaking different languages are supported in different kinds of situations. The use of languages is mainly regulated by the Constitution and the language legislation. The language of the educational institution is normally regulated in the legislation concerning the educational institution in question.

Section 17 of the Finnish Constitution, which is relevant for the languages, reads as follows:

Section 17 - Right to one's language and culture
The national languages of Finland are Finnish and Swedish. The right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis. The Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sami to use the Sami language before the authorities are laid down by an Act. The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act.

The status of the Finnish and Swedish language has not only been strengthened in the Finnish Constitution, but also by the Language Act (423/2003). The other languages are minority languages, and in addition, of the official languages, Swedish is the minority language. These can be studied both from the view of the individual right as well as from the communal view of the minority.

Section 17, Clause 2 of the Constitution guarantees the linguistic identity of the Finnish-speaking and the Swedish-speaking populations, a protection from discrimination and the right to equal treatment by the authorities. For the Sami, Roma and other minority groups, Section 17 guarantees a linguistic identity and partially equality and a ban on discrimination. Section 6 of the Constitution, concerning equality, refers explicitly to language as one of the forbidden grounds for separation.

To have the same grounds as basis for actual equality will most likely require resources to be distributed unequally to different population groups. An actual equality often requires that the group in minority is proportionally favoured. The provisions will especially reflect on the societal services, school and educational conditions and on the distribution of information in one’s own language. This presents itself, for example, as favouring persons knowing Swedish when determining starting quotas for an education, when the grounds for this have been otherwise acceptable too.

Apart from the regulation mentioned above regarding Finnish and Swedish, it is to be noted the provision concerning any linguistic group’s right to maintain and develop its language and culture, as well as the rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability. Jews and Tatars are mentioned in the reasoning of the Government Bill, but any minority group, staying relatively permanently in Finland, can constitute a group as intended by the provision. The Karelian language has, amongst other things, been recognized as a minority language in Finland. The position of the Sami language and sign language is stronger than for other languages when they, according to the Constitution, have to be regulated by an act.

The country is according to the Language Act bilingual and, in addition, divided into monolingual and bilingual districts. Based on the language proportion in the district, there are four different possibilities: Finnish-speaking districts, Swedish-speaking districts, bilingual districts with Finnish as the majority language and bilingual districts with Swedish as the majority language. The national organs, such as the supreme courts and ministries, have to use the language chosen by the party. The legislation with its preparatory acts and almost all other statutes are published in Finnish and Swedish, and partly in Sami. The language of the educational institution is its language of instruction. The courts and other authorities must always know both languages; a person may always present his or her case in his or her first language, and the courts and other authorities must use the language chosen by the party in their decisions. The provision is in this respect similar to Article 41, paragraph 4 of the Charter of Fundamental Rights of the European Union. The language of the process in monolingual districts is, however, the language of the authority, but the proceedings must be interpreted to the language of the party.

According to the Sami Language Act, the Sami language has to be used accordingly with the choice of the party in the home area for the Sami population, which is composed by the northern part of the country. There are three different kinds of Sami languages, and the authority shall use the language chosen by the party. Based on the Act on Services and Assistance for the Disabled (380/1987), persons using sign language have a right to receive interpreter services, the use of which they themselves decide.

The language provisions for doing business in the administration are included in Section 26 of the Administrative Procedure Act. The authority shall arrange for interpretation and translation when a matter becomes pending on the initiative of the authority and if the person does not know the Finnish or Swedish language. Even if it is a question of a decision that has been set in motion on the initiative of the person himself or herself, matters related to revision or reversing of the decision, or other actions similar to that, which surface on the initiative of the authority, fall under the provision set out in the Administration Procedure Act. The party must answer for the interpretation and translation at his or her own expense in matters that become pending on his or her own initiative. The authority may, however, arrange for interpretation and translation in these situations too at its own discretion. Interpretation and translation is free of charge to the party when arranged by the authority. The provision does not require an official interpretation and translation and the authority can itself too interpret and translate the matter. That said, the party must make out the essential contents of the decision and the grounds for it. The interpretation and translation must be done into a language that the party knows adequately in view of the nature of the matter. It is not required that the interpretation is done into the party’s first language. This is very essential for immigrants. There might be an illiterate person doing business in the
administration, in which case it is not enough to only translate but instead, the matter should be able to be presented orally too. On the other hand, oral interpretation might not necessarily be enough when the matter has long-lasting effects and if it imposes obligations later on for the person or if a neglect of the obligation is followed by, for example, the loss of a benefit.

In year 2011, 4,863,351 (90.0%) of the population had Finnish as their first language, 291,219 (5.4%) had Swedish and 1,870 (0.03%) Sami. People speaking other languages than Finnish, Swedish or Sami as their first language were in total 244,827, or 4.5%, of the population. The biggest groups of people speaking foreign languages were the Russian-speaking (58,331), Estonian-speaking (33,076), Somali-speaking (14,045), English-speaking (13,804) and Arab-speaking (11,252).5 The people talking Romani are estimated to be about 5,000, the same as for people using sign language (0.09%).

The rights of the cultural and linguistic minorities are appropriate to assess through their actual realization, especially when the obligations mainly consist of the state tolerating a certain action. Even the obligation to promote is not necessarily fulfilled by legislative measures, instead it is often a matter of discretionary financing where the determination of fulfilment would demand that the actual circumstances are determined.

2. ÅLAND

Åland is an autonomous monolingual Swedish-speaking region where the official language for the state and regional authorities and the local government is Swedish. The autonomy of Åland is based on the decision made by the League of Nations in 1921, by which the region was given to Finland under the condition that it guaranteed especially the Swedish language and an autonomous system to the local population. A Finnish citizen has nonetheless a right to use Finnish in a court or other state authority functioning in the region. In the region’s and its municipals’ authorities there is no such right. The language of instruction in the schools in the region is Swedish and learning Finnish in schools is not compulsory. The Act on the Autonomy of Åland gives persons who have passed their degree in Åland the right to receive a study place in a governmental Swedish-speaking or bilingual educational institution even if they would not meet the language requirements set out for the Finnish language. The Act on the Autonomy can only be amended by a joint decision by the Parliament of Finland and the Parliament of Åland so that the law is enacted in the Parliament in the order of enactment set out in the Constitution.

3. HUMAN RIGHTS

With regard to international commitments made by Finland, Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) determines the right of everyone to participate in cultural life, and Articles 17, 20 and 40 of the Convention on the Rights of the Child stipulate on taking into consideration the linguistic needs and Article 30 on the right to culture, religion and language for the children of minorities and indigenous people. Paragraphs 11 and 12 under Article 19 of the Renewed European Social Charter can also be noted, as well as several regulations in human rights agreements on the requirement to understand language for example in connection to imprisonment and court proceedings.6 According to Article 5 of the Council of Europe’s Framework Convention for the Protection of National Minorities, the parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve their identity, among other things. The Convention contains regulations on the rights for persons belonging to national minorities to use their own language in different situations and the striving to use a minority language when dealing with administrative authorities. The leading principle for the Convention is a liberal attitude that promotes the culture of the minority, as well as obligations for the public authorities due to this.

The Council of Europe’s European Charter for Regional or Minority Languages has in Finland been accepted as being applicable to the Sami language and, of the official languages, for Swedish as the less spoken language in the region. The Convention further requires that persons may determine themselves whether they belong to a minority or not. The Convention concerns, for example, education, public services and, economic and community life. The status of the regional and minority languages is recognized in order to promote them, people are encouraged to use these languages both in their public and private life and teaching and education in those languages shall be organized in an adequate way. Opportunities to learn the language is given to others than only the ones who use the language in question, and cooperation across state borders is promoted. The principles should also be applied to other non-regional languages, which are in Finland for example the Romani language and sign language. For the sake of both Swedish and Sami, Finland’s commitment for cooperation across state borders should be noted.

4. EDUCATION, LANGUAGE AND FINLAND’S COMMITMENTS

According to the Finnish Constitution, everyone has the right to basic education free of charge and everyone shall be guaranteed equal opportunity to receive other educational services without being prevented by economic hardship. The Constitution does not separately regulate on the education in linguistic relations, instead the above mentioned Section 17 of the Constitution is in this regard a central provision. Rules regarding the content of the education in relation to the international agreements that are binding on Finland are most diverse in Article 29 of the Convention on the Rights of the Child. It follows the earlier agreements like the ICESCR. Rules concerning the content of the education have in the international agreements developed relatively little since the Declaration of Human Rights.7 Views on the contents of the education can also be found in the preamble of the Human Rights Declaration.

A significant part of the human rights are the remedies by which they are guaranteed. This mainly consists of legislation and securing the public financing, alongside which the reciprocal relationships between different rights are to be pinned down in conflict situations. The weakness with implementing especially cultural human rights is often the application of them. They are not necessarily regarded as rights, but instead as principles or even only as politically binding. This perception has been proved to be wrong even though it can be a question of gradual implementation.8 For implementing and also legally strengthening the ESC rights, there are, however, several possibilities. Some of these can be implemented
straight through the human rights agreements, some by going, for example, round the International Covenant on Civil and Political Rights or the European Convention on Human Rights, and some can be implemented by using national systems.

A crucial question is choosing the content for the school and education. The curriculum may violate the students' rights or, especially if the state is ideologically involved, violate human rights in the form of national propaganda. A private educational institution or private teaching may even in a democratic society be necessary as an option to the public system. It has to be of the same standard as the public education system.

When choosing the education and school, it is normally a question of choosing from a majority language school or a minority language school, religious and convictional elements or the language of instruction. The actual need for establishing a private school arises most likely for natives with differing language and culture and for groups consisting of immigrants. Based on Section 123 of the Finnish Constitution and several human rights agreements, the establishment of private educational institutions must be allowed, inter alia, on linguistic grounds. In these cases there are often demands as to the voluntariness of choosing the school and regarding the quality of the education. The right to establish private educational institutions may on the other hand also be a ground to accept a certain standard of activity within the public educational system.

An important dimension of choosing education is the interest of the child. Article 3 of the Convention on the Rights of the Child emphasizes the obligation for the authority to take into primary consideration the best interest of the child, and Article 18 deals with the same obligation for parents and legal guardians. Article 12 of the Convention requires on the other hand that the child’s own views are taken into consideration in all matters affecting him or her. It needs to always be taken into account that the best interest of the child might be in conflict with the interest and view of the child’s parents. It is for the first time on Convention level uttered in the First Protocol to the European Convention on Human Rights about the parents’ right to choose the quality of education and teaching for their child. The same thing has been mentioned in nearly all human rights agreements that deal with education. The principle could possibly, as applicable, be used in matters concerning the choice of language.

According to Article 12 of the Framework Convention for the Protection of National Minorities, the Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities on the same grounds as for the majority. The Convention also contains provisions on teacher training, access to textbooks and on the fact that there should be access to education at all levels. According to Article 13 of the same Framework Convention, the Parties recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments. The right in question does not, however, cause financial obligations to the Parties.

When restricting the right to arrange for private education, it can be a question of protecting other basic rights, a need to give criminal protection or a similar cogent reason. The need for a restriction may also be based on, for example, protecting the individual from commercial exploitation or guaranteeing the public reliability of provided education or degree.

In the European Charter for Regional and Minority Languages, Finland undertakes to make available pre-school education, primary education and secondary education in the relevant regional or minority languages. Finland undertakes to make available in Swedish technical and vocational education and university and other higher education, as well as to arrange for the provision of adult and continuing education courses in Swedish. In the latter field of education, Finland commits to a little less when it comes to the Sami language, meaning it makes available a substantial part of the technical and vocational education, university and other higher education and the adult and continuing education courses in Sami.

According to the Convention Against Discrimination in Education (by UNESCO) discrimination is not, among other things, the establishment or maintenance, for linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

In paragraph 1c of Article 5 in the UNESCO Convention is used the term national minority instead of ethnic or linguistic minority because it was undesirable to recognize the right for migration minorities to set up their own educational institutions. The importance of that particular paragraph is lessened by the fact that the Convention makes it possible to also only educate in the national minority language. The right must not be used in a way that prevents people belonging to these minorities from understanding the culture and language of the whole community. It must not prevent people from taking part in functions for the whole community or damage the national sovereignty. The restrictions can be seen as stating obvious principles or even as hostile against minorities.

One of the problems with minorities’ own teaching is financing and the right to set up of educational institutions in relation to it being free of charge. It is at least in the spirit of the Convention that the government officials answer for the education free of charge on equal grounds with the education of the majority, when considering the Convention as a whole with regard to the national minority. The Convention does not, however, require this.

The ILO Convention no. 169 on the Rights of Indigenous Peoples and Tribal Peoples in Independent Countries requires equality for these peoples in education, among other things, and a right to establish their own education institutions and to be provided with appropriate resources for this. The children shall be taught their own indigenous language and the national language. Finland has not (yet) ratified this Convention because the land ownership conditions for the Sami population do not correspond to the Convention. The articles concerning education in the Convention require that measures shall be taken to ensure that members of the indigenous peoples have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community. The children belonging to indigenous peoples shall, wherever practicable, be taught to read and write in their own indigenous language and be given the opportunity to attain fluency in the national language or in one of the official languages of the country. Measures shall be taken to preserve and promote the development and practice of the own languages of the peoples.

5. PRIMARY AND PRE-SCHOOL EDUCATION

The language of instruction is in primary and pre-school education 1) either Finnish or Swedish. There are exceptions to this main rule. The language of instruction can be 2) Sami, Romani or sign language. Part of teaching may be given 3 a) in a language other than the
pupil’s own language, provided that this does not risk the pupil’s ability to follow teaching. In a separate teaching group or in a separate school, teaching may be given primarily or totally 3 b) in a language other than Finnish, Swedish, Sami, Romani or sign language. The provisions regarding language are also applicable to pre-school education. Teaching shall be free of charge for the pupil in all languages.

A pupil is entitled to a specific language of instruction. The main rule is that the language of instruction is either Finnish or Swedish. The education legislation does not contain direct provisions stating that the pupil explicitly has to participate in teaching given in his or her first language, either in Finnish or Swedish, or that the registration of native in language in the Population Information System would be decisive in this matter. The pupil may seek to teaching other than in his or her own language. The interest of the child is nonetheless a basic rule, standardizing all decisions in connection with the child, and it is undoubtedly always against this principle if the child is taught in a language that he or she does not understand. The municipalities, on the other hand, have an obligation to always make available primary education in Finnish and Swedish. In a monolingual municipality, arranging teaching for a pupil with another native language may lead to tricky solutions for the pupil, for example a long way to school or living in another area, when the school has to be the closest suitable school in his or her own language.

In the whole country, there were in total 542,000 pupils in the pre-school and primary education arranged by the municipalities in year 2011. These were divided by language groups in the following way:

<table>
<thead>
<tr>
<th>Language</th>
<th>Pupils</th>
</tr>
</thead>
<tbody>
<tr>
<td>In total</td>
<td>541,931</td>
</tr>
<tr>
<td>Finnish</td>
<td>505,189</td>
</tr>
<tr>
<td>Swedish</td>
<td>33,516</td>
</tr>
<tr>
<td>Finnish/Swedish</td>
<td>671</td>
</tr>
<tr>
<td>English</td>
<td>1,375</td>
</tr>
<tr>
<td>Other</td>
<td>1,180</td>
</tr>
</tbody>
</table>

Of the pupils, 2,834 were from the monolingual (Swedish-speaking) Åland. Pupils living in the Sami home area who are proficient in the Sami language shall be primarily taught in Sami during their primary education. This seems more compulsive than that the obligation for Finnish-speaking pupils’ to be taught in Finnish or the Swedish-speaking in Swedish. The provision is, however, primarily to be read as binding on the arrangement of the teaching, the municipality, and not as an obligation for the pupil. In Finland, pupils are taught in Sami in the Sami home area (in all three Sami languages). Teaching in Sami can only be given to pupils who sufficiently master the Sami language. It must be given if wanted by the pupil's parents. In the primary education, you only have the right to be taught in Sami in the Sami home area. Pupils where only taught in Sami in the Sami home area, and in year 2011 there were 154 pupils.

Pupils with auditory impairments must be taught in sign language, when needed. The provision demands teaching in sign language always when there is a need for it. This is in most cases situations where sign language is considered to be the pupil’s first language. If the pupil has as his or her first language learned sign language, it constitutes his or her mother tongue. The provision does not, however, restrict the use of sign language or the need for teaching in sign language only to these situations. Instead, another language of instruction can be supported by sign language, even though the teaching in its entirety would not be given in sign language. Sign language is used for teaching pupils with a hearing impairment, but there are no exact statistics to be found on that.

It is for the municipalities to decide if teaching in Romani is to be given, as well as teaching in Sami outside the Sami home area. This can be arranged for if there, in the understanding and assessment of the municipality, are enough pupils and the municipality wishes to do so. Accepting pupils to this kind of teaching requires that the pupils have learned Romani or Sami as their first language or know it sufficiently to be able to successfully follow teaching. Pupils are not taught in Romani nor in Sami outside the Sami home area.

In the primary education, Finnish, Swedish or Sami is taught as first language according to which is the language of instruction. When the language of instruction can also be Romani, sign language or another first language of the pupil, can these languages also be taught as first language. Finnish, Swedish or Sami can be taught as first language in addition to the language of instruction, in which case the pupil is taught two languages as his or her first language. The Sami language can, for example, be taught in addition to another language, mainly Finnish, as the first language. This kind of teaching was given to 35 pupils in year 2011. At that time, 163 pupils were taught Romani.

All pupils are taught the other official language (Swedish for the Finnish-speaking and Finnish for the Swedish-speaking, for others either Finnish or Swedish, basically Finnish) and at least one foreign language in their primary education. The foreign language is, in practice, English for everyone, but it can also be German, French or Russian. About 20% of the pupils study at least two foreign languages. Pupils studying Sami are about 380, of which about 40 outside the Sami home area.

Teaching can, according to the Basic Education Act (see earlier Section 3 a), be given in a language other than the pupil’s own language. Therefore, a Finnish-speaking pupil can, for example, be taught in Swedish, Sami, Romani or sign language or another language if it does not endanger the pupil's ability to follow teaching. This gives the opportunity to, on expediency grounds, integrate teaching between different subjects.

Teaching can also be given in a separate teaching group or in a separate school, in which case all or most of the teaching is given in a language other than the pupil's first language (see earlier Section 3 b). A special form is the foreign-language schools. This kind of teaching gives the pupil an opportunity to be taught in a foreign language, and as an example can be mentioned the language immersion courses in Swedish that have become common lately, and teaching in English given to children that have been staying abroad. In this way, children moving from abroad to Finland can, for example, be attended and children with Finnish or Swedish as their first language can be given an exceptionally intense teaching in a foreign language. The teaching is always voluntary for the pupil. Primary education in a language other than the pupil's own language requires arrangements by which the realisation of the goals of the primary education can be guaranteed.
There is no exact information about the teaching given in foreign languages outside the municipal primary education. Teaching in English is given broadly in, for example, different university cities. Teaching in German is given in four big cities and the total amount of pupils is around 1,500. In French, teaching is given in three big cities and there are about 1,200 pupils. Teaching in Russian is given in three schools to about 1,000 pupils in total. In addition, teaching in Estonian is given in one school.

Preparatory teaching for basic education is also given in the primary education. It is meant to immigrants and it is optional for the municipality to arrange for this. The main purpose with the teaching in question is to prepare the pupils so that they can take part in the basic education. This mainly leads to the teaching of the Finnish or Swedish language, and the teaching of cultural knowledge. If a pupil, for whom it would be suitable to participate in preparatory teaching for basic education, does not take part in this either of his own choice or because the municipality does not arrange for mentioned teaching, has he or she still a right to be given access to basic education and the municipality is, based on the provisions regarding supervision of compulsory education, on the other hand, obliged to supervise that a pupil at school age is given a basic education. About 2,000 pupils took part in the preparatory teaching for basic education in year 2009. There are around 17,000 foreign-language pupils enrolled in basic education. Not all immigrants need preparatory teaching for basic education, but the percentage for these is still low. Children in pre-school education can also be given preparatory teaching for basic education. Basic education (about 1,200 students) and preparatory teaching for basic education (about 250 students) is also given to adults willing to take part in it.18

Pupils can be taught the Finnish or Swedish language based on a Finnish or Swedish as second language syllabus, meant especially for immigrants. All in all, a little less than half of the pupils who are not Finnish-speaking or Swedish-speaking receive this teaching either exclusively or as part of the lessons in the first language.19 Not all foreign-language pupils are in need of this kind of teaching, but know Finnish or Swedish sufficiently. The municipalities may arrange for immigrant children to be taught their own native language. It is necessary to support the teaching of native languages in order to maintain and develop the native language of the immigrant pupils and to make them achieve a functional bilingualism. The integration is strongly affected by the fact whether or not the immigrant has been taught his or her own native language. Teaching of the own native language strengthens the identity of the immigrant children and improves the learning results. The importance of the language skills are emphasized even more and the bilingualism or multilingualism of the immigrants benefits not only the society but also the immigrants themselves. It is voluntary for the municipality to arrange for this kind of teaching. A little more than 12,000 pupils took part in this kind of teaching in year 2008. Teaching is normally given two hours a week and the taught languages are 50 in total. More than 13,000 pupils were taught their own native language. There are extra finances in the State Budget for the teaching of immigrants as part of general education.20

6. SUMMARY

The languages of instruction are in the pre-school and basic education in Finland the official languages (Finnish and Swedish), as well as the regionally compulsory minority language. Sign language must always be used, when needed. The public authorities, mainly the municipalities, can arrange for teaching in other languages according to their own discretion. In principle they arrange for teaching in English. The state and private institutions also arrange for teaching in German, French and Russian. Other possibilities are arranged occasionally. The teaching is free of charge to the pupil.

The language of instruction is taught as the first language, and another language might be taught as that too. All pupils are in their basic education taught as compulsory the other official language, Swedish or Finnish. Further, the pupils study one to three other languages. The municipalities may arrange preparatory teaching for immigrants, by which the knowledge of Finnish or Swedish is strengthened. The pupils may also be taught their own native language to some extent.

7. LITERATURE

Case of Kjeldsen, Busk Madsen and Pedersen, European Court of Human Rights, judgment of 7th December 1976, Series A no. 23.
Official Statistics of Finland (OSF): Pre-primary and Comprehensive School Education [e-publication].

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Endnotes


6. For the interrelationship between the political aims of the content of the education and the obligations for the state, see Delbrück, J.(1992), ‘The Right to Education as an International Human Right’, German Yearbook of International Law, 35, pp. 101–102.


11. Case of Kjeldsen. Busk Madsen and Pedersen, European Court of Human Rights 1976, Series A no. 23 shows the principal significance of establishing private educational institutions when dealing with special questions.


Linguistic Rights in Germany

Hermann Avenarius
Hans-Peter Füssel
Ingo Richter
“Language has never been nor is, at any time or any place, an unpolitical territory”
( Herta Müller, Nobel-Prize Winner for Literature 2009 )

1. INTRODUCTION

The German Language is currently used as mother-tongue by about 100 million people. Today “High German” is the official language in Germany, in Austria, Liechtenstein, and most of Switzerland. In addition, it is one of the official languages in Luxemburg and parts of Denmark, Belgium and Italy.

"High German" developed in the centre of Europe towards the end of the 6th century and the beginning of the 7th century A.D. The differentiation of the "High German Sound Shift" separated "Low German" and "High German." Languages, such as Dutch and Flemish developed from "Low German," while the different (High) German dialects have the same root in the High German language.

The development of "High German" as we know it today followed different phases up to the middle of the 17th century. Of importance for the unification and a common understanding of the German Language are Martin Luther's translations of the Bible in 1521 and 1534. In the 19th century, the language developed so far that first steps in the direction of standardisation could be fixed.

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The common language in Germany became a symbol of identity and an important condition for the development of German culture. The expression of "Germany as a Cultural Nation", as it was used since the early 19th century, had already demonstrated two sides of the same coin: the cultural and the political. The language was the basis for the political unification of Germany in the 19th century, but also the basis for the clashes in the 19th and 20th century, where the dispute was, for example, whether the Alsace or the Saarland belonged to Germany or to France.

2. MINORITY RIGHTS IN EDUCATION

Minority languages have always been part of German history. Not only was the influence of French speaking refugees in Prussia, the Hugenots, remarkable, but the integration of workers coming from Poland to the Prussian Rhine-Provinces in the 19th century took a long time. Even at an early stage in German Constitutional History, the linguistic and cultural rights of non-German speaking people had been recognised by the law;

"The traditional development is guaranteed also to the non German speaking tribes in Germany, especially the equality of their languages inside of their territories, in church affairs, in education, in the interior administration and in the juridical system" – so Art.188 of the Constitution of the Reich of 1849; a similar clause can also be found in Art. 113 of the German Constitution of 1919.

The actual German Constitution, the Basic Law of 1949 ("Grundgesetz"), does not allow any discrimination on the grounds of "language, homeland or origin", Art.3 Sect.3. This had to be understood as a special expression of the general non-discrimination-clause of the Basic-Law, as it had been guaranteed in Art.3 Sect.1.

Moreover, there is also a German constitutional understanding of ensuring the use of other languages as well as the cultural and personal importance of these languages for individuals. In the past, the Danish Minority was mainly in the very north of Schleswig-Holstein, near the border to Denmark, and the immigrant workers were also mentioned. But only since the treaty on the German unification of 1990 have the Sorbian been mentioned expressly. Now clauses of protection of the Sorbian identity, language and culture can be found in the constitutions of the Land Brandenburg and the Land Saxonia. In the laws of the Länder, the general right of protection of especially the mentioned minority languages is demonstrated in a more concrete way, in the Educations Acts. The right of parents, of the minority, to choose the language of their children’s schools is guaranteed. In addition, there is also the right of acceptance of these minority languages in Kindergartens and other schools.

As the Federal Law of Germany does not expressly protect the duty of the Länder to do so, Germany has signed and ratified the “European Charter of Regional and Minority Languages” of 1992, decided by the Council of Europe, which came into force as German Federal Law by 1999. Since the German Declaration of 1998, Germany now protects one Regional Language and four Minority Languages, as a Regional Language the “Lower German” is accepted and protected in the northern part of Germany; and as Minority Languages, Frisian, Sorbian, Danish, and Romanes are accepted and protected.

In fulfilling the obligations of protecting minority languages Germany has also founded, in cooperation with Denmark and the Land Schleswig-Holstein a research-institute, the "European Center for Minority Issue" (ECMI) in Flensburg, in 1996.

3. LANGUAGE-RIGHTS OF MIGRANTS

As mentioned above, some minority languages in Germany are protected by federal law and by the law of the Länder. However, these minority languages are not the main problem of the educational system in Germany. The educational system is confronted, to a greater extent, with problems that arise from pupils coming from different parts of the world without sufficient knowledge of the German language.
These pupils, in some cases, may also have German citizenship by law. Under the constitutional rule of Art.116 Para.1 of the Basic Law, a person who has German Citizenship, is a person, “who has been admitted to the territory of the German Reich within the boundaries of December 31, 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such a person”. This clause includes those persons from the territory of the former Soviet Union whose ancestors moved from Germany to Russia, for example, the so called ”Wolga-Germans,” who came to Russia in the late 18th century following a call of Katharine II. These persons are Germans by law, even if their knowledge of the German language is sometimes very poor, they have a right to come and settle in Germany.

People of Non-German citizenship who are citizens of an EU-Member-State have, under European Law, the same rights as Germans. The European Regulation No.1612/68 on Freedom of Movement for Workers became of importance also in German educational institutions, especially Art.12 of this law. German educational policy followed the obligations contained in the European Regulation, for example, by offering special courses in the schools. The main group of pupils that came under this European Regulation in the 1970’s came from Italy or Greece, and, in some parts of Germany, there were also pupils coming from Portugal.

The most important non-German speaking community in Germany is the Turkish. German Policy for Foreigners in the 1970’s and also the 1980’s followed the model of “guest-workers”, i.e., an understanding that people coming to Germany will spend a period of time in the country and will return to their home state afterwards. For such a model, adequate instruction in the German language was not a main topic; whereas, to keep the links to the home-country of the children – by special instruction in their language and culture – was one of the offers made for children with a foreign background. The acceptance of Germany as a country with immigrants who will stay and spend there future life there is a newer development in the official government policy. This has also become part of the new “Act on Residence, Employment and Integration of Foreigners in the Federal Territory” (in force from 2005). Following § 43 (1) of this Act, supporting integration is now an official goal. Special language-courses help to reach a sufficient knowledge of German language and the understanding of culture is now an obligation for foreigners (§44a).

This Act is of importance only for future immigrants, not for people who already live in Germany as foreigners with an accepted legal status; such as migrant workers and their families, refugees, and persons applying for asylum in Germany for political reasons. For some of them, lack of knowledge of German is a problem they sometimes try to avoid. They try to avoid contact with the majority language by trying to stay within their own community. Problems of communication in Germany are of special importance for the educational system as German is the language of instruction.

All PISA-results have shown that around 20 % of the students tested come from a migrant background. Children without a migrant background have reached much better results in the PISA-tests, the difference of results between pupils with and pupils without a migration-background in Germany are amongst the highest in all PISA-states; differences like these can be found only in Switzerland and Belgium. The difference between these two groups of pupils is equivalent to the development gained from one to two years of instruction in school. This result becomes even more important if one takes into account that children with a migrant background, where the parents immigrated to Germany, and where the children were born in Germany and have visited only German schools performed to a poorer level in the PISA-tests.

One of the main problems (and also an explanation for the bad results in the PISA-tests) for the pupils with a migration-background is language; if they have learned another language at home they must learn a second language in school because the German is still the language of instruction in education. Schools are not yet prepared for diversity of languages.

This situation is intensified by the socio-cultural situation of children with a migrant background. They generally belong to a lower social class. Due to the strong relationship between socio-cultural background and attendance of schools with higher expectations, these pupils have therefore been handicapped in a dual way, both by their language and by their socio-cultural background.

Discrimination on grounds of language is therefore a problem for migrant pupils in schools. The constitutional question arising from this is how far such an indirect form of discrimination is also unlawful following the case law of the German Constitutional Court. The first steps towards an understanding of indirect discriminations as unconstitutional had been done by the German Federal Constitutional Court. But this may become of more importance, in Germany, after the implementation of the “EC-Directive implementing the principle of equal treatment irrespective of racial or ethnic origin” because Art.2 Para.2 (b) of this Directive states that indirect discrimination is unlawful.

4. THE PROBLEM REMAINS

Germany must solve all the problems caused by discrimination on the grounds of language, in the interests of a generation of pupils leaving school with insufficient results. In general, pupils with a migrant background are not adequately prepared for the conditions of the labour markets. Knowledge of the majority language is the key-issue in the solution and therefore efforts have to be made to reach that aim. In a time where a political slogan of a “growing parallel society” tries to use differences as criteria for separation, an imbalance of the minorities and majorities in German society is indicated. Schools and other educational institutions are important instruments for integration and politicians should focus on them much more than they do. If these problems are not adequately dealt with, the best foundations of society may collapse and the importance of one common language for nation-building may be lost.
Endnotes

2. In 17 of the 26 "Kantone".
3. Like the ( again different ) Bavarian, Swabian/Alemannian, Franconian, Saxonian dialect.
4. By the dictionary of the German Language by Konrad Duden.
5. One may also think about the clashes in South-Tyrolia, as a part of Italy or not, also happening in the 1960’s.
6. So called “Paulskirchen”-Constitution, named after the Paulskirche in Frankfurt/Main, where the assembly for preparing this constitution was seated.
7. The so called Constitution from Weimar.
10. The Danish Minority is also mentioned in Art.5 of the Constitution of the Land Schleswig-Holstein of 13 June 1990.
11. See Gubelt, op.cit.
15. § 5 Sentence 1 of the School Act of Brandenburg.
16. § 2 Section 1 of the Saxonian School-Act.
20. The language of the Roma and Sinti in Germany.
21. For further information see See www.ecmi.de ...
23. "The children of a national of a Member State who is, or has been, employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory. Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions."
24. More than 2.5 million came to Germany as so called "guest-workers", now 20.6 million of the population in Germany (26.3 % ), has a migrant background ( Autorengruppe Bildungsbericht, Bildung in Deutschland 2012, Gütersloh 2012, p.18); this number will grow up to estimated 36 % by 2035 ( op. cit ).
25. See also Baumert/Maaz, Migration und Bildung in Deutschland, in : Die Deutsche Schule 2012, p. 280 f., 297 f.
28. To add only one figure : 39 % of all children where at home German is not the language of communication need special promotion in learning the German language ( Autorengruppe Bildungsbericht op.cit., p.62 ); Baumert/Maaz ( op. cit., p.298 ) : „To support social integration in Germany in a long run, an early and systematic promotion of the German language-competences will be the silver bullet."
29. From the first results presented in Germany, see PISA-Konsortium Deutschland (Eds.), PISA 2003 – Der Bildungsstand der Jugendlichen in Deutschland – Ergebnisse des zweiten internationalen Vergleichs, Münster-New York-Munic-Berlin 2004., p.271; in reading f.e. the rate of worse readers is still double as high in the group of pupils with migrant background ( Autorengruppe Bildungsbericht, op. cit., p.91 ).
30. Migration-background refers to the following factors of the history of a family : which generation migrated and where the child tested by PISA is born,. what is the socio-cultural background of the family, which is the language used for communication within the family and whether this language is the same like the language used for communication in school ( PISA-Konsortium, op. cit., p. 255 f.).
32. PISA-Konsortium, op. cit., p.257.
33. PISA-Konsortium, op. cit., p.271.
34. PISA-Konsortium, op. cit., p.271.
38. The European Court of Justice has decided that also indirect discrimination is unlawful, under European Law, see decisions dealing with labour-conditions, e.g. Cases 43/75 ( "Defrenne" ), 96/80 ( "J.P.Jenkins" ).
6
Linguistic Rights in Education -
the Scope of the Constitutional Law

Balázs Szabolcs Gerencsér
Linguistic Rights in Education - the Scope of the Constitutional Law
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1. BACKGROUND

Since 1000 AD, Hungary’s founding is a multi-ethnic state. This is illustrated by the first king, St. Stephen's letter to his son, Prince Emericus (Imre), while he collected the necessary parameters of good governance. According to the admission of aliens and the use of languages the king wrote the following: '(...) Because the monolingual and monocultural country is weak and frail. Therefore I command you, my son, that protect the newcomers benevolently and hold them esteem and keep them stay with you prefer to dwell elsewhere. And if you wanted to destroy what I have built, or litter, which is collected, no doubt a great loss will your country sustain. (...)'2

In the medieval Hungarian state a significant number of minorities lived, who could practice their own language, to express their identity. A region inhabited by the minority could use their mother tongue in all private and public in relation. This is bearded out by the fact that at the end of the 1800s more than half of schools did not teach in the majority language, but in minority language.

From the 19th century, according to the European trend, began the rise of the national identity in Hungary as well. In modern times the use of language and minority rights has normally connected, which is still characterized by the Hungarian legal environment, which also means a less significant role for immigrants and refugees, though they use foreign language as well. We must mention that according to the depth of the legal regulation regardless of this difference there are detailed rules applying to both areas.

The first act in the subject was the Law of Nationalities of 28. July 1849, but after losing the war of independence (1949) to the Compromise (1867) there was no minority (in that time's terminology: national) regulation.3 After 1867 a claim rose on the settlement of the minorities’ situation and in particular the Hungarian-Croatian relations. As a result of the that era's ongoing legal codification born the Act XLIIV on national Equality of 1868.

The birth of the nationality law was almost unique in Europe, however, the representatives of ethnic groups received it rather negatively, and only much later recognized its merits.4 The Act contained basically only language rules, such as the use of mother tongue in the Parliament, the publication of the law, at authorities, courts, and land registry system, at the administrative authorities of second instance, in real estate records, church bodies and authorities and the procedures of township official, and, finally, in education. The implementing of the Act, however, faltered and as a result the original broad powers weakened.5 In the period between the two world wars the protection of minorities appeared significantly in education that remained in the post-war times in some elements.

During the decades of the Communist dictatorship (1947-1989) minority issues were treated almost only in education and just after the regime change in 1989 was able to pick up again. In 23 October 1989 Hungary became independent and the provisional Constitution was announced that proclaimed democratic content of fundamental rights such as freedom of conscience and religion, freedom of association, freedom of assembly or right to education.

In the two decades since the political system has changed, the most important laws were adopted by Parliament, but the social and economic changes are continuously induced amendments of legislation both in the use of language and the laws administration of education. 2010th year's general election formed a parliamentary majority, which alone was able to take further steps in legal system changing. One result is the new Basic Law of Hungary from 2012, others are the newly adopted the cardinal laws. Among these important new regulations we can find the act on public education, and the act on higher education and another act on the field of minority rights.

2. CONSTITUTIONAL REGULATION AND INTERPRETATION

2.1. Right to education in the Basic Law

The right to education was an integral part of the historic Hungarian Constitution, which was in force from the founding of the state (1000) until the end of the Second World War, when the Constitution of the Soviet dictatorship had taken place.6 In its Article 59 of the constitution adopted in 1949,7 included the right to culture and education, was modified in 1972, when the Bolshevik vocabulary was replaced by modern terms in the Constitution. This amendment was a milestone in the development of education approaching today's meaning. In 1989 the Constitution was amended by the change of political system and major provisions of the right to education remained the same with the previous text, only clarification of the text has been made.8 By this, the constitution contained real democratic provisions.

On 1st January 2012 Hungary's new Basic Law came into force. After nearly twenty years of the Hungarian political changes the modernisation of the public law system has made a significant step. Besides the entering into force of the new Basic Law, the most important cardinal laws gained a new shape and modern content. Thus in 2011 the public education law9 and higher education law10 was adopted by the Parliament.

In the Hungarian constitutional system ‘[t]he right to education traditionally referred to schooling, which has different levels and forms that make different demands on the State. Recent elements have also been formed that can typically be evaluated among the state obligations to protect the institutions’, such as maintenance of museums, public collections, libraries, state support given to theatres.11

As it is stated in the first commentary of the Basic Law on the same place 'Article XI of the Basic Law12 practically implements the provisions of former Article 70/F of the Constitution. A novelty regarding the right to education is granting that secondary education shall be free of charge. This was only mentioned earlier in the Act on Public Education, although it was obvious and self-evident as a condition of the fulfilment of compulsory education.'13

The right to education means a right on the one hand. In a narrower sense it means the right to learn and to teach.13 The former is related to the quality and availability of teaching and equality. This is a subjective right of access to education, even free access to compulsory education. It means a right to have the freedom to choose a school as well as the freedom of someone to choose a religiously committed school. The latter access, according to the Constitutional Court, is accompanied by a protective right, ie the parents are not obliged to take their children to schools that are religiously and ideologically contrary to their convictions.14 The right to choose a school does not mean that the state shall guarantee
tuition waiver in every chosen school. The doctrine of freedom of teaching is connected to the rights of teachers and the right to found an educational institution. In Hungary educational institutions may be established by the State, the self-government of a nationality (minority), churches, civic organizations, and corporate or other persons, where the permission of activity is acquired in accordance with the law. The churches' role in education and the freedom of religion is detailed in prof. Schanda's previously study written for ELA.

The right to education, on the other hand, means an obligation for both the state and the citizen. As to the state, it is an obligation to create institutions and protect this fundamental right, so to guarantee the possibility the access of education. The Constitutional Court stated that this obligation does not mean the State must guarantee education for all levels of education and for all ideology. In addition, it means the right to school establishment and maintenance, the obligation of an objective and balanced education, and the support for schools even if not state-maintained, but by foundation, church, or any other (legal) person. The obligation for citizens is to participate in compulsory education. According to the Hungarian constitutional system, the 8 years of primary schooling is compulsory and free, the secondary education is free for citizens and universally available but not compulsory. The higher education is accessible to everyone bearing the right of free movement and stay in accordance with EU law and principles, according to his or her abilities.

The Basic Law have regard to the fact that Hungary has major international obligations as well. These are especially the International Covenant on Economic, Social and Cultural Rights (Article 15), the International Covenant on Civil and Political Rights (Article 18), UN Convention on the Rights of the Child (Articles 14.1., 28, 29, 31) and the European Convention on Human Rights (Article 9.1.), and European Charter for Regional or Minority Languages. These international standards concerned to all segments of the rights to education. The practice of the state must be consistent with its international obligations, and controlled by the Constitutional Court on the one hand, and international organizations (UN, CoE) on the other hand.

2.2. Right to education and usage of mother tongue of the minorities

The use of language education in the Basic Law specifically affected to the minorities. It appears first in the first chapter of the Basic Law, the National Avowal when it declares that 'The nationalities living with us form part of the Hungarian political community and are constituent entities of the State' and 'to preserve and safeguard (...) the languages and nationalities living with us form part of the Hungarian political community and are constituent entities of the State' and 'to preserve and safeguard (...) the languages and cultures of the nationalities living in Hungary'. By these statements the recognition and protection of minorities are raised among the basic values.

In the Chapter Freedom and Responsibility Article XXIX. contains the most detailed constitutional regulations concerning minorities. Here included, as a novelty, the free expression and safeguarding of identity (paragraph 1). It was excluded, however, the previous sentence 'part of the people’s power’, which does not mean an essentially dogmatic turn because the new text declares the same by stating 'constituent entities of the State'. The article still guarantees the right to use of names, the care of culture and the right to education in mother tongue, as well as the possibility of self-government. The Basic Law keeps the specific status of minorities that goes beyond the general human and civil rights.

The Basic Law also keeps the control of the Ombudsman, and the other regulation and protection of the legal institution. The only changing in this respect is the ombudsman system conversion, which is set in Article 30 paragraph 3 of the Basic Law, where the deputies of the Commissioner for Fundamental Rights ‘shall ensure the protection of the interests of future generations and the rights of national minorities residing in Hungary’.

2.3. Minority Law in brief

Further details behind the constitution are set in the Act CLXXIX of 2011 on nationalities, which is not unprecedented in the content. The first Act was adopted in 1849, the second was the Act XLIV of 1868. After the political system change of 1989 the third Minority Law was adopted as Act LXXVII of 1993 on National and Ethnic Minorities, which declared, as perhaps one of the most important features, the collective rights of national minorities, which still divides the practice of states and international organizations.

The most important rule of the 1920s was a ministerial decree, which offered the following three options to minority students to elementary schools: in A) types of schools the teaching language is the ethnic language and the Hungarian language is a compulsory to study; in B) types of schools the Hungarian or minority language of the subjects is evenly divided and taught, and in C) type of schools the education is in Hungarian, but the minority language is compulsory to study.

In 1945, the three-stage system was changed to two stage (A, C). Then in 1960, further amendment came in the minority school system, changing to B and C type.

The new act on nationalities of 2011 is the fourth minority law in Hungary following the above logic. The new law breaks the earlier somewhat didactic list of minority rights, and place language rights are in special highlight. It is no accident that the strong emphasis is displayed: in Hungary the main character of the minorities is primary the language. The Act sets the use of language in more areas: (i) the language used in the operation of minority self-governments, (ii) the official use of language, ie. before courts and authorities, and (iii) use of language in the Community. The possibility of use of rights is bound to between 10 and 20% of minority population.

The new act permits the use of language in education again in A, B and C types, which meet the commitments of the European Charter for Regional or Minority Languages and intend to give to the broardest possible rights to the minorities.

3. CONCLUSION

We may conclude the according to the historical experience of Hungary the issue of use of language is primarily refer to indigenous minorities, and only secondly for immigrants and refugees. Hungary is traditionally not the final stop of the refugees, but rather a transit country. The issues of use of language can reflect this situation too, and we may concluded that languages in schools different from Magyar, are mostly languages of minorities.

Detailed regulations can be found in Hungary, which is nourished by the practice: only small number of minority students studying in their own language (mother tongue). Due to the size of the country and the number of ethnic groups, the Hungarian language is general in education. The state's role is, according to the Basic Law and the above cited decisions of
the Constitutional Court, to provide a permanent possibility to use and learn the language, but it can not be forced. Beyond this point the legal regulation has no effect.

Endnotes

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3. The terminology of „minorities” came into common use only in the 20th century. Traditionally in Hungary the „nationalities” mean national and ethnic minorities. The Compromise of 1867 is also known as the birth of the Austro-Hungarian Monarchy.


5. The prime Minister Decree 4800/1923 amended most of the parts of the 1868 Act. The use of language before courts was facilitated only at townships where the 20% of the inhabitants are belonging to one minority (Article 12). In addition, it should be noted that the regulation following 1920 took into account the significant decline of Hungary's territory and population by peace treaties, along with the drastic changes in number of nationalities living in Hungary.

6. We may mention as milestones the Ratio Educationis of 1777-es, which was on the public schooling in the Habsburg empire, and, furthermore, the life-work of J. Eötvös (19th century) and K. Klebensberg (20th century) that were the most important steps of approaching modern public schooling.

7. Act XX of 1949


10. Act CCIV of 2011.


12. Article XI of the Basic Law of Hungary

(1) Every Hungarian citizen shall have the right to education.

(2) Hungary shall ensure this right by providing general access to public culture, free and compulsory primary schooling, free and universally available secondary education, and higher education available for every person on the basis of his or her ability, and, furthermore, through the financial support for students in training, as defined by statute.


14. 22/1997 Decision of the Constitutional Court §1.4.

15. 1042/B/1997. Decision of the Constitutional Court

16. Act on public education of 2011 Article 2 para (3)

The Unrecognized Linguistic Right in Hungarian Education
There is by now a great deal of good literature on linguistic rights in education, including The Hague Recommendations (1996), many papers in Phillipson, ed. (2000), Skutnabb-Kangas (2000), Skutnabb-Kangas et al, eds. (2009), UNESCO (2003) etc. This literature usually focuses on the right to mother-tongue-medium education, or the right to bi- or multilingual education, and the all too frequent violations of these rights in most states on all continents. However, when it comes to the right to education through the medium of a nonstandard vernacular, such as African American Vernacular English (AAVE) in the USA, the amount of specialist literature concerning such issues is smaller (see, for instance, Labov 1982, Baugh 2000, Wolfram 1998). In the case of AAVE, we have a conflict between a 'good' variety (Standard English, regarded as worthy for use in education) and a 'bad' variety (AAVE, regarded as unworthy for educational purposes), and this conflict is accentuated by race: Standard English is associated with white speakers and AAVE with blacks.

In this paper I will discuss the conflict between a 'good' and a 'bad' variety of a language not associated with differences of race: the educational conflict between Standard Hungarian required in schools, job interviews and other socially important domains, and nonstandard Hungarian varieties, i.e. varieties of the language which are almost unanimously regarded as undesirable in schools. But first let us briefly look, not at varieties of Hungarian, but at some languages different from Hungarian.

1. TWO CONFLICTS CONCERNING THE RIGHT TO MOTHER-TONGUE-MEDIUM EDUCATION IN HUNGARY

According to Baugh (1999), educational malpractice refers to the miseducation of schoolchildren by trained teachers. In a similar fashion to the linguistic diversity of the United States, Hungary has (a) students for whom Standard Hungarian is native, abbreviated SHN, (b) those for whom Standard Hungarian is not native, SHNN, and (c) those for whom Hungarian is not native, HNN. The most conspicuous cases of educational malpractice in Hungary have concerned two groups of HNN students: the Gypsies whose mother tongue is Gypsy or Boyash (a dialect of Rumanian), and the Hungarian students who are medically deaf.

While most Gypsies/Roma in Hungary are native speakers of Hungarian, more than 48 000 of them claimed Gypsy or Boyash as their mother tongues in the last two censuses (2001 and 2011). Almost all of their children are educated through the medium of Hungarian only, and the state’s denial of their right to education in their mother tongue results in their dramatic over-representation among the unemployed. As sociologist Kemény (1996) demonstrated in a study of Gypsies in Hungary, there are huge differences in educational achievement between the Gypsy males for whom their mother tongue is Hungarian and those for whom it is not. Among the Gypsies with Hungarian as mother tongue 41.6% did not complete 8 years of school (which made them, in this respect, well integrated into mainstream Hungarian society in the mid-1990s), but among those with Rumanian as mother tongue 48.2% did not complete 8 years of school. As is well known, educational achievement and employment are highly correlated, consequently the Hungarian state’s de facto denial of some Gypsy children’s right to even begin their educational career through the medium of their mother tongue results in their lifelong unemployment. This kind of linguistic genocide in education (for the term see Skutnabb-Kangas 2000) is aided by the Hungarian Statistical Office which, in their census question on mother tongue, collapses beás ‘Boyash, a dialect of Rumanian’ and romani ‘Romany’ as cigány ‘Gypsy’, thus making invisible the true number of Boyash-speakers and Romany-speakers (see Kontra 2011).

Until recently, medically deaf Hungarian students, who can never learn to hear, were taught orally and in a subtractive way, that is, they were forbidden to use Hungarian Sign Language in schools. Such oralist teaching practice deprived the Deaf children of their right to develop a linguistic competence by age three, and it deprived the Deaf or hearing children born to Deaf parents of their right to a mother tongue, that is Hungarian Sign Language. This was a case of the rightholders’ misidentification due to a lack of sound medical diagnosis. What was deemed to be good for the majority of the minority (for the hard-of-hearing who may learn to hear) was presented as good for all of the minority by obfuscating the heterogeneity of the rightholders (Kontra et al 1999). From a legal point of view all this came to an end when, at the end of 2009, the Hungarian Parliament passed Law CXXV of 2009 on Hungarian Sign Language and its Use (2009. évi CXXV. törvény). The law has recognized Hungarian Sign Language as an independent and natural language, and it has also recognized the Deaf or hard-of-hearing children’s right to bilingual education, i.e. their right to use Hungarian Sign Language as one of the media of instruction in Deaf schools.

2. LINGUICISM AND STANDARD LANGUAGE IDEOLOGY

The rest of this paper also deals with social and educational discrimination between groups of people in Hungary defined on the basis of language, or, to use Tove Skutnabb-Kangas’ term, it is also about linguicism. The original definition was conceived to deal with interlingual rather than intralingual discrimination:

Linguicism can be defined as ideologies and structures which are used to legitimate, effectuate and reproduce an unequal division of power and resources (both material and non-material) between groups which are defined on the basis of language (on the basis of their mother tongues).

(Sikutnabb-Kangas 1988: 13)

If we delete the second parenthetical phrase, the definition also covers intralingual discrimination, i.e. the language subordination (Lippi-Green 1997) or verbal hygiene (Cameron 1995) that speakers of standard English, standard Hungarian, or almost any standard variety in Europe impose on their nonstandard speaking compatriots.
For centuries, issues of national independence and the (‘proper’) use of Hungarian have been intimately tied together. In 1825 the Hungarian Academy of Arts and Sciences was founded with the primary aim of enriching and cultivating the Hungarian language. The propagators of language cultivation (nyelvművelés in Hungarian) have had various institutional means for influencing language use, including the Academy. Hungarians live in what James Milroy (1999: 18) has called a ‘standard language culture’ in which ‘the awareness of a superordinate standard variety is kept alive in the public mind by various channels (including the writing system and education in literacy) that tend to inculcate and maintain this knowledge – not always in a very clear or accurate form – in speakers’ minds.’

The linguistic profession in Hungary is split between prescriptivists, who are held in high esteem by almost everybody, including the highest-ranking academicians of the country, and descriptivists, who are sometimes regarded as traitors to the nation. Hungarian language cultivators or language mavens are a politically and socially powerful lobby, with extreme influence in the media and in public education. However, recently there have been a few unequivocal signs of doubt concerning their usefulness to the nation. Language cultivators have been criticized for disseminating language myths and maintaining and recreating language-based discrimination among Hungarians.

Standard language ideology is extremely strong in Hungary. A representative survey we conducted in 1988 revealed that 33% of the adult population of the country watched language cultivation programs on TV frequently and 41% watched them occasionally. Nevertheless, linguistic insecurity is rampant: close to half of the adult population think that correct speech is important for success in life, but they do not exactly know what is and what is not correct (see Kontra, ed, 2003).

Most Hungarian school teachers teach their subjects, be they biology, mother tongue or anything else, in a way that might cause psychological damage to pupils. When pupils use a linguistic variant that is not part of Codified Standard Hungarian, teachers will often correct them by saying ‘That’s not Hungarian’, ‘Hungarians don’t speak that way’, or ‘True Hungarians don’t say such things’. Such verbal humiliation often causes long-lasting psychological injuries in pupils because they translate the teachers’ abuse as excluding their close relatives from ‘true Hungarians’, for the simple reason that they learned the ‘incorrect’, ‘non-Hungarian’ forms from their mothers, fathers, siblings, grandparents, etc. The moral evaluation of such behavior was expressed in unequivocal terms by Halliday et al (1964: 105) nearly half a century ago:

A speaker who is made ashamed of his own language habits suffers a basic injury as a human being: to make anyone, especially a child, feel so ashamed is as indefensible as to make him feel ashamed of the colour of his skin.

Such indefensible practice in Hungarian schools was demonstrated and duly criticized by the Hungarian linguist Papp (1935) three decades before Halliday et al.

The importance of language cultivation (nyelvművelés), ‘correct’ Hungarian, ‘beautiful’ speech, ‘logical’ writing etc is also emphasized in pedagogical documents, including the latest National Curriculum issued this year (A Kormány 110/2012 (VI.4.) Korm. rendelete). This document pays lip service to a sociolinguistic attitude to language use (the need to analyze Hungarian in terms of its various users and uses), but it oftentimes calls attention to the requirement to speak Hungarian in a linguistically proper way, to use Hungarian grammar according to the norm, and to follow the rules of correct Hungarian.

3. STANDARD HUNGARIAN IDEOLOGY AND ITS TARGETS

Standard language ideology in Hungary is hegemonic, in the sense in which Wiley (1996: 113) defines it:

Linguistic hegemony is achieved when dominant groups create a consensus by convincing others to accept their language norms and usage as standard or paradigmatic. Hegemony is ensured when they can convince those who fail to meet those standards to view their failure as being the result of the inadequacy of their own language [...]. Schools have been the principal instruments in promoting a consensus regarding the alleged superiority of standardized languages.

What I will do now is to look closely at the ‘others’ who accept ‘the norms’, and the norms themselves, one by one. At first glance, Wiley’s description of linguistic hegemony seems to fit all Hungarians in Hungary. In reality, however, we see a lot of interesting variation. In a review, Miller (1999: 121) cogently states that “Tame standard codes can be laid down, but taming millions of exuberant users is quite a different task.” The Hungarian National Sociolinguistic Survey, conducted in 1988, offers a dramatic demonstration of the differences between Codified Standard Hungarian and the grammaticality judgments and oral sentence-completions of a representative sample of native speakers (N=832) across Hungary.

Even in Hungary, we can determine what percentage of the entire adult population of Hungary is ‘targeted’ by language cultivators and school teachers if, by definition, those who speak the codified standard variety are not targeted? (This question also implies the question What percentage of school children are ‘targeted’ by school teachers in Hungary?)

To answer this, I set up a ‘Hungarian linguistic hurdle race’, in which each hurdle was a linguistic variable (a task with a standard or a nonstandard solution), and respondents who opted for a nonstandard solution (variant) were eliminated from the race. Omitting the linguistic details (which are published in Kontra 2006), let me state that by the time the respondents got as far as the 10th hurdle (grammaticality judgment task), only 64 of the full sample of 832 were left. In other words, this shows that Hungarian language cultivators and school teachers promulgate a set of rules that only 8% of the population adheres to, even when they are on their best linguistic behavior, as they are when answering questions on linguistic correctness posed by a social scientist. In other words, the correctness judgments of 92% of the adult population of Hungary differ from those prescribed by the school teachers and language cultivators!
A real-time replica study in Budapest of the 1988 country-wide survey shows that these judgments of grammatical correctness have not changed at all between 1988 and 2005. Figure 1 shows the grammaticality judgment hurdle race in Budapest in 1988. As can be seen, out of the random representative sample of 163 respondents only 22 (13.5%) made 10 judgments according to the rules of Codified Standard Hungarian.

Figure 1: Respondents who judged 1, 2, 3, ..., 10 sentences in accordance with Codified Standard Hungarian in Budapest in 1988

Seventeen years later the very same survey was administered to respondents in Budapest. The results show no change at all: now 14.5% of the representative sample made 10 judgments according to the rules of Codified Standard Hungarian, see Figure 2.

Figure 2: Respondents who judged 1, 2, 3, ..., 10 sentences in accordance with Codified Standard Hungarian in Budapest in 2005

If we use the same linguistic hurdle race for oral sentence-completion data, we see a similar picture, but the loss of respondents is on a smaller scale. Figure 3 shows that in 1988 only 51.5% (or 84 out of 163) of the Budapest respondents could orally complete 7 sentences according to the rules of Codified Standard Hungarian.

Figure 3: The grammaticality judgment hurdle race in Budapest in 2005 (N=200)
The oral sentence-completion hurdle race in Budapest in 1988 (N=163)

The results of the replica study 17 years later are not any different: now 108 out of a total of 200 respondents (or 54%) could orally complete the 7 test sentences according to the rules of Codified Standard Hungarian. Consequently, we can say that Hungarian school teachers and language cultivators ‘target’ the speech-ways of about half the adult population of the capital city of Budapest. If we look back to the 1988 country-wide data, the speech-ways of two-thirds of Hungary’s adult population were targeted (Kontra 2006: 107).

As can be seen, the grammaticality judgments show the samples to be much less standard than the oral sentence-completion tasks. There are sound psycholinguistic reasons for this, but nevertheless, the fact remains that advocates of Codified Standard Hungarian (including almost all school teachers in Hungary) have many millions of unruly Hungarians to tame.

4. WHY IS THIS A VERY SERIOUS PROBLEM?

Many people believe, not just Hungarians but Germans, Swedes, Russians and others, that speakers of a nonstandard variety should only blame themselves. If they were not that lazy, they would have easily learned to speak Hungarian, German etc correctly. Most school teachers, who should know better since they are professionals, tend to agree. In our European societies language myths and prejudices are omnipresent. The strength of Hungarian prejudices can be illustrated by the responses to two questions in our 2005 study in Budapest. Among other questions we asked:

(1) When you turn on the radio and hear an unknown person speak for about two minutes, can you judge how smart or intelligent the person is?
(2) When you turn on the radio and hear an unknown person speak for about two minutes, can you judge how trustworthy or honest the person is?

Figure 4 shows the social distribution of (smart) and (honest), which can be summarized this way: Almost half the inhabitants of Budapest can judge the smartness/intelligence of an unknown speaker on the radio, but they cannot judge the person’s honesty/trustworthiness.

Furthermore, chi-square tests have shown that the social distribution of linguistic prejudice in Budapest is independent of speakers’ educational levels, sex and age because the myth ‘Dumb people speak dumb language’ permeates practically all people in Hungary. If such prejudice were not enough, it can be aggravated by the effects of linguistic hegemony I quoted from Wiley (1996) above: those who suffer linguistic discrimination are often convinced that their failure is the result of the inadequacy of their own language.
From all the discussion so far, it may seem that linguistic prescriptivism is responsible for such harmful educational effects. Not necessarily so. In a highly illuminative study Myhill (2004) has shown that prescriptive correctness is socially harmful only if it goes hand in hand with prestige-based correctness. This latter type of correctness derives from the language use of a society’s social elite. When prescriptive language gurus propagate forms which are natively used by members of the social elite, correctness becomes related to social class. Most European societies are like this, but in a number of languages the ‘standard’ or ‘correct’ variety is not based on the everyday language of the social elite (examples include Hebrew, Arabic, Icelandic, or Sinhala). As Myhill points out, Hebrew and English prescriptivism are equally unscientific, ‘but only English prescriptivism can also be considered to be discriminatory because only English prescriptivism is based upon following the usage of the highest-status speakers’ (Myhill 2004: 398).

Hungarian is also like English. In our 1988 study the upper-level managers and university-trained professionals used or judged correct nonstandard forms in significantly smaller proportions than did the unskilled workers (see Kontra 2006: 119).

Many also believe that speakers of nonstandard varieties could easily learn to speak correctly but they are too lazy. However, sociolinguists have demonstrated in several languages, Hungarian and English included, that there are linguistic features which are easy to learn but others may be impossible to learn (see Kontra 2006: 108–112). This ‘too lazy to learn correct language’ argument is simply false. In many cases it is linguistic nonsense and educational malpractice.

Linguicism is different from racism, sexism and other forms of social discrimination in as much as, in many cases, those who maintain language-based social discrimination are hailed for doing so. They are regarded as the guardians of good language, correct usage, and, by implication, the well-being of the nation that speaks the language. Racists are not generally hailed for being racists, but linguists fare much better. This situation is made worse by those who suffer the discrimination in as much as they may blame themselves as a result of linguistic hegemony.

Such discrimination constitutes a serious obstacle in educational achievement (pupils with low achievement results on mother-tongue tests may never get to schools where they would be successful, were it not for the rampant linguistic discrimination). Schools should dismantle, rather than erect and maintain such linguistic barriers to educational success. After all, to conclude by quoting the distinguished British linguist Peter Trudgill: ‘If women are being discriminated against, you don’t say “You should become a man”’.5

5. REFERENCES


Baugh, J. (1999), Out of the Mouths of Slaves: African American Language and Educational Malpractice, University of Texas Press, Austin, TX.


Kontra, M., (2003), Nyelv és társadalom a rendszerváltáskori Magyarországon (=Language and society in Hungary at the fall of communism), Osiris Kiadó, Budapest.


Kontra, M., (ed), (2003), Nyelv és társadalom a rendszerváltáskori Magyarországon (=Language and society in Hungary at the fall of communism), Osiris Kiadó, Budapest.


Endnotes

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2. In the grammaticality judgment tasks, following a trial phase, respondents had to judge whether each sentence given to them on index cards was ‘grammatically correct’.
3. The Survey is described in detail in Kontra (2006), see also Cseresnyés (2005).
4. In the oral sentence-completion tasks respondents had to insert the appropriate form of a word (whose citation form was printed in the margin of the index card) into a blank in a sentence, and say the entire sentence out loud.
5. See Kontra and Trudgill (2000).
Linguistic Rights in Compulsory Education: Country Report: Ireland

Dympna Glendenning
1. INTRODUCTION

Language is one of the central elements of a minority’s identity and is at the core of the European Union’s (EU) “United in Diversity” principle. Although the EU lacks express competences in this sphere, it has pledged itself to the preservation of linguistic diversity in the Charter of Fundamental Rights and elsewhere.1 Furthermore, the European Court of Justice (ECJ) has contributed significantly to the jurisprudence of the language rights of minorities in Europe in the context of the free movement of persons and the freedom to provide services in the community.

In addition international human rights law plays an important role in setting standards for linguistic rights and for the promotion and protection of the identity of linguistic minority groups and it provides the normative framework for developing principles of democratic governance for multicultural policies aimed at many ethno-linguistic conflicts.2 The right of everyone to take part in cultural life is stated in Art 15 (1)(a) of the International Covenant on the Economic, Social and Cultural (CESCR) Rights and one of the elements of that right is the right to use one’s own language in public or in private as the General Comment No 21 on the CESC of the 21 Nov 2009 of the United Nations Committee (UNC) points out.3

The right to express oneself in the language of one’s choice is a significant right for minorities, who have the right to preserve, promote and develop their own culture, including their language, which is intrinsically linked to education.5 This article considers aspects of linguistic rights in compulsory education (6-16 years generally)6 in Ireland in the light of national, international and EU law.

2. LINGUISTIC RIGHTS IN IRELAND

In Ireland, with its long and troubled history of colonisation, language issues have always been sensitive nationally, culturally and politically. Long before the concept of EU citizenship was enshrined in the Treaty on the Functioning of the European Union (TFEU),7 Thomas Davis, Irish poet, journalist and cultural nationalist (1814-1841), contended that “a people without a language is only half a nation”8 but many countries, although lacking a language of their own, still manage to retain a strong cultural and national identity. In modern Ireland the Irish language continues to be an important part of national identity although, it appears, many perceive it as being of symbolic importance only.9 Nonetheless, the survival and evolution of the Irish language, with its literary tradition dating from the late 6th century, has been remarkable. Having been proscribed by English legislation in 1537,10 it rose like Phoenix-like to achieve a higher status nationally under the Official Languages Act 2003,11 to acquire official recognition as a minority language in Northern Ireland, and to achieve official status as a working language of the European Union (EU) in 2005.12

Although the Constitution of Ireland 1937 (the Constitution)13 was drafted in English and later translated into Irish, Article 8.1 confers the status of “national language and first official language” on the Irish language. The following subsection (8.2) recognises the English language as “a second official language”. Article 8.3 provides:

“Provision may, however, be made by law for the exclusive use of either of the said languages for any one or more official purposes, either throughout the State or any part thereof.”

Notably, the Constitution did not include any express national policy, aim or objective in respect to the restoration of the Irish language and Articles 42 (Education) and 44 (Religion) are silent on the Irish language issue in schools/education. Accordingly, the compulsory teaching of the Irish language in all primary schools is not an express constitutional principle although this was considered in early constitutional drafts.14 However, the courts have established that the State has obligations relating to the Irish language.15

In O’Shiell v Minister for Education & Ors16 parents and pupils in a Steiner school failed in their constitutional action against the State seeking public funding for the school in accordance with parental choice. The school had been refused recognition, inter alia, on the grounds of the inadequacy of the teaching of Irish in the school. Laffoy J held that a duty to provide for the education of the children of the State, at their first stage of formal teaching and instruction, must involve an obligation to provide for education in the constitutionally recognised first official language of the State. She concluded that the informal regulatory requirement of the Rules for National Schools (1965), that teachers who teach in recognised primary schools should have proficiency in Irish, is constitutionally valid. Moreover, Laffoy J noted that such a requirement is also a valid requirement under EU law and in application to the facts and applying the test laid down by the ECJ in Groener v Minister for Education,17 such requirement is neither disproportionate nor discriminatory, she stated.

The Groener and Angonese decisions are informative because they indicate how far Member States may go when requiring knowledge of a minority language as a condition of access to employment in the host Member State. In Groener18 the ECJ was called upon to balance Ireland’s ‘special linguistic situation’ with the Community’s aim of freedom of movement for workers. The applicant, a national of the Netherlands, who had been a part-time teacher of art for two years at the Vocational College of Marketing and Design in Dublin, applied for a permanent post in 1984. While successful in the competition, Ms. Groener failed the proficiency test in oral Irish (the Ceard Teastas). On a referral from the Irish High Court, the ECJ held that:

‘The EEC Treaty does not prohibit the adoption of a policy for the protection and promotion of a language of a Member State which is both the national language and the first official language. However, the implementation of such a policy must not encroach upon a fundamental freedom such as the free movement of workers. Therefore, the requirements deriving from measures intended to implement such a policy must not in any circumstances be disproportionate in relation to the aim pursued and the manner in which they are applied must not bring about discrimination against nationals of other Member States.’

The ECJ noted the Irish State’s long-standing policy for promoting the Irish language through education as a means of expressing national identity and culture and in particular its constitutional status as the national language and the first official language.20 Consequently the Court interpreted the phrase ‘conditions relating to linguistic knowledge required by reason of the nature of the post to be filled’ in Art 3 of Regulation 1612/68 in a manner...
sympathetic to Ireland’s cultural and national values and concluded that the nature of the post justified a linguistic requirement. The Court stated: ‘The importance of education for the implementation of such a policy must be recognised. Teachers have an essential role to play, not only through the teaching which they provide but also by their participation in the daily life of the school and the privileged relationship which they have with their pupils. In those circumstances it is not unreasonable to require them to have some knowledge of the first national language.’

However, the Court carefully qualified the scope of its decision in Groener stating that the level of linguistic knowledge required of the candidate must not be disproportionate in relation to the objective pursued within the meaning of the final paragraph of Art 3(1) of Regulation 1612/68. The Court further required that nationals of other Member States, where they have failed the oral examination, should have an opportunity to re-take such examination when re-applying for a post.21 While the Groener judgment seems ideal from a national standpoint, it was not satisfactory from a Community perspective for in validating the exemption for the protection of the Irish language, it doubly advantaged teachers who were Irish nationals in that they could avail of teacher mobility in all other Member States without the full duty of reciprocation in the host Member State.

The application of the Groener case is now largely historical due to a change in national linguistic policy. With regard to Irish language requirements for second level teachers, a change to existing practice was effected at the beginning of the school year 1999-2000.22 From that date forward there is no Irish language requirement for the majority of post-primary teachers who do not need to use Irish to discharge their daily duties.23 However, the Irish language requirement is retained for the following categories of second level teachers:

(a) teachers employed in Gaeltacht schools (schools situated in Irish speaking areas i.e. where Irish is the first language);
(b) teachers where the daily teaching medium is Irish (e.g. Gaelscoileanna) in the case of subjects other than Irish in any school and
(c) teachers who teach any subject (except Irish) through the medium of Irish in any school.

Irish linguistic requirements are still in place for primary school teachers in Ireland with some limited exceptions.24

3. THE CURRENT SITUATION: LANGUAGE PROVISION

Recent census figures indicate that although English is the mother tongue of the vast majority of the population, approximately 41% declared themselves capable of speaking Irish.25 This figure, being self-declared, seems highly optimistic but it is difficult to find reliable statistics on this topic. More realistic estimates indicate that approximately 10% of the population are fluent speakers of Irish which is the first language of approximately 2% or 3% of the total population.26

As an integral part of the EU and the wider global community, Ireland has become increasingly multicultural in latter decades. Research indicates that in 2005 there were speakers of at least 60 different languages enrolled in Irish schools27 so the language entitlements of these new communities adds a new challenge to education policy and practice. Language difficulties may arise when new immigrant communities come to reside in Gaeltacht areas (the few remaining areas where the Irish language is commonly spoken in daily communication as the first language). In such communities the competing rights of those who assert the right to be educated through the medium of Irish in recognised publicly funded schools (Irish medium schools) need to be weighed against the rights of immigrant children who have the right to education under the Constitution, under statute law and under international human rights law. Such competing rights arose in a community school (2nd level) situated in the Kerry Gaeltacht in Geaney & Ors v Pobalscoil Chorca Dhuibhne, the Minister for Education & Science & Ors.28 In this collective action 71 minors and their parents or guardians sought no less than 30 remedies against the school. Essentially, the minor plaintiffs, many of whom were children of immigrant families, claimed that they did not understand the subjects they were taught in the State curriculum in the school which was teaching mainly, it appears, through Irish. The publicly funded community school had evolved from the merger of two existing voluntary schools in which education, it appears, was provided to the plaintiffs bilingually (through Irish and English) and there was no other appropriate second level school in the locality. This case, which was part heard in the High Court,29 had an unsuccessful 3-day mediation period, and was finally settled between the parties. It should be noted that this was not a State school although it was built and fully indemnified by the State which also paid the teachers and carried virtually the full financial burden. However, the Trustees in whom the school was vested, and the board of management strenuously supported an all-Irish linguistic policy to a degree that allegedly impacted adversely on the applicants’ rights to education. Apart from alleged constitutional and statutory breaches, this would also appear to have violated Article 2 of Protocol 1 of the ECHR being a denial of the substance of the right of access to existing educational establishments as the ECHR held in Cyprus v Turkey.30

It will be recalled that, although the applicants in Cyprus v Turkey31 were Greek Cypriots residing in Northern Cyprus, the manifold matters complained of fell under Turkish control including language rights. Prior to the Turkish invasion of Cyprus, secondary schools in Northern Cyprus included Greek language facilities for students, which were abolished by the Turkish authorities. This presented Greek Cypriot students, living in Northern Cyprus, with a dilemma as their education up to that point was delivered through the Greek language. The applicants alleged breach of their rights under Art 2 of Protocol 1. The Court held that since these Greek students had received their education in Greek up to that point, the actions of the Turkish authorities constituted a denial of the substance of the right of access to existing educational establishments. In so far as no appropriate secondary school facilities were available to these children, the Court found this to be a violation of Art 2 of Protocol 1 of the ECHR. The setting and planning of the curriculum is a matter for the Member States.32 Accordingly, language policy and practice in Ireland is a matter for the Irish State.

4. LANGUAGE POLICY AND PRACTICE IN IRELAND

In compulsory education there is still a considerable focus on the Irish language33 and a striking lack of emphasis on the teaching of foreign languages in Ireland’s small, open economy which is heavily dependent on foreign investment. Among the key findings of a recent national longitudinal study of 9 year-olds, (Growing up in Ireland, 2009),34 was that...
the typical number of hours per week spend learning English in mainstream schools was 4 hours while the typical number of hours spent learning Irish was 3.5 hours. The Eurostat Report (2010) found that Ireland had the lowest level of foreign language tuition in Europe and that only a tiny proportion of primary school students in Ireland were exposed to foreign languages in any meaningful way. Sadly, such minuscule provision as then existed (mainly pilot programmes) has since been abolished in recent budgets. Thus Ireland remains one of the few remaining EU Member States in which it is not mandatory to learn a foreign language during the period of compulsory education or at any stage of education. Moreover, the Eurostat Report also found that by the time students reach the senior cycle in second level schools, 19% have discontinued the foreign language and only 8.4% are learning more than one language. This remarkable lack of emphasis on foreign languages in compulsory education is further reflected in primary teacher colleges of education, where such teachers receive their training/education. Qualification in a foreign language is not a prerequisite in the State examination (Leaving Certificate) which determines entry to these colleges. In effect Ireland’s insular language policy and practice disadvantages many of its own citizens who must emigrate to find employment further afield because they generally lack the required language skills to work in the EU.

Ireland has not yet formulated an appropriate response to the EU’s policy on pluri-lingualism, namely that all European citizens should achieve proficiency in at least two languages, apart from their mother tongue, (Barcelona, European Council 2002: 119). With the recent swinging cut-backs, inter alia, in education, many of which sit uneasily with human rights norms and standards, Ireland is unlikely to present an appropriate response to the Barcelona European Council in the foreseeable future.

4.1. Home Education

Currently 730 children are receiving their education in the home which is constitutionally permissible. When considering, among other matters, whether Irish had to be included in any curriculum or system of home education in Director of Public Prosecutions v Best, the Supreme Court (Keane J) stated that it would be going too far to hold that its absence would, of itself, mean that the constitutional standard would not be reached. However, Keane J continued he was also of the view that the absence of Irish from the curriculum could be taken into account in view of its constitutional status as the first official language and that a knowledge of Irish is a precondition of at least some forms of employment. Currently Irish is an obligatory subject in all mainstream, recognised primary and secondary schools and is a requirement for entry to all constituent colleges of the National University of Ireland. Bonus marks are generally available on a phased basis to students who sit the State Examination (Leaving Certificate) in the Irish language. It will be recalled that in the Belgian Linguistic cases, the European Court of Human Rights (ECtHR) rejected the applicant’s contention that the right to receive education in the language of one’s choice was within the protection of Article 2 of Protocol 1 of the European Convention on Human Rights (ECHR). However, the Court made one exception, where the language of one’s choice is also the national language or one of the national languages, it held that even in the absence of an express provision in Art 2, the right to education necessarily implied that its beneficiaries be afforded the right to be educated in the national language or one of the national languages. Since Irish is the “national language and first official language”, arguably Irish parents have both a human right and a constitutional right to have their children educated through the medium of Irish and State provision has been made for this in the past few decades in the Gaelscoileanna (schools built and owned by the State in which Irish is the language of instruction). It has been alleged that these schools, which generally have high achievements academically, are elitist since they are attended mainly by the children of the middle classes but the schools point to the fact that they are open to all children.

5. CONCLUSION

At a time when Ireland’s literacy rates in English have fallen in the international league, and its emigration rates are climbing, perhaps the time is opportune for Ireland to make a fresh appraisal of its language policy and practice in compulsory education. In the opinion of this writer, Ireland needs to find a more proportionate, pragmatic and equitable balance in the school curriculum between the protection of the Irish language, the rights of its children to a higher standard in the vernacular and their right, at the very least, to learn one foreign language in the period of compulsory education. If a nation places a focus on nationality and culture to a degree that adversely affects the global opportunities of its citizens, it is high time for re-appraisal, and reform in education policy and practice.

Endnotes

2. UNESCO, MOST programme. With a view to assisting Governments, Parliaments and civil society in this sphere UNESCO has provided its MOST programme including the most germane conventions, declarations and multilateral treaties which pertain to linguistic rights, see www.unesco.org/most/in2nt.htm
3. At paragraph 1.3. See further B (16)(a) and para 5.32 and paragraph C (Core Obligations).
4. Paragraph 1.3 of the General Comment No 21 of the UNC
5. General Comment, No 21, paragraph 1.2 of the UNC
7. By Art 20 of TFEU which adds to and does not replace national citizenship.
8. Arthur Griffith (ed.) Thomas Davis: the thinker and teacher: the essence of his writings in prose and poetry (Dublin, 1914); Writings, Biography, & Studies, T.S. Rolleston (ed.) online at www.celt.ie Davis, inter alia, sought the revival of the Irish language, contending that it was vital to reverse the anglicisation of Irish culture.
10. An Act for the English Order, Habite and Language 1537.
11. The Official Languages Act 2003 provides for the use of the Irish language for official purposes in the State and for the use of both official languages for all official purposes in the State, in Parliamentary proceedings, in Acts of the Oireachtas (Parliament), in communicating with or providing information by public bodies and in the administration of justice; see also O’Beolain v Fahy [2001] 2 IR 279.


15. But the State must act lawfully when promoting the Irish language. See Leyden v A.G. [1926] IR 213. O’Shiel & Cooleenbridge Ltd v Minister for Education & Ors [1999] 2 IR 321 (Laffoy J): the time allotted for teaching English and Irish in the language curriculum in mainstream schools, which was revised in November 2011, is 4 hours weekly in mainstream schools is to be spent on the Irish language while 3 and a half hours is to be spent on the Irish language, see: http://www.ncca.ie/en/curriculum and assessment/early childhood education/primary

16. O’Shiel & Cooleenbridge Ltd v Minister for Education & Ors [1999] 2 IR 321 (Laffoy J): the time allotted for teaching English and Irish in the language curriculum in mainstream schools, which was revised in November 2011, is 4 hours weekly in mainstream schools is to be spent on the Irish language while 3 and a half hours is to be spent on the Irish language, see: http://www.ncca.ie/en/curriculum and assessment/early childhood education/primary

17. But the State must act lawfully when promoting the Irish language. See Leyden v A.G. [1926] IR 213. O’Shiel & Cooleenbridge Ltd v Minister for Education & Ors [1999] 2 IR 321 (Laffoy J): the time allotted for teaching English and Irish in the language curriculum in mainstream schools, which was revised in November 2011, is 4 hours weekly in mainstream schools is to be spent on the Irish language while 3 and a half hours is to be spent on the Irish language, see: http://www.ncca.ie/en/curriculum and assessment/early childhood education/primary


20. Under Art 8 of the Constitution.


22. Groener v Minister for Education [1990] ILRM 335: [1989] ECR 39677 at 9, para 23; this requirement was taken into account in Circular 19/96 governing arrangements for nationals of other Member States who wished to take the Irish qualifying examination.


26. For further information see www.teachincouncil.ie and www.education.ie. The Teaching Council [Registration] Regulations 2009 indicate that there are two main entry routes into primary education in Ireland: (1) a recognised three year full-time programme (now changing to 4) leading to a Bachelor of Education degree, or(2) a recognised Graduate/Higher Diploma in Education (Primary) degree at level 8 or a qualification at level 9 on the National Framework of Qualifications. Whichever route is taken, the applicant must have achieved prescribed examination results in the Leaving Certificate or in Northern Ireland’s General Certificate of Secondary Education (GCSE) or the General Certificate of Education (GCE) A-level examinations.


28. Official website of Tourism Ireland.ie


30. Schools recognised by the Minister for Education and Skills pursuant to s. 10 of the Education Act 1998 and are publicly funded under s. 12 of that Act.


36. The time allotted for teaching English and Irish in the language curriculum in mainstream schools, which was revised in November 2011, is 4 hours weekly in mainstream schools is to be spent on the Irish language while 3 and a half hours is to be spent on the Irish language, see: http://www.ncca.ie/en/curriculum and assessment/early childhood education/primary

37. Conducted by the Economic, Social, Research Institute (ESRI), www.esri.ie

38. Eurostat is the statistical arm of the EU Commission.

39. Scotland and England being the others. However, England has plans to introduce the teaching of foreign languages in compulsory education.


42. See further Glendenning, “The Irish Constitution: Education and Human Rights in Recognised Schools”, at www.ihr.ie under “Events”.

43. These children are registered with the National Education Welfare Board (NEWB) pursuant to the Education (Welfare) Act 2000 as amended.

44. [2000] 2 IR 17 at 59.


46. In second level schools it is mandatory to study Irish for the Leaving Certificate but it is not mandatory to sit the Irish language as a subject in the Leaving Certificate in order to pass the examination as it was formerly.

47. But not for entrance to Trinity College, Dublin or the University of Limerick.

48. State Examinations Commission (SEC), see www.examinations.ie

49. Belgian Linguistic Case (No 1) 1 EHRR 241; Belgian Linguistic Case (No 2) 1 EHRR 252.

50. The ECtHR held against Belgium on one point that the legislative provision that prevented French-speaking schools in the "special status" communes in the Brussels suburbs from accepting pupils outside the area, but permitted Dutch-speaking schools to accept such pupils, was discriminatory treatment based on language (as prohibited by Art 14 read in conjunction with the first sentence of Art 2 of protocol 1) and could not stand.

51. Belgian Linguistic case 1 EHRR 252.

52. As has its numeracy rates, see Education at a Glance (2010) OECD.
Information with regard to capitation going to primary school/ownership of primary schools.html. Information with regard to sitting exams through the medium of Irish http://www.examinations.ie/index.php?l=en&mc=ca&sc=im
The Immigrant Minors’ Integration in the Italian Educational System (2005)

Claudia Pretto
The number of non-European children in Italian classroom is rapidly increasing, which reflects recent trends throughout Europe. These “new differences” in the schools are creating a melting-pot of cultural, ethnic, linguistic and religious diversities, posing challenges for the future.

This short paper aims to analyse how these emerging issues are treated in the Italian educational law. Particular attention will be given to how the right to, and in, education might be assured to immigrant children in Italy, through the exploration of the constitutional law on education and the immigration law related to children. In this paper, following the European common terminology, the words “immigrant children”, indicate pupils with non-European citizenship.

Immigrant children in the Italian schools are adopted children, children of regular or irregular immigrants, or foreign children who arrived alone in the country. The status of immigrant children is an important aspect of Italian educational law; however, it is difficult to fully grasp it as it is legally determined by minors’ law and immigration law and is regulated by administrative, criminal, civil and public law. In addition, Italy is facing a period of increasing consciousness of its multiculturalism. The political actors have different positions and this causes the approval of too many contrasting and un-systematic laws. Educational law and in particular the legal status of immigrant pupils is a delicate topic because children will be the future of a society.

2. IMMIGRANT CHILDREN IN THE ITALIAN EDUCATIONAL SYSTEM

Immigrant children in the Italian schools are adopted children, children of regular or irregular immigrants, or foreign children who arrived alone in the country. The status of immigrant children is an important aspect of Italian educational law; however, it is difficult to fully grasp it as it is legally determined by minors’ law and immigration law and is regulated by administrative, criminal, civil and public law. In addition, Italy is facing a period of increasing consciousness of its multiculturalism. The political actors have different positions and this causes the approval of too many contrasting and un-systematic laws. Educational law and in particular the legal status of immigrant pupils is a delicate topic because children will be the future of a society.

2.1. The meeting of differences, a public problem and a social step

Immigration starts as a social phenomenon. It begins in the State of origin and ends in the State where migrants arrive. The meeting between differences becomes a problem, or better, a new step that the societies should pass through. The phenomenon of immigration used to be considered only as a labour related phenomenon. In reality, immigration disrupts all the structures of society, while creating new legal and factual orders.

Minors are protagonists of integration, for they unite their parents’ culture, a foreign culture, to the Italian culture. They participate in both of these cultures, and schools can be the first ground on which integration develops, nevertheless it is difficult for schools to implement intercultural programmes. Immigrant children must be considered as active subjects, they should not be asked to give up their cultural values and origins, for this would be against the respect of immigrant minors’ rights in education. Immigrant minors take part in Italian society, so an intercultural approach is necessary to assure them with a right to education.

It is impossible to speak of an intercultural approach if there are still discriminations or unequal treatments within schools or classrooms. Different treatments can be used only to assure the substantial equality among pupils of different cultural origins and backgrounds. Intercultural education means to share information, to live and gain experiences, to permit the comparison not only for schools’ operators but also for all other subjects participating in education.

“The values which give importance to life are not only the values of our culture, not only the values of the past, or the present. We must have an universal point of view not a relative one. At the same time we recognize in the universal value of the person the foundation of a commune culture and we look at the “Declaration of Universal Rights” (U.N., 1948) the expression of values of a common consensus. The Intercultural education finds in the dialectic conciliation between the diversities the foundations on which to build a multiethnic society.”

On 24 March 1993 the National Council of Education rendered another important opinion on this matter, giving importance to the role of schools in fighting racism and anti-Semitism. “Intercultural education”, thanks to this Council’s statement, became part of the specific language of Italian educational law. The National Council of Education wants to underline the need to give answers to intolerant actions through education, in order to create a society in which the diversities can be considered as sources. A multicultural society is possible if there are no particularisms, but if there is a universal point of view in the school’s programs. For this reason the programs have to be contextual, they have to look at the local realities, without losing the universal approach in order to respect the principle of autonomy. During this meeting the National Council of Education outlined the institution of the Documentation Centers of Multiculturalism, the professors and school operators’ formation, new pedagogical and didactical activities trough art, cultural exchanges.

Pototschnig, in his work “Insegnaento (libertà di)”9, affirmed that the modern State cannot indoctrinate pupils, but, on the contrary, must respect all different doctrines. A State has the duty to foster social pluralism in its institutions. Immigrant people take part to social pluralism, according to Pototschnig’s thought, this means that the State has the duty to admit immigrant pupils into public schools and to assure to them all the rights and all the possibilities given to Italian children. Nowadays there are no international conventions or treaties recognising immigrant pupils as minority, or as a protected group, but it is possible to find their rights’ protection trough a thorough examination of our legal system.

2.2. Italian Constitutional law and the International provisions

The Italian Constitution of 1948 addresses educational law in articles 33 and 34. Paragraph 1 of article 34 ensures: “Everyone must have access to school”. This principle is particularly relevant to immigrant children. As everyone has a right to basic education, such...
access is constitutionally demanded for all persons regardless of their country of origin or even their status under the law.

The Italian Constitution was written after the Second World War when most of the population lived in poverty. Nowadays many immigrant children are suffering the same fate in their countries, but we have to remark that they do not have the same economic standard of life as the Italian children in Italy. As a matter of fact, immigrants’ families live in inferior economic situations, due to the different jobs of the immigrant pupils’ parents. Therefore the Constitutional principles addressing financial equalisation are of great interest for the protection of this group. The concept of “substantial equality” reflected in article 3, paragraph 2, for instance, obliges the Government to respect the rights of all regardless of social status.

In regards to educational law, article 34, paragraph 2 of the Italian Constitution grants access to schools regardless of financial status. This article is best understood in the context of the principle of substantial equality reflected in article 3. In 1989, more than forty years after the Italian Constitution was written, Article 28 (1)(a) of the Convention on the Rights of the Child (CRC) expresses the same principle. The concept of a natural right to education for everyone is the central point of this reflection because it demands member states not to distinguish this social right on the grounds of the citizenship of its people.11 The fundamental human rights have to be recognised to foreign pupils to. The Convention does not have the same force as the Constitution. Reflecting this idea, paragraph 2 of article 28 of the CRC allows the member States to choose how to promote and respect the dignity of the child considered as human being.12

The CRC codifies the nearly universal rights of children. In fact, 191 countries have ratified the Convention, four more then belong to the United Nations. Thus, as the 20th Century came to a close, nations placed a great force on the rights of the child.13

Following the discussion on these educational rights, Section 6, article II-74 underlines that everyone has the right to compulsory and free education.

It is in conformity with the principles of article 34 of the Italian Constitution since it underlines the right of each person to free and compulsory education.

Article 3 of the Italian Constitution underlines the possibility to create schools that must respect the democratic principles and national laws, while at the same time respecting the parent’s right to educate their children in accordance with their religion, philosophical and pedagogical believes

After having analysed the CRC and the Italian Constitution it is easy to understand that great importance is given to education for all people, but in the Italian Constitution there are no considerations or references to immigrant children. When this Constitution was written, Italy was not a land of immigration, but on the contrary, Italian people left it to seek jobs in other countries.

Reference to education is also made by the International Covenant on Economic, Social and Cultural Rights (ICESP), article 13 says that all the member States have the duty to make “Primary education... compulsory and available free to all”. This act prescribes that education must be given to all people and through it everyone must be allowed to participate in society in order to promote friendship between religious groups, nationalities and races.

The concept of intercultural education lies at the centre of this article, which is one of the most important principles that can be found in many educational systems today.

Intercultural education could be considered as the educational answer to the needs of a multicultural society.15 Between the rights in education lies the minor’s right to be respected. “The school’s function is not only to promote culture but also to promote its elaboration in order to allow all young people to be part of this process”.16 Pototschnig made this remark while considering the important role played by a pupil’s personality in education. It is possible to relate Pototschnig’s statement to foreign pupils as they are part of Italian classrooms as well as part of the young Italian population even if they lack Italian citizenship. They live and grow up in the Italian educational system and schools, bringing along their own cultural luggage, their different history, different traditions, and different origins.

2.3. The Right to Education: between State and local governments

Articles 33 and 34 of the Italian Constitution recognise the right to education, in particular article 33 prescribes that it is the government that has to realize the fundamental principles of educational law. The right to and rights in education have to be guaranteed by the State, through all means, therefore the easiest access possible to the Italian language must be provided to immigrant pupils.

In the Italian legal system, due to the constitutional provisions, there is a sharing power between State, Regions and locals governments. Thanks to Constitutional Law No 3, 2001 the principle of “subsidiarity” has been codified in the Italian legal system as well as the concept of “governance without government”17.

Article 114 of the Italian Constitution says that the Italian Republic is composed of Regions, Provinces and Communes.18 These local governments have their own statutes as well as their own powers and functions.19

Due to this Constitutional Law the State has an exclusive power in setting the fundamental principles of education (article 117 of the Italian Constitution, at paragraph 1 letter m and n: “m) determination of the basic standards of welfare related to those civil and social rights that must be guaranteed in the entire national territory; n) general rules on education.”
The third paragraph of this article says that the Regions and the local governments have a concurrent power in Education. This paragraph gives the school's autonomy the central place in the new Italian educational legal system. The local governments have to coordinate themselves with the local school institutes in order to implement good autonomy. The local governments have an essential power in choosing the topics of: schools programs, school organisation and school management, but they have to respect the essential levels given by the State.

The new version of the article expresses the idea that the public functions have to be as near as possible to the citizens. The attribution of the administrative functions to the local governments is given preference in this new version of the constitution.

Constitutional Law No 3, 2001, also gives a constitutional basis to administrative decentralisation, as it transfers administrative functions and duties to the local administrative powers. The administrative functions always remain State functions, but they are exercised through local organs, thus respecting the principle of subsidiarity.

Not only the State has to take care of education, but also regions, this is really important because in Italy there are different regions, in fact the region could be considered like the second local power after the State itself. Some of the Regions have a particular autonomy, they are called “Regions with autonomous statute”. The autonomy means independence in many sectors and it means also economic independence. That creates different economic situations throughout the Italian Regions. So if we consider for example the “Trentino Alto Adige Region”, we can find that the positive economic situation creates more possibilities also in the educational system, for example it is possible to activate more language courses of Italian as second language for foreign children.

These reforms can be considered as a more thorough application of articles 33 and 34 of the Italian Constitution -truly dynamic norms- as they promote the total human being development, through a more sophisticated educational system.

3. IMMIGRATION AND THE ITALIAN LEGAL SYSTEM

3.1. Demographic data

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<thead>
<tr>
<th>School year 2001-2002</th>
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<td>Pupils with European citizenship</td>
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<td>Pupils with non-European citizenship</td>
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<th>School year 2002-2003</th>
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<tr>
<td>Pupils with European citizenship</td>
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<tr>
<td>Pupils with non-European citizenship</td>
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Analysing this data we can understand the increasing presence of immigrant pupils in Italian schools. In these analysis the MIUR considers both private and public schools and pupils until secondary school.

In 2003/2004 there were approximately 2.5 million foreigners with legal residence permits-equivalent to just over 4% of the resident population. Many foreign pupils live in northern Italy, the greatest number of them are in the north-east (5.29%), in the east this number is 4.63%, in the south 0.75%, and in the islands 0.56%. This distribution is caused by the different economic situations in Italy. In northern Italy there are more job opportunities than in the other parts of Italy.

3.2. Italian immigration laws

To analyse the immigrant minors’ integration in the Italian educational system, we must first examine the immigration laws of the Italian legal system and then we have to analyse Italian educational law.

Italian immigration laws can be divided into super primary laws, primary laws and secondary laws. This division respects the degree between the sources of the Italian legal system where the treaty and customary international laws are at the top, followed by the constitution and the constitutional laws, at the “third floor” there are the parliament's and government's laws and then all the other laws.

The super - primary sources of immigration law in the Italian legal system: The general constitutional provision related to the status of foreign people in Italy is found in art. 10. Customary international law is, according to art. 10 par. 1 of the Italian Constitution, self executing. The Italian legal system has to give direct and automatic application to these norms.

The primary sources of immigration law in the Italian legal system are international treaties on foreign people, ratified by Italy, such as the UDHR (1948), the ECHR (1950), ICERD (1989), CRC (1989). Also the European directives and regulations on immigration and refugees operate in the Italian legal system as established in the Italian Constitution in article 11.

Finally, immigration in the Italian legal system is regulated by ordinary laws (parliament or government's laws). An important example is given by Law No 40, March, 1998, so called Turco Napolitano. Article 47 of this law establishes some legislative decrees.
This decree gives effect in Italy to the “European Race Directive 2000/43”.

3.5. Legislative Decree number 215 dated 9 July, 2003

This decree gives effect in Italy to the “European Race Directive 2000/43”. This directive finds application also in the educational system. The “Race Directive” prohibits all direct and indirect discriminations based on race or ethnic origins or religion.

4. ITALIAN MEASURES TO ASSURE THE RIGHT TO EDUCATION

The Italian laws recognise foreign cultures as a richness for the Italian educational system. Dialogue among differences is not only a duty but it is important for the Italian culture too.
The topic of immigrant children in Italian law is regulated by administrative law through Ministerial Circulars, and Presidential Decrees. This means that education is regulated not only by the parliament’s laws but also by the government’s acts.

The practice of restricting admission in schools of immigrant pupils to those holding a residence permit allowing them to remain in Italy to study or work, was revoked in 1995, and compulsory schooling is now seen as a right and obligation for all immigrant children regardless of their residence permit. In fact to guaranteed their right to and in education the action of a “juvenile judge” can be required.

After Italy had ratified CRC, immigrant children nowadays are entitled to benefit from all measures in force in terms of rights to and in education, access to educational services and participation in the life of the school community.

When a child arrives at an Italian school, he or she is placed in the class immediately following the one that he or she has successfully completed in their country of origin. However, difficulty often arises when comparing both the Italian and the foreign educational systems. It is then necessary for the two different states to reach a diplomatic agreement, but this is sometimes difficult as pupils may come from countries where there are political, economic and war problems, causing the agreement to be much more difficult to achieve.

A more recent Ministerial Circular about foreign minors’ entrance in the Italian educational system is No 87, 2000. This Circular provides for a different treatment between foreign and Italian pupils. Italian pupils have to enrol in school before the end of January, however, foreign pupils can enrol at anytime throughout the school year. This different treatment is meant to ensure that all immigrant pupils, who arrive in Italy throughout the school year, will be able to exercise their right to education as soon as possible.

Presidential Decree No 394 of 31 August 1999 sets out the procedure for integrating foreign pupils into the Italian school system and gives the basic criteria and guidelines. There is a referent for each schools, it can be the school headmaster, who has the duty to control and permit the immigrants’ admission.

Where it is possible, foreign pupils are assigned to classes where there are other pupils who speak the same foreign language. However no more than five foreign pupils may be assigned to each class. The introduction of the foreign pupil requires a specific, suitable, didactic method and individual programmes are sometimes necessary.

It is the case that the lack of knowledge of the Italian language could cause the immigrant pupil to be left behind by the rest of the class. Italian, therefore, should be taught with the aim of it becoming the pupil's second language, which they are able to use in a similar way to their mother tongue.

The foreign pupil encounters two main problems when arriving in the school, first of all they have to learn Italian to use in every day life, and secondly they have to learn Italian to use when studying school topics. Usually the pupil’s parents speak their original language at home, and this is another obstacle for the pupils to learn Italian quickly.

Each school can arrange language courses in Italian as second language, with projects predisposed by professors, or cultural mediators. From 1990, thanks to the Ministerial Circular No 136, 1990, schools have to offer courses for professors to introduce them to intercultural education.

In Law No 53, 2003, known as Moratti’s reform, the legislator never uses the words “foreign pupils”, this could be considered not as a mistake but as a choice, the choice to consider all students equally, without ethnic or religious differences and to assure to all pupils their right to and rights in education. However from an intercultural perspective, not underlining the fact that there are many foreign students in Italy, varying cultural backgrounds and origins, could be blind-sighted.

Each school finds many problems in developing concrete intercultural programmes as schools funds have to be used for many activities and some school do not have sufficient money at their disposal to pay for the cultural mediators and professors.

4.2. Italian as a second Language (L2)

The General Directorate for Youth Affairs and the Ministry for Education, Universities and Research has established a working group to organise issues linked to the integration of foreign pupils. This topic is coordinated also by the Institute for Multiethnic Studies (ISMU) and consists of analysing and comparing the results of almost one hundred surveys on this theme.

The General Directorate for teachers’ education in the Ministry for Education coordinates the project called “Italian as a second language: language of contact, language of culture”.

Another auxiliary project is supported by the Labour Ministry entitled: “School and Immigration”, which was established in late 2003, in collaboration with the Ministry of Education, as part of the “Permanent observatory on the condition of immigrants and on the situation as regards reception process and integration in southern Italy”.

5. LOCAL ACTIONS TO CARRY OUT IMMIGRANT PUPILS’ INTEGRATION.

For the first time in the Italian legal system, law No 59, 1997, gives importance to the local governments in the educational topics. That means that local governments have been considered important educational decisional centres for the first time. An important role was given to the regional plans to implement education.

The new Title V of the Italian Constitution gives each regional and local government more autonomy, because, they have concurrent powers in education. This new role allows each region to respond differently to the multicultural presence in Italian classrooms.
Due to Moratti’s Reform and an older presidential decree, number 722 dated 1982, each region can choose how to implement intercultural education in the regional and local educational systems.

The number of immigrants in each area of Italy differs quite widely, so every region has a different situation regarding immigrant children and may find different solutions provided that they conform with the government’s guidelines.

Different regions have a large variety of projects and proposals to support concrete integration. This is the first step towards promoting effective rights in education for all pupils. Ministerial Circular 106/2002 assigns financial funds to regions to support the teachers and the school operators’ training education, for example the cultural mediator.

Hereafter two examples of local actions in Italy in Veneto and in Lombardia (two regions in the North of Italy).

5.1. The Veneto Region’s law No 55/1999 and the Holy-cross case

Regional Law No 55 dated 16 of December 1999 on the regional intents to promote Human Rights, a culture of peace, cooperation and solidarity. This law permits the creation of a three year programme aiming to select Human Rights projects which are worthy of public regional funds. The aim of this programme is the immigrants integration into society, with particular attention on the school integration, but also focuses on the dialogue between diversities and the promotion of peace and human rights. There are also projects which can be organised by students with the financial support of the region.

In Veneto, the high percentage of immigrants caused high demand for an intercultural approach. Immigrants also requested the possibility to exercise their religion and to exercise their rights. These problematic issues have also come up also with regard to the Holy cross case, in which it was requested that the holy crosses, in the classrooms, were taken away, in pursuit of the principle of laicism (see articles 2, 3, 7, 8, 19 and 20 of the Italian Constitution).

The Veneto’s T.A.R. as the administrative courts of other regions took an important decision No 56, 2004 about the Holy cross in the classrooms. This is the first step towards promoting effective rights in education for all pupils. Ministerial Circular 106/2002 assigns financial funds to regions to support the teachers and the school operators’ training education, for example the cultural mediator.

Hereafter two examples of local actions in Italy in Veneto and in Lombardia (two regions in the North of Italy).

5.2. The Islamic classes in Lombardia

In 2004, the proposal of Islamic classes in the Liceo Agnesi, in Lombardia, was made, which caught the attention of both Letizia Moratti, Minister of Education, and of the public opinion. In July 2004, the educational regional office of Lombardia decided to prohibit Islamic classes because they could be considered as a form of segregation. However, Islamic expert Paolo Branca, analysed this case and identified that the segregation would have derived, in this particular case, by not allowing Islamic classes. In fact these Islamic children did not attend an Italian school, since their parents prefer to send them to a school not recognised by the Italian legal system. According to Paolo Branca’s opinion, the choice of Islamic classes would be a means of integration in the Italian educational system and would carry articles 33 and 34 of the Italian Constitution into effect.

Due to the new title V of the Constitution, schools can decide how to render intercultural education and programmes, but due to Uil-Milan’s (one of the three major Italian trade unions) opinion, “autonomy” does not mean the possibility to create ideological classes.

Another important example is provided by Vimodrone’s school where there are Italian and Libyan programmes in the same school. In fact, the headmaster permits Libyan professors to teach Libyan programmes to Islamic pupils. With the result that there are classes for Italian pupils and classes for Islamic pupils in the same school, but this is possible thanks to a bilateral Treaty between Italy and Libya.

Considering these two examples, we have to emphasise that in the first case a school decides to separate Italian and Islamic pupils without any law, circular or Treaty to prescribe this. In the second case a bilateral Treaty between Italy and Libya, disposed that in the Vimodrone’s school the Libyan and Italian students could attend separate classes.

6. CONCLUSIONS

The Italian legal system can be considered a “promotional model” for in the educational field it promotes the “intercultural education” in the school’s programmes and it recognises the right to education for everyone, without distinction based on the racial, religious or ethnic differences.

However the “intercultural education” finds many difficulties in its concrete application, because the school autonomy permits different answers to the multicultural problems in the Italian classrooms. The autonomy means that the regions and the local governments and school institutions sometimes have to face the multicultural problems using their own economic sources.

In the concrete application of intercultural education local governments and schools find many problems because the Circulars and the laws are too general. This can create discriminations between immigrant pupils living in different parts of Italy.

The Italian government, through laws and dispositions, tries to give application to the international standards and to articles 33 and 34 of the Italian Constitution, to assure the right to and rights in education to all without citizenship distinctions. However this is insufficient as there are no fixed procedures to give concrete application to the dispositions. The results are wonderful principles with no application. “How is it possible to bombard schools, headmasters, professors with the need of integration through circulars and courses without any concrete help or indication to achieve it?”. This is the first open question that this analysis presents.
Nowadays in Italy there is a gap between Law No 189, 2002, the so called Bossi-Fini Law, with its restrictions, its centres of temporary permanence and the concept intercultural education among pupils and the other dispositions to which this law refers. The Bossi-Fini Law is restrictive towards immigrant adults due to the public order principle and the immigration emergency, but it refers to a non restrictive, older law No 40, 1998 (Turco-Napolitano Law) for the educational topics and for immigrant minors treatment.

Another open question that is raised is: "What about uniformity in the Italian immigration law?". The Bossi-Fini Law disposes "percentages", that means a certain number of immigrants in the Italian territory, this number answers to the job needs. In fact this law restricts the possibility of immigrants to reunite with their family in Italy. Can the public order be more important that the immigrant minors rights? In that case the right to joint their parents? If the answer is "yes, it can", then the Italian Immigration law called "Bossi-Fini" is probably not a good choice because it refers to a more tolerant law, a law that can be considered inspired by solidarity to immigrant people and to immigrant minors integration.

What can be criticised in the Italian immigration laws is the incoherence of international standards and all the other educational laws, in particular with the principle of intercultural approach. It is difficult to think about a multicultural society if the laws of its legal system contradict one another. It is likely that this contradiction in the Italian legal system is a clear manifestation that the government, like many other European governments, is afraid of immigration, so it has taken a while to harmonise it in conformity with the constitution and international laws.

The Italian legal system needs clearer procedures to assure intercultural education, it needs not only principle but also concrete choices to face the immigration reality in school. The recent T.A.R. of Veneto decisions about the holy cross in the classrooms seem to be another example of the incoherence in the Italian legal system in these subject: diversities, immigration and education. In fact with this decision the T.A.R. of Veneto recent T.A.R. of Veneto decisions about the holy cross in the classrooms seem to be another example of the incoherence in the Italian legal system in these subject: diversities, immigration and education. In fact with this decision the T.A.R. of Veneto say that Italy recognises the laicism principle but the cross has an historical importance. The Constitutional Court with its decisions number 389, 2004 seems to avoid a clear decision on this topic.

The Italian legal system does not have a clear approach to diversities, both the courts and the government demonstrate this difficulty, but the future of a multicultural society needs some concrete and clear answers.

Endnotes

1. This short paper will be part of the author’s final dissertation: “L’integrazione dei minori immigrati nelle legislazioni scolastiche: modelli europei comparati”
2. Art. 13 of the Maastricht Treaty refers to “immigrant” as a person having no European citizenship.
7. Meeting of the National Council of Education, 24 March, 1993
10. Ital. Const. Part 1, Title II, art. 34 Translation by ICL (International Constitutional Law, available at http://www.oefre.unibe.ch/law/it/l000000__html, last viewed February 23, 2005. For further reference to the relevant portions of the Constitutional law regarding education see appendix
14. The Treaty establishing a Constitution for Europe is commonly referred to as the European Constitutional. It intended to create a constitution for the European Union and was signed in 2004 by the representatives of the member states of the Union. Two of member states rejected it in referenda.
18. They are called municipalities in many other countries.
20. (3) The following matters are subject to concurrent legislation of both the state and regions: international and European Union relations of the regions; foreign trade; protection and safety of labour; education, without infringement of the autonomy of schools and other institutions, and with the exception of vocational training; professions; scientific and technological research and support for innovation in the productive sectors; health protection; food; sports regulations; disaster relief service; land-use regulation and planning; harbours and civil airports; major transportation and navigation networks; regulation of media and communication; production, transportation and national distribution of energy; complementary and integrative pensions systems; harmonisation of the budgetary rules of the public sector and coordination of the public finance and the taxation system; promotion of the environmental and cultural heritage, and promotion and organisation of cultural activities; savings banks, rural co-operative banks, regional banks; regional institutions for credit to agriculture and land development.
21. In matters of concurrent legislation, the regions have legislative power except for fundamental principles which are reserved to state law.
25. They are called municipalities in many other countries.
26. These are: Friuli Venezia Giulia, Trentino Alto Adige, Valle d’Aosta, Sicilia, Sardegna


27. MIUR’s data, October 2003, available at www.eurydice.org, last viewed 16 April 2005


Article 10 (International law)

(1) The legal system of Italy conforms to the generally recognized principles of international law.

(2) Legal regulation of the status of foreigners constitutive rules and treaties.

(3) Foreigners who are, in their own country, denied the actual exercise of those democratic freedoms guaranteed by the Italian constitution, are entitled to the right to asylum under those conditions provided by law.

(4) Foreigners may not be extradited for political offences.


30. Ratified by Law No 848, 4 August, 1955

31. Ratified by Law No 654, 13 October 1975


[Repudiation of War] Italy repudiates war as an instrument offending the liberty of the peoples and as a means for settling international disputes; it agrees to limitations of sovereignty where they are necessary to allow for a legal system of peace and justice between nations, provided the principle of reciprocity is guaranteed; it promotes and encourages international organizations furthering such ends.

33. like: the "Ratto Unico" concerning immigration and the condition of foreign people issued with Decree No 286 25 July, 1998, and all the other dispositions that integrate it Nowadays this source of law must be integrated by the new Italian immigration law called "Bossi-Fini" (Law No. 189 of 30 July 2002)

This new law has modified by the d. l. No 195 9 September, 2002, modified in law No 202/2002. The Legislator regulated the case of evacuees from other countries with the legislative Decree number 85, 7 April 2003.

The dispositions of the law No 286 25 July 1998 are fundamental references for the Regions and autonomous Provinces (Trento and Bolzano)

The Legislative Decree are regulated by article 76 of the Italian Constitution.


Article 76 [Delegation of Legislative Power]

Legislative power may not be delegated to the government unless parliament specifies principles and criteria of guidance, and only for limited time and well-specified subjects.


In the Italian legal system an administrative act must be justified by the administrative power. In the author M. Cesare’s opinion this act can’t be impugned because it is not an administrative act that weights on the individual rights because it is a general programmatic act.

35. Prime Minister’s Decree

36. The Italian executive power has the power to create statutory instruments as Presidential Decree, Ministerial Circulars, Decree Law.
63. See paragraph 2.3. "The Bossi-Fini law No 189, 2002, refers to article 38, Decree Law No 286 July 1998. This Decree gives effective value to Law No 40 of 6 March 1998..."
64. available at www.eius.it, last viewed 5 May 2005. Sentenza T.A.R, Veneto No 1110, 22, March, 2005
65. available at www.associazionedeicostituzionalisti.it, last viewed 5 May 2005., Rimoli, F. (Ordinario di Istituzioni di diritto pubblico nell'Università di Teramo), 25, January, 2005, Ancora sulla laicità: ma la Corte non vuole salire sulla croce...
Language Rights and Duties in Italy, with Special Regard to Immigrants and Refugees

Giovanni Poggeschi
Language Rights and Duties in Italy, with Special Regard to Immigrants and Refugees

Giovanni Poggeschi*

1. My contribution is about language rights and duties in Italy. In order to tackle the issue, I consider necessary to explain my theory on the subject. There are already some distinctions, like the one between language rights in the public and in the private sphere1, and the one regarding the difference between individual rights and collective rights. My theory lies on a distinct approach and it is useful to analyse the issue from the point of view of the rights and duties affecting foreigners and their descendants, and also the refugees.

The language rights of the first kind are instrumental to the exercise of fundamental rights: they are the rights of the integration, and they consist in the non-discrimination by the language. Historically, they were aimed to citizens of the State2, but this distinction has lost relevance because there are also non-citizens, or better “half citizens” (for instance foreigners having the permission of staying, which gives some rights but not the entire range of rights that only citizenship can give) who can enjoy those rights, at least in the minimal intensity3. Learning the State language is a language duty of the first kind, both for citizens (comprised the citizens belonging to national minorities) and non-citizens. This is the case for the refugees and asylum seekers, which will be better described in the last paragraph.

The typical example of language rights of the first kind is the right to a fair trial: for instance in the Italian Code of Penal Procedure, articles 143-147 regulate the right to the interpreter when the defendant does not know the Italian language. The Italian citizen is supposed to know the Italian language, so the provision is more aimed to non-Italians, but it can refer also to Italian citizens who do not know the Italian (official) language (speakers of minority languages or even illiterate people who only have an oral command of dialect). The parallel language duty is the obligation to learn the official language: again, this is assured by the school system, but in the case of the foreigners and their descendants (some of whose will become the “new Italians” by obtaining the Italian citizenship) there must be other ways to reach this goal.

When there is the possibility to use the minority language (German in South Tyrol, Slovene in Trieste) in the public administration and in the Courts without the help of interpreter, there is a switch from linguistic rights of the first kind to the linguistic rights of the second kind (Judgment 28/1982 of the Const. Court), aimed to recognised national minorities. This is something relevant for the language protection, because it presupposes an organisation of the judiciary system (and of the public administration in general) which is much more complicated than the use of interpreters and translators.

The mentioned system is stronger when there is a relevant autonomy which is able to exercise it. The cases of Catalonia and South Tyrol are very clear, and also other cases of “medium” language protection like the one which is set for the Friulian language in the Region of Friuli – Venezia Giulia are typical of language rights of the second kind4. Other examples of relevant legislation of sub-State entities regarding language come from Tatarstan, Wales, Scotland and Corsica5.

An exception is the USA, where the protection of linguistic diversity comes more from the Federation than from the States, many of which have adopted English only norms which legally discriminate the linguistic minorities, mainly the Spanish speaking one6.

In the described cases there is a legal recognition of the minority language, and we deal with language rights of the second kind. Those rights regard national minorities, or language minorities, or historical minorities (this is the definition of the Italian law n. 482 of 1999). Those adjectives are for the purpose of my theory synonyms, and, also taking account of the different grounds which influence the terminology, regard groups which have for centuries7 lived in a territory. The term “national minority” is influenced by the German and Slavic culture which stress on the existence of a motherland, a Nation (expressing in most cases a State, that is thus the kin-State of the minority), from which the territory where the minority group lives, has been unluckily excluded. The term “national minority” has become dominant since the adoption of the “Framework Convention for the Protection of National Minorities” of the Council of Europe and the “High Commissioner on National Minorities” of the OSCE8.

Language rights of the second kind developed, with different intensity but following the same trend, since the end of the sixties, after the fading of the dimension of individual rights that was the dominant idea of the post-world war II (see for instance the ONU Universal Declaration of Human Rights of 1948 and the European Convention on Human Rights and Fundamental Freedoms of 1950).

There are of course possibilities of mixed experiences between language rights and duties of the first kind and language rights and duties of the second kind. Examples regarding South Tyrol and Catalonia for sub-state entities and about Latvia for sovereign States can be useful to explain the mixtures of the different kinds of language rights and duties and the possible switches from one to another.

In South Tyrol the status of the German language is equalized to the one of the Italian, according to Article 99 of the Statute of Trentino – South Tyrol of 1972. In the everyday life, and also in its juridical status, German is so strong and useful for all the citizens, that it is a tool of integration, also for the Italian speaking women and men, who belong to the State majority. In South Tyrol both official languages are necessary for the integration: German, the language of the rights of the second kind at State level, is a language of the rights of first kind, together with Italian. This coincidence happens where the minority State language is majoritarian at local level and supported by the legal status and also by social prestige.

The issue of the legal status is of course linked to the level of autonomy: if the sub-state entity, like South Tyrol and Catalonia, have in some matters the possibility to assess rights in a complete way, then the theory of language rights and duties of the second kind gets blurred. According to Italian nationalists in South Tyrol and Spanish nationalist in Catalonia, there is a reversal of the relation between major and minority: I rather think that there are parallel societies rather than a clearly dominant one. This turover has on the other hand
taken place in the Baltic Countries, where the Russian speakers are nowadays a minority, sometimes discriminated\textsuperscript{10}. With the mentioned examples I also mean to remind that language rights and duties of the second kind can be viewed on different perspectives and can sometimes switch to the ones of the first kind.

The language rights and duties of the third kind affect the foreigners and their descendants. They are the new paradigm of our multicultural societies and they imply different needs from the ones that traditional minorities long for. Members of national minorities need recognition, while it is commonly stated that foreigners and their descendants need more integration and less recognition (with the possible exception that I will describe in the following pages).

The relation between the language rights of the first and the third kind is evident: integration is the aim for both of them. The most complicated relation is the one between the language rights and duties of the second kind and language rights and duties of the third kind. To make and example, learning two official (and both important at local level) languages is one problem which affects the foreigners who seek integration in Catalonia (an example of a territory where there is a primacy of linguistic rights of the second kind inside the Spanish State).

Language rights and duties of the third kind are very rare to find: one example is Canada (officially bilingual, English and French), where the languages of minorities are often taught in public schools. This happens both the more rooted languages of the Canadian immigration (Italian, Ukrainian, Portuguese, Polish) and also the languages of more recent immigration (Spanish, Chinese, Filipino, Bangla), which have an increasing presence in the educational system. There are both pedagogical reasons for this teaching and a general interest: in fact the cultural life of a country is enriched through increasing the diversity of its linguistic resources\textsuperscript{11}.

2. Italy is a peculiar Nation-State: language is one of its fundamental elements of cultural unity, but at the same time it is a country of linguistic diversity. First because of the dialect tradition, which is very strong and rooted, but which is not traditionally in opposition to the Italian language. It is true that the Italian was until 50 years ago a minority language, because mostly people spoke dialect, but its tradition and prestige were not questioned, and becoming not only the language of the upper classes (very often second language after the dialect also for them) but of the common people was just a matter of time\textsuperscript{12}: this trend started becoming not only the language of the upper classes (very often second language after the mot of people spoke dialect, but its tradition and prestige were not questioned, and Italian language. It is true the Italian was until 50 years ago a minority language, because Germany and to a lesser extent Switzerland; French (more exactly, Franco-Provençal speakers) of Aosta Valley, and Slovenes of Friuli – Venezia Giulia. The protection of the quoted groups has been assured mainly through autonomy, which has proved everywhere to be the best way to assure the linguistic and cultural protection\textsuperscript{14}, at least in most cases (the USA exception has been previously quoted)\textsuperscript{15}.

The intensity of the language protection of second kind in Italy is very diverse: it includes the “super-protection”\textsuperscript{16} of the quoted groups (especially the German speaking inhabitants of South Tyrol), the medium protection of the Friulan and Sardinian language, the weak protection of the Albanian (Arbëreshë) and Greek (Grico) linguistic islands of the South\textsuperscript{17}, which is in most cases exercised by regional laws but not in Puglia\textsuperscript{18}. The most recent law on minorities has been adopted by Region Puglia, the 22\textsuperscript{nd} March 2012, and its is called “Provisions for the promotion and the protection of the linguistic minorities in Puglia”.

The language protection of second kind looks rather stable: there can be of course some progress in the intensity of protection, and equally few cuts, like some recent judgments of the Italian Constitutional Court indicate (but those don’t affect “super-protected” minorities, very safe in their autonomy)\textsuperscript{19}.

What is evolving, together with the demography of the country, is related to language rights and duties of the third kind: it means the language rights and duties of the foreigners and their descendants. According to the last data\textsuperscript{20}, foreigners who are legally residents in Italy are 4,5 million, amounting to the 7% of the population. It is a quite impressive figure if we think that Italy was a typical country of emigration, until less than 40 years ago.

Some of the children of those foreigners will have the Italian nationality once they reach the major age\textsuperscript{21}, especially if the reform projects of popular initiative will succeed\textsuperscript{22}. It is hard to foresee how many of those foreigners will remain in Italy and how many will return to their country of origin (or move to another State). All those possibilities have to be considered. Thus I will speak of the language rights and duties of the foreigners and of their descendants, remembering that, even if it is difficult to foresee the future, the possibility that some of them will leave the country are not remote.

Foreigners and their descendants (hereinafter FATD) in Italy are nowadays facing more language duties than they enjoy language rights. To get the Italian citizenship it is not foreseen a language text, unlike in most of western countries. It is possible that the future law on citizenship will include a language text, but now it is the recent legislation on the permissions of staying of foreigners which demands a language text. Before analysing the new legislation on language rights and (more) duties it is necessary to remember that rights
and duties are intimately tied: one right cannot exist without a correspondent duty. The duty can affect the State which has to provide the language courses and also the foreign person who has the obligation to study the Italian language. On the other hand the possibility to follow those courses by the foreigners (and the refugees, on which see the last paragraph) is a right. Thus, language rights and duties are tightly intertwined.

The general legal framework of the language legislation for the immigrants is the Act on the right of foreigners 286/98, which, at art. 9, section 2, contains the idea of the "Integration Agreement". Another legislative ground is of the new regulations on the proficiency of Italian language is the Act n. 94 of 15th July 2009, called "security package", which contains many relevant new rules to assure the public safety and sets obligations for the foreigners23.

There are tow different kind of regulations concerning the language text: the first concerns the long period residents, which entered in force the 9th December 2010. Since this date it is necessary to pass the language text in order to obtain the permission of staying CE for long term residents. The Inner orders ("Circolari") of the Ministry of the Interiors n. 7589 of 16th November 2010 and n. 8071 of 1st December 2010 provide some information about the modalities of the language text. The educational institutions organize it, with a little monitoring of the "Prefecture" (basically, the reservation of the place where the language text takes place).

The second kind of language text has entered in force the 10th March 2012, and it consists in the so called "credits permission" for the "first entrance" in Italy. The persons who come to Italy for the first time subscribe the mentioned "Integration Agreement." This complex "credits system" includes obligations for the learning of the Italian language.

Section 3 of Article 2 states that “In the moment of the subscription of the Agreement, the foreigner receives sixteen credits which correspond to the level A1 of knowledge of the spoken Italian language and to sufficient level of knowledge of the civic culture and of the civil life in Italy, according to what it is foreseen by points 1 and 2 of attachment B”. There are similar solutions in other countries: in Canada, for instance, there is the “Immigration Points System for Skilled Workers”24.

The subscription of the “Integration Agreement”, according to section 1 of Article 2 is done in two original copies, one of which is delivered to the foreigner: this copy is translated in the language chosen by the foreigner or, if this is not possible, in the language which he/she chooses among the following: English, French, Spanish, Arab, Chinese, Albanian, Russian and Filipino. This is a typical basic measure of the third kind, because it presupposes a minimum acknowledgement of the languages of the immigrants. The aim is similar to the language rights and duties of the first kind, both aiming at integration and non-discrimination, but the first refer to the use of the State language as a tool of integration.

Section 4 of the same Article 2 regulates the commitments of the foreigner: point a concerns the duty of learning the Italian language in a level corresponding at least to the level A2 of the European common framework for the languages issued by the Council of Europe25. The points b and c regard the obligation to attain a sufficient knowledge of the fundamental principles of the Constitution of the Republic and the functioning of public institutions as also a sufficient knowledge of civic life in Italy, with special reference to health, social services, labour and fiscal duties. Point d states that the foreigner must guarantee the fulfilling

The verification of the Agreement, according to Article 6, foresees the possibility to increase the points of the “Integration Agreement” also if the foreigner shows an improvement of the command of the language.

The “Integration Agreement” is a very severe measure, and it does not look proportionate to the aim of a temporary staying: its fulfilment is rather comparable to the obligations that western countries establish to concede the citizenship.

The obligation issuing from the “Integration Agreement” looks absolutely demanding if we look at the consequences of the lack of the fulfilment: this is expulsion, which follows the removal of the permission of staying and the refusal of its renewal, according to the 7th section of Article 6.

It is too soon to judge the effectiveness of the described measures, but it is evident that, if the foreigner has a duty to integrate – and I see the fulfilment of the duty as a way to better enjoy the fundamental rights -, there is a correspondent duty of the State26 to accommodate the “half citizens” in a proper way. Courses of language, of history, of civic life (in a very broad sense, comprising also sport and gastronomy, two features that are very important in Italy) have to be offered by public authorities, or, at least, supported and funded by them and performed by authorised private actors.

There is vagueness and lack of determination of the measures needed for supporting the foreigners, although Regulation n. 179 of 2011 devotes one article (n. 10) to the “inter-institutional collaboration”, foreseeing the possibility to sign Agreements between the Prefetto (who represents the central State in periphery) and the education institutions and also the Regions and the lower local entities.

Specific regulations to execute the law are necessary: it would be better if they were issued from the central institutions (Ministries and other State bodies), at least in the minimal required contents. In the absence of State regulations, the local entities are enabled to fill this void dictating the practical rules about the obligations for integration regarding language, culture and civic life of Italy. Following the general principle of Italian constitutional law, it is not possible for the Regions to demand more than the State does in similar situations, while it is possible for them, and also for the local entities like Municipalities (which may play an important role in the process of integration), to offer more than the State does.

In fact there are many possibilities to make proposals about the learning of Italian language (and culture and civic life) for local entities and for the associations aiming at the integration of foreigners (included the ones whose members are only foreigners). The regulation foresees a possible role for the “territorial Councils for the immigration” and the consulting
The legislative order (decreto legislativo) issue of language rights of refugees and asylum seekers in Italy. I have now to draw a distinction inside the language rights and duties of the third kind. The displaying of signs (for instance, in hospitals) in the language of the foreigners is a hint of language rights of the third kind, a minimum acknowledgment of the language of the foreigners in order to avoid the discrimination in enjoy the public services. If the language is taught at school and is part of the programs (even more if the teaching is compulsory, but this condition is not necessary) we are surely dealing with mature language rights (and duties) of the third kind.

The difficulty of the coexistence of language rights and duties of the third kind with the language rights and duties of the second kind is something that the doctrine, especially the one coming from “restless Nations without a State” (Catalonia, Québec) has duly stressed. As it has been already underlined, it is more complicated for a foreigner to integrate into two official languages than into only one. For sure language rights and duties will be a precise and quite reliable indicator of the next change of the different State systems and also of the emerging global order.

3. If foreigners and their descendants are in many cases a weak layer of society, refugees and asylum seekers share for sure this feature. In this short paragraph I will approach the issue of language rights of refugees and asylum seekers in Italy.


Article 10, at section 4, foresees the possibility for the asylum seeker to be informed about its status in a language indicated by him/her or, if this is not possible, in English, French, Spanish or Arabic. In all the procedure regarding the presentation of his/her request the assistance of an interpreter of his/her language, or of a language he/she understands, is guaranteed.

The above mentioned guarantee is directly taken by the same Directive, which contains several provisions about language rights of the first kind, aimed for the protection of the non-citizens par excellence, the asylum seekers.

Endnotes

3. When the intensity of protection for the foreigners switch for the mere non-discrimination to some collective recognition of the language group there is a passage to language rights of the third kind.
4. I copy the expression “New Canadians”. Canada is considered the best example of integration of foreigners, also from the linguistic point of view. On the huge literature on the Canadian multicultural model within the minority issue see Will Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights, Oxford, Clarendon Press, 1995; the same approach with a particular stress on language is Will Kymlicka – Alan Patten (editors), Language Rights and Political Theory, Oxford University Press, 2003.
5. Rather recently the Italian Constitutional Court has issued a Judgment, the n. 159 of 2009, which is rather restrictive of the status of the Friulian language in the Region of Friuli – Venezia Giulia: see Roberto Toniatti, Pluralismo sostenibile e interesse nazionale all’identità linguistica posti a fondamento di “un nuovo modello di riparto delle competenze” legislative fra Stato e Regioni, in Le Regioni, n. 5, 2009, pp. 1141-1159.
6. I analyse this medium and weak protection of language rights in Giovanni Poggeschi, I diritti linguistici, cit., pp. 192-203. The distinction between strong, medium and weak protection of language rights does not have to be confused with the distinction between language rights and duties of three kinds analysed before.
8. How much time? This is a difficult question to answer.
9. Those documents, even if officially aimed only to national minorities, are quite open in their scope, and include also minorities which are hard to define national minorities, like the Roma. A more embarrassing issue is the exclusion, at least by the Framework Convention for the Protection of National Minorities, of the “second degree minorities”, the groups being majorities at national level being on the contrary minorities at local level (like the Italians in South Tyrol, or the Flemish in Wallonia or the Walloons in Flanders: in Brussels the two communities lie on an equal foot). A deep analysis of the Framework Convention for the Protection of National Minorities is Annelies Verstichel – André Alen – Bruno De Witte – Paul Lemmens, The Framework Convention for the Protection of National Minorities: a Useful Pan-European Instrument?, Antwerp – Oxford – Portland, Intersentia, 2008.
11. See Sebastian M. Poulter, English Law and Ethnic Minority Customs, London, Butterworths, 1986, p. 172, who refers his statement to the British environment: he adds that this teaching will “improve
Britan’s prospects of maintaining valuable links with other nations in commercial, industrial, educational and cultural fields”.


15. For South Tyrol I consider important what it has already been stated in paragraph two about the concrete status of German of language of rights and duties of the first kind inside the territory of the Autonomous Province of Bolzano (South Tyrol).

16. Francesco Palermo – Jens Woelk, Diritto costituzionale comparato dei gruppi e delle minoranze, cit., p. 282 – 305. Here (p. 283) it is written that the notion of “super-protected minorities” was for the first time formulated by Elisabetta Palici di Suni Prat, Intorno alle minoranze, Torino, Giappichelli, 1999.

17. In Giovanni Poggeschi, I diritti linguistici, cit., pp. 192 – 203 I mix the medium and weak protection (in which I also include the protection of dialects), and I make also reference to other European cases) of languages because it is hard to draw a border between the two levels. It also depends on the ambition of the involved language groups: what can be sufficient for asturiano speakers in Spain can be considered very insufficient for Kurds in Turkey.


19. See the judgments on the regional laws respectively about the Friulan language, n. 159of 2009 (on which see supra, note 19) and the Piedmontese dialect, which, according to judgment n. 170 of 2010 is not considered a language, but only a dialect.


21. Very few of them have already got the Italian citizenship. Other foreigners who have acquired the Italian citizenship through marriage or through the other (difficult) possibilities to get it under the current law on citizenship, Act n. 91/1992.

22. See the campaign “L’Italia sono anch’io”: http://www.litaliasonoanchio.it

23. This Act is not the first “security package” which has been enacted in the last years. Also in 2008 one was adopted, and it was also declared in part unconstitutional. The “security package” has been declared unconstitutional in some parts: the crime of illegal entry (“reato di clandestinità”) has been the object of the judgment n. 350 of 2010 of the Constitutional Court. The motivation of the unconstitutionality lies on the breaking of the principle of equality. The motivations of the Constitutional Court are based


26. In this case I mean for State all the public authorities at every territorial level.

27. Antoni Milian i Massana, Mundialització, llur circulació i immigració, i l’exigència d’una llengua com a requisit: el cas del català, llengua oficial en part del territori d’un Estat, Barcelona, Atelier, 2008.

Language Rights in Education in Latvia

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1. BACKGROUND

1.1. The importance of language in nation-building in that country

The meaning of language within the existence of the state-nation of Latvia cannot be overstated. Latvian language is the backbone of the Latvian nation. Latvia may be understood only within the context of historical facts that are rightly explained in the judgment of 2005 of Constitutional Court of the Republic of Latvia: “In June of 1940 the USSR occupied Latvia, Estonia and Lithuania. As the result – these states lost their freedom, experienced mass deportations and killing of its inhabitants as well as inflow of Russian-speaking immigrants. 2,3 percent of inhabitants were deported from Latvia on March 25, 1949, that is about thrice as many persons than in June 14, 1941 deportation and 96 percent of them were the Latvians. As a matter of fact, during the occupation of Latvia the USSR purposefully realized genocide against the nation of Latvia [...]”. After the Second World War mass immigration of the USSR citizens in Latvia took place and the ethnic composition of the inhabitants of Latvia in comparison with that of the prewar situation noticeably changed. As the result of it the number of the Latvians decreased but that of the aliens, especially the Russians, the Byelorussians and the Ukrainians materially increased. For example, in accordance with the data of the State Statistics Committee in 1935 the basic nation – the Latvians were 77 percent of the whole number of inhabitants, however in 1989 – before restitution of independence of Latvia – the proportion of the Latvians was only 52 percent. As the result of the Russification policy, carried out by the Soviet power, in Latvia a special group of inhabitants – the so-called Russian language speaking inhabitants was artificially created and the greatest part of other nations, for example the Byelorussians, the Ukrainians and the Jews were forced to become part of the group. They were given just two possibilities – either to learn in the Russian language or in the language of that titular language in the administrative territory of which they lived. In the occupied Latvia already in the seventies 85 percent out of the children, who were neither the Russians nor the Latvians learned at the Russian schools but 15 percent – in schools with the Latvian language of instruction. The only privileged nation was the Russians, to whom educating their children in the native Russian language was ensured in every place of the USSR. Russification subdued and destroyed the national awareness of those people, who lived outside of their ethnos and deprived them of the possibility of defending their national self (see: Dribins L. Etniskās un nacionalās minoritātes Eiropā (Ethnic and National Minorities in Europe). Riga: the Information Bureau of the European Council, 2004, pp.71–72).

In the same period of time immigration to many Western European states also took place, however– in difference from Latvia – with the agreement of these states. There is one more significant difference: the governments of the Western European states tried hard to reach social integration of the immigrants, in their turn the Soviet immigrants were not integrated into the society of Latvia. In Latvia was created a school system based on the segregation principle: for children of the immigrants was created a separate parallel school network for the Russian speaking people, at the same time the ethnic minority schools, among them also the Russian national schools, which existed before the occupation, were liquidated.4

This historical context has affected the language policy after restoration of independence in 1990. In 1998, amendments5 were made to Article 4 of the Constitution of the Republic of Latvia, in which the status of the Latvian language as the official language was enforced.6 Moreover, the Article of the Constitution, in which the status of the Latvian language was enforced, was included in the so-called core of the Constitution – in the provisions that according to Article 77 and Article 79, Section one of the Constitution have to be approved in a referendum. Amendments to the Constitution's core provisions are adopted, if at least half of all those entitled to vote have cast ballots in favour of the amendment. Thus the constitutional status of the Latvian language has actually been made irrevocable. In 1999, the Official Language Law6 was adopted that regulates the use of the official language. Although this law is outdated (the terminology used in it does not conform to other laws), this law has never been amended. This is due to the political sensitivity of the issues this law regulates. In 2002, amendments to the Constitution7 were adopted that can be considered a logical extension of Article 4 of the Constitution: Article 21 of the Constitution states that the working language of the Saeima shall be the Latvian language, Article 101 – that the working language of the local governments shall be the Latvian language, but Article 104 of the Constitution (that stipulates the right to address submissions to State institutions) states that everyone shall have the right to receive a reply from a State institution in the Latvian language. Also the text of the solemn promise of a member of the Saeima (Article 18, Section two of the Constitution) includes the duty “to strengthen the Latvian language as the only official language”. As acknowledged by the Constitutional Court, taking into consideration the enforcement of the Latvian language as the official language within the Constitution, as well as the fact that under the circumstances of globalization Latvia is the
only place in the world, where the existence and development of the Latvian language and also the basic nation may be guaranteed, narrowing the usage of Latvian as the official language within the state territory can also be considered as a threat to the state democratic order.8

Already since the restoration of independence the State has tried to integrate the Russian-speaking community. One of the means of integration is the provision of general education in the official language in all state and local government educational institutions. Transfer to studies in the official language only was a gradual process, the progress and results of which were detailed in the judgement of the Constitutional Court.9 Within this judgement the provision of the Education Law was evaluated stating that on 1 September 2004 the studies in minority education programmes in secondary education level shall commence in the official language (at least three-fifths of the total study subjects must be ensured in the official language). The Constitutional Court acknowledged that this provision conforms both to the Constitution and to ECHR.

The last event that demonstrated the sensitivity of language issue in Latvia, was the referendum of 18 February 2012. In 2011, draft law of at least one-tenth of the residents was submitted to the Saeima, which provided amendments to Article 4 of the Constitution and to other Articles, stating that both Latvian and Russian would be the official languages. On 22 December 2011, the Saeima rejected this draft law. Article 78 of the Constitution states that a national referendum shall be organized if a draft law has been submitted by at least one tenth of the residents, and it is rejected by the Saeima or amended as a draft law. This referendum gathered 1,098,921 citizens or 71.13% of all those entitled to vote10, which was the largest number of voters in a referendum since the restoration of the Constitution in 1993. 24.88% of the voters or 17.69% of all those entitled to vote cast their ballots for amendments to the Constitution, but against the amendments were 74.8% of the voters or 53.9% of all those entitled to vote.11 Thus this draft amendment to the Constitution was rejected.

1.2. The formal recognition of the various languages and their status in that country

In accordance with Article 4 of the Constitution and the Official Language Law the only official language in Latvia is the Latvian language. Under the Official Language Law special status is granted to two languages only: the Latgalian language, which is a historical variety of the Latvian language and is used in the ethnographic region of Latvia – Latgale, and the Liv language, which is the language of the indigenes of the territory of Latvia. According to the results of population census in 2011, only 250 people have admitted themselves to be the Livs.12 The Official Language Law provides that the State shall ensure the preservation, protection and development of the Latgalian written language, as well as the Liv language, but there are no special legal provisions, neither any policy about the use of these languages. Section 5 of the Official Language Law states that all other languages, except the Liv language, shall be regarded as foreign languages.

The Official Language Law specifies a wide range of the official language use. The official language is used in the record keeping, as well as in the daily communication in state administration institutions, as well as in companies, in which the majority of capital shares is owned by a public person. Article 2, Section two of the Official Language Law lays down that “language use in private institutions, organisations, undertakings (companies) and with respect to self-employed persons shall be regulated, if their activities affect the lawful interests of the public (public security, health, morality, health care, protection of consumer rights and employment rights, safety in the work place and public administration supervision) […] and to the extent that the necessary restriction which has been set in the lawful interests of the public is proportional to the rights and interests of private institutions, organisations and undertakings (companies).” The Official Language Law lays down a more detailed use of the official language for the legal persons of the private rights, but it also states that “this Law does not apply to the use of language in unofficial communications of the inhabitants of Latvia, in internal communications of national and ethnic groups, or in services, ceremonies, rituals and other kinds of religious activity of religious organisations.”

Article 114 of the Constitution provides that “persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity.” This Article of the Constitution has already been topical in the case-law of the Constitutional Court in the previously mentioned case about studies in the official language in minority schools, but the Constitutional Court has not provided an in-depth explanation of this Article. Within the comments of the Constitution it is acknowledged that the rights to preserve and to develop the language, ethnic and cultural identity that are guaranteed in Article 114 of the Constitution in their essence mean the rights of minorities to preserve the elements that are significant to their identity. As we know, identity is characterized by language, traditions, culture and religion. For the minorities to be able to preserve their identity, it is necessary that the State allows the existence of the minority schools and supports them to the possible extent, as in most cases such schools will always be a private initiative.13

Latvia has also ratified the Framework Convention for the Protection of National Minorities (hereinafter – the Convention), yet but making several reservations. Firstly, “the notion ‘national minorities’, which has not been defined in the Convention, in the meaning of the Convention, apply to citizens of Latvia who differ from the Latvians in terms of their culture, religion or language, who have traditionally lived in Latvia for generations and consider themselves to belong to the State and society of Latvia, who wish to preserve and develop their culture, religion or language. Persons who are not the citizens of Latvia or another State but who permanently and legally reside in the Republic of Latvia, do not belong to a national minority within the meaning of the Convention” in accordance with the definition of a national minority provided by the relevant declaration of the Republic of Latvia, but who identify themselves with a national minority that meets the definition, shall enjoy the rights prescribed in the Convention, unless specific exceptions are prescribed by the Law.”14 Thus the immigrants who arrived in Latvia during the Soviet occupation are not considered a national minority. Secondly, Latvia has provided that Article 10, Paragraph two of the Convention (the rights to use the minority language in communication at administration institutions) and Article 11, Paragraph three of the Convention (the state obligation to provide toponyms, street names and topographic designations in the language of minority) is binding as far as it does not contradict the Constitution of the Republic of Latvia and other regulatory enactments in force in the Republic of Latvia that stipulate the usage of the official language.

2.1. General legal principles

The compulsory education in Latvia is the basic education. In accordance with Article 112 of the Constitution basic education is compulsory, however the State ensures that both – basic and secondary education may be acquired without charge. Nonetheless within this section study language in both – basic and secondary education programmes will be reviewed. There are no special rules for the application of languages in education also within the regulation of the professional secondary education, therefore also in the professional secondary education the following regulations should be observed.

Article 9 of the Education Law lays down the basic principles of language use in education. Article 9, Section one of this Law provides that education shall be acquired in the official language in State and local government education institutions. There are only three exceptions to this regulation, when the usage of a foreign language is allowed in the study process (Article 9, Section two of the Education Law):

1) in private educational institutions;
2) in State and local government educational institutions in which educational programmes for minorities are implemented;
3) in educational institutions specifies in other laws.

Private educational institutions may freely choose the study language. But it should be considered that the students of these educational institutions have to pass the state provided examinations, in which the use of language is provided by the Regulations of the Cabinet of Ministers. Only if the relevant educational programme is registered as an educational programme for minorities, exceptions are allowed to the general regulation, which provides that the examination materials are provided in the official language and also the language for filling in these materials is the official language. Cabinet Regulations prescribe that an educatee who acquires educational programmes for minorities is entitled to select the language for filling-in of an examination – the study language or the Latvian language (except examinations in foreign languages). An educatee who acquires general secondary education in the educational programmes for minorities is entitled to select the language for taking the examination – Latvian or Russian (except state examinations in foreign languages). An educatee who acquires education in forms 6 and 9 in educational programmes for minorities is entitled to select the language of examination materials – Latvian or Russian (except state examinations in foreign languages). Thus when implementing the study programme in private educational institutions it should be considered that the choice of examination language is limited to Latvian and Russian (examination materials are prepared centrally by a state institution). In any case, in order to acquire basic or secondary education, each educatee shall take examinations testing his or her knowledge of the official language (Article 9, Section three of the Education Law). In 2005, the Constitutional Court based on an application submitted by 20 deputies of the Saeima acknowledged the provision of the Education Law as non-conforming to the legal equality principle (Article 91 of the Constitution) that provided that state and local governments may participate in the financing of private educational institutions only if such institutions implement accredited basic education and general secondary educational programmes in the official language. The Constitutional Court provided that the state obligation emerges from Article 4 of the Constitution “to form such education system that would provide effective training of the Latvian language as the official language – also referring to those persons, the native language of which is not Latvian.” The Constitutional Court acknowledged that this provision has a legitimate purpose – to strengthen the use of the official language. The Constitutional Court acknowledged that taking into consideration the historical experience of Latvia, as well as the fact that the dominance of Latvian in the state territory still has not been provided sufficiently enough, there is a necessity for the state to implement positive measures and to increasingly protect the use of the official language. Nevertheless the Constitutional Court considered that the said legitimate purpose can also be reached by

17 *Interalia* a suggestion was expressed within these discussions that Latgalian should be included as a study subject in schools.

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16 The Constitutional Court brought the action, in which the judgment has not been adopted yet. Concurrently, the opinion about the core of the Constitution, including the official language as a constitutional value, is being prepared by the Commission of Constitutional Rights (an independent consultative institution established by the State President). Thus the politically sensitive issue about the status of the official language has created a much wider legal discussion about the core of the Constitution, its content and the possibilities to amend or not to amend it.

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applying more sparing measures, such as by promoting stricter requirements for the accreditation of the private educational institutions.25

For the state and local government institutions, where educational programmes for minorities are being implemented, studies in the foreign language have been regulated differently in basic and secondary educational programmes. The application of languages in the basic educational programmes for minorities in accordance with the Education Law is provided by the state basic education standard stipulated by the Cabinet of Ministers.26 The standard in its turn provides that the use of Latvian in the basic education programmes for minorities is provided by the samples of basic education programmes for minorities, that are developed by the Ministry of Education and Science and the licensed basic education programmes implemented by the educational institutions. These samples of basic education programmes for minorities27 that are developed by the Ministry of Education and Science provide quite detailed language use methodology. The samples provide four models of education programmes for minorities depending on the educatee's integration level in the society of Latvia:

1) for students, who have acquired the pre-school education in Latvian or bilingually, who have conversational skills and experience and environment for using Latvian;
2) for students, who have the conversational skills of Latvian, but who do not have the environment for using Latvian, but whose family wish that their children would integrate in the society of Latvia,
3) for students, who do not have preliminary knowledge in Latvian, who do not have the environment for using Latvian, but whose family wish that their children would integrate into the society of Latvia,
4) for students, who do not have preliminary knowledge in Latvian and whose parents wish that their children would obtain the primary school education in their native language.

Within these models it is provided in detail, which subjects in the relevant class should be taught in the official language, bilingually or only in the minority language. For example, within the first model 8 lessons in Form 1 are taught bilingually, 5 lessons – in the minority language. 10 lessons in Form 6 are acquired in the official language, 7 – bilingually, but in Form 9, 16 lessons are acquired in the official language, 5 – bilingually (Mathematics). Within the fourth model 12 lessons in Form 1 are acquired bilingually, but 9 lessons – in the official language. Within all models Latvian language and Literature are acquired in the official language, but minority language and literature – in minority language.

In the secondary education programme the proportion of languages is provided by Article 9 of the Transitional provisions of the Education Law that specify that in minority education programmes the acquisition of the content of studies in the official language shall be ensured for not less than two-fifths of the total teaching hour load in the academic year, including foreign languages, and shall ensure with the minority language, the acquisition of identity and culture associated studies content in the minority language. In addition to that state secondary education standard also provides that at least 5 subjects must be taught in the official language. In 2005 this provision of Education Law was disputed at the Constitutional Court, that acknowledged it as conforming to the Constitution and to Protocol 1, Article 2, and Article 14 (referring to Protocol 1, Article 2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as to Articles 26 and 27 of the International Covenant on Civil and Political Rights, to Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, to Articles 2 and 30 of the Convention on the Rights of the Child, and also to Article 18 of the Vienna Convention on the Law of Treaties.28 The most voluminous part of the judgement refers exactly to the evaluation of conformity of the legal equality principle that is secured within the Constitution. The Constitutional Court admitted that the disputed provision has a legitimate purpose – protection of the official language and other human rights – and it is proportional.

In Latvia the state ensures the education in 8 minority languages: Russian, Polish, Jewish, Ukrainian, Estonian, Lithuanian, Romany and Byelorussian.29

Up to now applications related to the use of language in education have neither been submitted to the courts of Latvia (except the already mentioned cases of the Constitutional Court), nor to the European Court of Human Rights.

2.2. Special categories

Article 3 of the Education Law provides that rights to education in Latvia are provided for the following categories of persons:

1) to citizens of Latvia;
2) to non-citizens of Latvia (citizens of the former USSR, who do not have the citizenship of Latvia or other countries);
3) to the citizens of the European Union, of the European Economic Area or of the Swiss Confederation;
4) to the permanent residents of the European Community, who have a valid residence permit in the Republic of Latvia;
5) to stateless persons, who have a valid travelling document of a stateless person issued in the Republic of Latvia;
6) to citizens of another country that is not the member of the European Union, European Economic Area or the Swiss Confederation;
7) to fugitives or persons, who have acquired the alternative status;
8) to persons, who have received temporary protection in the Republic of Latvia. The under-age child of a person seeking for refuge and the under-age person seeking for refuge has the right to receive basic and secondary education, as well as has the right to continue the initiated education after reaching lawful age. But under-age third country nationals or stateless persons, who have no legal substantiation to reside in the Republic of Latvia,28 have the right to obtain basic education during the time period that is provided for voluntary emigration, or during the time period, for which the deporting has been postponed, as well as during such person’s residence.

There are no special rules in Latvia about the usage of languages in education depending on the abovementioned statuses. 74
Persons with special needs (disabilities of vision, hearing, physical development, somatic, language, learning and mental health) can acquire education in special education programmes. The regulatory enactments provide in more detail the peculiarities of the implementation of these education programmes, as well as of the processes of taking examinations. For example, depending on the health problems persons with special needs are provided support that is appropriate to the concrete person in the process of taking state examinations.

3. LANGUAGE RIGHTS IN NON-COMPULSORY EDUCATION (ESPECIALLY HIGHER EDUCATION)

The use of languages in the study programmes of higher education is provided by the Education Law and the Law on Institutions of Higher Education. Article 56, Section three of the Law on Institutions of Higher Education provides that the study programmes at State-founded institutions of higher education shall be implemented in the official language. Exceptions are allowed in the following cases:

1) Study programmes which are acquired by foreign students in Latvia, and study programmes, which are implemented within the scope of co-operation provided for in European Union programmes and international agreements may be implemented in the official languages of the European Union. For foreign students the acquisition of the official language shall be included in the study course compulsory amount if studies in Latvia are expected to be longer than six months or exceed 20 credit points;

2) Not more than one-fifth of the credit point amount of a study programme may be implemented in the official languages of the European Union, taking into account that in this part final and State examinations may not be included, as well as the writing of qualification, bachelor or masters works;

3) Study programmes, which are implemented in foreign languages are necessary for the achievement of the aims of the study programme in conformity with the educational classification of the Republic of Latvia for such educational programme groups: language and cultural studies and language programmes.

4) Joint study programmes may be implemented in the official languages of the European Union (study programme implemented together with a recognized foreign institution of higher education).

The Law on Institutions of Higher Education stipulates that one of the provisions for enrolling aliens in study programmes of higher education is "sufficient knowledge of the language in which the studies take place." The institution of higher education may organise entrance examinations to define the level of language proficiency, but actually an alien can be enrolled to the study programme also without verifying his or her language proficiency. Also citizens and non-citizens, who do not know the official language well enough, are enrolled in study programmes, in which studies take place in the official language, however, not knowing the language usually is an obstacle to pass a relevant discipline and to graduate from the study programme.

In private institutions of higher education studies may also take place in another language. But it should be taken into account that study programmes, in which professional qualification has to be acquired (for example, a lawyer's qualification) examination shall be taken in the official language (Article 9, Section four of the Education Law).

The Papers necessary for obtaining academic (bachelor, masters) and scientific (doctoral) degree have to be developed and defended in the official language, except in cases as provided by other laws. Such exception has been provided in the Law on Scientific Activity: works required for the acquisition of an academic degree shall be submitted in the official language or in any of the official languages of the European Union with a translation of an extended summary in the official language attached thereto. A public defence may take place in the official language or in any of the official languages of the European Union – upon an agreement with the author and with the approval of the relevant Council for the Conferral of a Doctoral Degree in Science. Submission and public defence of the Doctoral theses for the acquisition of a doctoral degree in philology may take place also in a foreign language, if thesis is particularly devoted to the research of the relevant language (Article 11, Section five of the Law on Scientific Activity).

4. CONCLUSION

The use of languages in education in Latvia is provided by the historical experience of Latvia and the special situation of the Latvian language in Latvia. The necessity to protect and to strengthen the use of Latvian as the only official language in the public sphere is still topical.

Studies in state schools in basic and secondary education programmes are implemented only in the official language. Minority educational programme is the exception. In these programmes the use of languages is balanced, on one hand, to ensure the rights of the minorities to preserve their identity and, on the other hand, to integrate the minorities in the society of Latvia. Also, in the state institutions of higher education studies take place in the official language, except several substantiated exceptions. It cannot be expected that the policy of language use in education and in other spheres could change significantly in the future.

5. BIBLIOGRAPHY


Endnotes

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2. Leviš E. Par latviešu valodu Satversmes 4. pantā nacionālās valsts kontekstā. [About the Latvian Language in the context of a national state in Article 4 of the Constitution.] Jurista Vārds. 25 October 2011, No. 43 (690)


5. Article 4 of the Republic of Latvia Constitution: “The Latvian language is the official language in the Republic of Latvia. The national flag of Latvia shall be red with a band of white.”


9. See above Note 2


15. The Constitutional Court initiated a case on provisions of the National Referendum Law. Available at http://www.satv.tiesa.gov.lv/upload/2012-03-01%20FR%20part%20lerosin%C4%81%C5%A1anu_ENG.pdf


17. Leviš E. Par latviešu valodu Satversmes 4. pantā nacionālās valsts kontekstā. [About the Latvian Language in the context of a national state in Article 4 of the Constitution.] Jurista Vārds. 25 October 2011, No. 43 (690); Kusinš G. Oficiālājā sazīnā, arī Saeimas debātēs, jālieko latviešu literārā valoda. [In the official communication also in the debates of the Saeima literary Latvian language must be used.] Ibid; Rudevskis J. Vai Latgalei ir armija un flote? Does Latgale have army or fleet? Ibid.

18. Leviš E., op. cit.


20. In Latvia more than 90% of all schools that implement programmes of general education (both basic and secondary) are local government educational institutions. The rest are private educational institutions.


22. Cabinet Regulation of 6 April 2010 No. “Noteikumi par centralizēto eksāmenu satura un norises kārtību” [Regulations Regarding the Content and Procedural Requirements of Centralized Examinations]. Latvijas Vēstnesis. 9 April 2010, No. 57 (4249), point 92


24. Ibid, point 15.3

25. Ibid, point 17.3

26. Cabinet Regulation of 19 December 2006 No. 1027 “Noteikumi par valsts standarta pamatizglītībā un pamatizglītības mācību priekšmetu standartiem” [Regulations Regarding the State Basic Education Standard and Basic Education Subject Standards.] Latvijas Vēstnesis. 22 December 2006, No. 204 (3572)


28. See above note 2


30. See above note 20


Language Rights in Lithuania

Birutė Pranevičienė
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Language Rights in Lithuania

Birutė Pranevičienė and Agnė Margevičiūtė

1. THE IMPORTANCE OF LANGUAGE IN NATION-BUILDING IN THAT COUNTRY:

Language is the most important means of communication; it is inseparable part of every ethnic community and its culture, as well as it is the best form of self-consciousness and self-expression. Language unites the civic society, helps to ensure integrity and indivisibility of the nation, allows protecting the identity of nation which is considered to be the creator of the state, and guarantees the normal working of the state government, administrative, local authorities, various institutions, companies, and organizations.

Discipline of comparative linguistic research that has formed in the 19th century has been an incentive to research the origins of Lithuanian nation. It has remained an extensive and complex discipline providing studies on the Indo-Europeans and the Balts ever since. Geographically, Lithuania is one of the oldest Indo-European nations that have been continuously settled in the same region. First written historical records of the old Lithuanian religion date back to the period from the 1st century of our era up to the 19th century. Lithuanian language is one of the oldest Indo-European languages, that has maintained some of its elements that are older than Sanskrit, Greek and Latin languages up to modern times. Scientists on a global level have elaborated on the ethnicity, richness and beauty of that Lithuanian language, which remains an important resource of knowledge to those who study Indo-European languages, do historical research, it continues to be lectured in the universities world-wide. Linguistic research of Lithuanian and other Baltic languages has remained an important field of research while studying history of certain ethnic regions, especially the Baltics.

Lithuanian language remains one of the few modern – day languages maintain most of its oldest archaic elements. The question of why the Lithuanian language is the oldest of all living Indo-European languages remains open. Among the hypothesis raised to answer this questions few are worth to mention:

1) Psychological hypothesis – ever since the mother-tongue of the Indo-European language (circa 3000 years before Christ) Lithuanians (or, to be more exact – ancestors of Lithuanians) were very conservative, old fashioned and stubborn. They did not want any changes. Therefore the Lithuanian language has remained unchanged;

2) Mixing up languages hypothesis – during the period of 5000 years the Lithuanian language has not mixed with any other ide or non-ide language.

3) Central hypothesis – if one takes a close look at the historic maps of the Balt nations, it will be very obvious that the Lithuanians (or their ancestors) have remained at the center of the Balt nations during the last few thousand years. The Balt nations that have settled around the Lithuanian nation were occupied, destroyed, denationalized by the neighbouring countries, however, the Lithuanians have been scarcely affected by the tumults;

4) Geographical hypothesis – the Lithuanians have historically settled in the “midsts of the forests”, near the rivers and lakes, where they managed by fishing and hunting. For a long period these settlers have remained at a distance and disconnected from the central locations, access roads, and have mainly communicated by ways of rivers and lakes.

The Lithuanian language, no doubt, is the most important identifying trait of the nation and the most valuable asset of the nation. Lithuanians have long historical experience for defending their national language. During various historical developments and episodes, the Lithuanians have been notorious for nurturing the Lithuanian language which up to this day remains one of the most important elements of Lithuanian identity. The notorious “singing revolution” of the rebirth period of Lithuania in the end of the 20th century has shown how important the native language is to the Lithuanian nation.

It is important to mention just a few aspects of history of Lithuania that bring out the importance of the Lithuanian language:

- Lithuania experienced strong russification policy for 40 years (1864-1904). It was forbidden to use Latin letters, because Russian tsarist authorities forced to use Kirilica. Lithuanians resisted using Kirilica and secretly printed Lithuanian books in Latin alphabet.

- Later, during Soviet occupation, Lithuanian language had also experienced a lot of pressure: official documents had to be written in Russian language, all official signs (such as names of institutions or names of streets), had to be written in two languages – Lithuanian and Russian. All students had an obligation to study Russian language in schools from the first year. During that period lessons of Lithuanian and lessons of Russian language were at the same level of importance.

The main condition of the existence of the Lithuanian nation and the main reason why Lithuania kept its independence was Lithuanian language which was saved during the periods of the execution of the Russification policy. Native language helped people to experience Lithuanian identity.

2. THE FORMAL RECOGNITION OF THE VARIOUS LANGUAGES AND THEIR STATUS IN LITHUANIA / AN OVERVIEW OF CURRENT DEBATES

After Lithuania had recovered independence in 1990, the status of the Lithuanian language was very important for the nation. That is why Lithuanian language has a constitutional status in Lithuania: Article 14 of the Constitution of Lithuanian Republic states that „Lithuanian shall be the State language“ […]

Lithuanian language is the only official language in the Republic of Lithuania: it is required to use only Lithuanian language in the public life of the state. The official language guarantees the equality of the citizens of Lithuania in communication with the officials of the state administration and municipalities. The official language ensures an integration process of the
society, creates the equal conditions for individuals to get and share the information. The constitutional status of Lithuanian language obliges to use Lithuanian language in a public life, however, during the informal events, unofficial meetings or in the events of the religious communities, every Lithuanian citizen or resident can use the language which is most comfortable for him/her. The civil servants must know Lithuanian language by the categories approved by the government. This requirement applies to all persons holding the administrative positions, irrespective of their mother-tongue, nor nationality. Thus, we have not only Constitutional provision, but also State Language Law, Law on Education, and various regulations, which embed different aspects of using official Language in the Country.

According to Article 11 of the State Language Law “the state guarantees the right for citizens of the Republic of Lithuania to acquire general, vocational, further and higher education in the state language. Terms of the acquisition of general education in the state language shall be guaranteed throughout the territory of the Republic of Lithuania.” […]

According to Article 12 of the State Language Law “All secondary schools must teach the state language by the order approved by the government.” […]

According to Article 10 of the State Language Law “The official events of the state, local authorities, state agencies, and companies (such as sessions, congresses, meetings, conferences, etc.) must be organized in the official language. When the speaker uses another language, it must be translated into national language. If the international events are organized in the Republic of Lithuania, Lithuanian language is not obligatory.” […]

Article 37 of the Constitution of Lithuanian Republic states that “citizens who belong to ethnic communities shall have the right to foster their language, culture and customs.” […]

Article 45 of the Constitution of Lithuanian Republic states that “ethnic communities of citizens shall independently administer the affairs of their ethnic culture, education, charity, and mutual assistance. The State shall render support to ethnic communities”. […]

Department of Statistics gives such data about distribution of population by ethnicity in Lithuania. 7
Law on Education (Article 28.6) states that “the municipality must have an optimal network of the providers of the programs of the primary and secondary education, which ensures individuals' learning and their right to learn the national language.” […] 

Article 30 of the Law on Education ensures “the right to learn the state, and mother-tongue language.” […] It also embeds following provisions:

- Education in the national language and a right to study Lithuanian language is guaranteed for every citizen of the Republic of Lithuania and the foreigner who has a permanent or temporary residence in Lithuania;
- The regulations of the general education school ensure teaching all the subjects or the part of the subjects in minority language and fostering the minority culture depending on the parents (guardians) and students’ request. In these schools the subject of Lithuanian language is an integral part of the curriculum and devotes as much time for Lithuanian language as for the mother-tongue language teaching;
- State funded schools create conditions for national minority students to study their native language additionally if needed. This opportunity is provided if the expert of that particular language works in Lithuania;
- Ethnic minority person can learn the native language at institution which provides non-formal education programs or with another education provider;
- The children of the person, who is entitled to a permanent or temporary residence in Lithuania, are allowed to learn the national language, official language, and to learn their mother-tongue language if possible;
- All schools providing general education must ensure the knowledge of the state language in accordance with the general programs approved by the Minister of Education and Science.

The latter provision raised Polish minority dissatisfaction, because some of representatives of Polish minority argue that it is unrealistic to pass State language final exam. Some of representatives claim that Law on Education, which requires passing State language final exam for non-Lithuanian, is discriminatory and restricts the rights of the Polish. However, it should be noted that the law stipulates that no matter what ethnic group the student belongs, all students completing the school must take the Lithuanian language exam. From 2013 year the level of exam will be the same for Lithuanian-speakers and all non-Lithuanian-speakers.

There are 160 schools in Lithuania, which provide education in non-Lithuanian language. 100 schools are devoted for Polish students. 60 schools have classes for Russian-speakers. EU Human Rights Agency study found that 42 percent of Lithuanian ethnic minorities has a lack of the Lithuanian language proficiency, which reduces their ability to compete in the labor market. Therefore, recent changes in Lithuanian legal regulation of education likely will improve Lithuanian language proficiency and will raise the ability of the members of ethnic minority groups to compete in the labor market.

Endnotes

1. Prof. dr. Birutė Pranevičienė, Mykolas Romeris University, Faculty of Public Security, Department of Law; Agnė Margiukiūtė, Mykolas Romeris University, Faculty of Public Security, Department of Law
2. H. Volkaite – Kulkauskienė et all (1987); Vilnius „Mokslas“, p.3;
3. Vanda Daugirditė – Sruogienė (1990); Lietuvos Istorija [History of Lithuania]; Vilnius „Vyturys“, p. 18;
4. Marija Gimbutiene (1994); Senovinė simbolika lietuvių liaudies mene [Ancient symbolism in the folk art of Lithuania]; Vilnius „Mintis“, p.9;
5. Vanda Daugirditė – Sruogienė (1990); Lietuvos Istorija [History of Lithuania]; Vilnius „Vyturys“, p. 19;
6. Antanas Klimas (2001); Kalbos puošmenos ir paribos [Ornaments and peripheries of the Lithuanian language]; Vilnius, p.5-6;
Language, Law and Education Rights in Great Britain (2005)
Language, Law and Education Rights in Great Britain (2005)

Neville Harris

1. BACKGROUND

1.1. Historical, cultural and constitutional contexts

Great Britain and Northern Ireland are the constituent parts of the United Kingdom (UK), which is home to nearly 60 million people, of whom 83.7% (49.9 million) live in England; 8.5% (5 million) in Scotland; 4.9% (just under 3 million) in Wales; and 2.9% (1.7 million) in Northern Ireland. Great Britain is comprised of England, Scotland and Wales, which formed a single kingdom after the Treaty of Union 1707. Part of the historical legacy of the conflicts that shaped the UK is a strong sense of national cultural identity among the Scots, Welsh and Irish peoples within its population. Preservation of indigenous languages is seen by many within these national groups as important in helping to safeguard their cultural identity and traditions and in maintaining a degree of independence from the dominant Anglo-centric culture, even though the majority of the people within each of them can speak and understand English only.

In order to understand the relationship between language, education and the law across Great Britain it is necessary to be aware of the constitutional framework within the UK and how it affects the formulation and implementation of education policy and legislation. As a single sovereign state the UK has a national government and legislative body (Parliament). In recent years, however, the desire for a degree of self-determination in Wales and Scotland has been acknowledged through varying degrees of devolution of government and legislative authority. Northern Ireland, on the other hand, enjoyed such status from the day it became part of the UK following the partition of Ireland in the 1920s. Under the Government of Ireland Act 1920 the six counties of Northern Ireland acquired their own Parliament and assembly, although certain areas of government were reserved for the UK Parliament at Westminster. Direct rule from Westminster was, however, instituted in the 1970s. Despite subsequent short periods of devolved government and ‘power sharing’, it was not until the Northern Ireland Act 1998 (aimed at giving legislative effect to the Belfast Agreement concluded between the various political factions and the UK and Republic of Ireland governments) that a new constitutional framework for devolved government was set in place.

In any event, the education system of Northern Ireland has developed separately from the rest of Great Britain and had its own legislative framework and administration long before 1998. For those reasons, and bearing in mind the distinct cultural traditions within the province, including those shared with the Republic of Ireland, Northern Ireland is covered in a separate chapter (by Laura Lundy).

1.2. Scotland

Even before the devolution legislation of the 1990s, the education system in Scotland was different and separate from that in the rest of Great Britain. The legislative framework was

(and still is) comprised in various Education (Scotland) Acts, made by the UK Parliament at Westminster. However, the Scotland Act 1998 has given the new Scottish Parliament authority to enact its own primary legislation in the form of Acts of the Scottish Parliament; and although certain matters are reserved to the UK Parliament, such as social security, finance and the economy, education is not one of them. An important measure enacted by the Scottish Parliament is the Standards in Scotland’s Schools Act 2000, which among many other things makes provision in respect of the Gaelic language in schools (see below). Education policy making and central administration in Scotland fall within the remit of the Scottish Executive, whose ministers are empowered to promulgate secondary legislation: an example is the Education (National Priorities) (Scotland) Order 2000, which sets out the national priorities made by the ministers under their duty under the Standards in Scotland’s Schools Act to ‘define... priorities in educational objectives for school education provided for Scotland’.

1.3. England and Wales

Across the rest of Great Britain – England and Wales – there was essentially a single education system prior to the Government of Wales Act 1998, with services administered locally by local education authorities. Although policy making and central administration in England and Wales respectively were the responsibility of the Department for Education and Employment (now called the Department for Education and Skills (DfES)), based in London, and, the Welsh Office, based in Cardiff, the various basic policies were the same in both jurisdictions and there was essentially a common legislative framework. The Government of Wales Act 1998, which devolved power to a new Welsh Assembly, has not given the Assembly comparable legislative power to that given to the Scottish Parliament, so primary legislation in respect of Wales still has to be made by the UK Parliament. But secondary legislation is now formally made by the Welsh Assembly and, despite continuing areas of commonality, education policy in Wales is increasing divergent from English policy (such as in respect of the school curriculum). Recently, the UK government published formal proposals to devolve further legislative power to the Welsh Assembly.

Unlike Wales and Scotland, England has no legislative assembly and devolved framework of central government of its own. Primary legislation on education matters in England is made by the UK Parliament, while regulations and other secondary legislation are made by UK government education ministers, in furtherance of policy developed with the advice of civil servants in the Department for Education and Skills.

Wales has a very strong sense of national identity, which is reflected in the importance attached to the Welsh language and the presence of numerous schools in which the medium of teaching is Welsh (see below). In England, however, there is little evidence of a comparable national identity. Most English people perceive their national identity to be ‘British’ rather than ‘English’. There is an ongoing debate, mostly focused on England, about whether in an increasingly pluralistic society there is a need to inculcate a stronger sense of national identity based on the idea of ‘Britishness’ that some argue is prejudiced by the multicultural tradition in education that has developed over the past couple of decades. This in turn focuses on the question of how far the integration of minority groups into the
mainstream culture should be promoted through education and other policy areas. One question that arises is whether the need to respect and uphold the cultural integrity of ethnic or religious minority groups requires acceptance of a degree of segregation and even the preservation of a minority’s mother tongue; or whether there is an overriding need to promote social cohesion across the population by ensuring that education inculcates certain common values and ensures an appropriate level of competence in the majority language (English) for the maintenance of good communication and to maximise equality of opportunity within society. Certainly there has been an increasing policy emphasis on ensuring that new immigrants, from children to adults, learn English.

1.4. Linguistic diversity

Great Britain’s linguistic diversity is in part a reflection of its ethnic diversity, particularly as a result of immigration from Africa and Asia in the post-war period. The proportion of school pupils from an ethnic minority background has continued to grow and is expected to increase from its present level of around one in eight to one in five by 2010. London is the most ethnically diverse location in the UK: in three of its districts over half the population is classed as Black and minority ethnic, with a range of religions, and in twelve other districts the proportion exceeds one third.

English is the principal first language spoken in all parts of the UK, but some citizens are bilingual. There are no complete national statistics on the number of people for whom English is a second or additional language. A report published by the Department for Education and Employment in 2001 concluded that this lack of data hindered planning and delivery of education and training. When the national census (2001) was being planned a survey was conducted to identify the languages into which the census leaflets should be translated and this established a need to translate the forms into 24 languages ranging from Albanian/ Kosovan through to Vietnamese. A review undertaken for the Department for Work and Pensions in 2003 established a list of priority languages for the translation of the department’s information for clients who spoke a minority language: the highest priority was Bengali, followed by Punjabi, Gujarati, Urdu, Arabic, Classical Chinese, Somali, French, Polish and Tamil.

Although many members of immigrant or ethnic minority groups have English as their first language, a significant number do not and as many as 30% of school children in London speak a language other than English at home. Across England as a whole, the proportion of the main ethnic minority populations who speak English as their main language was found by a major health survey to be 99% in the case of persons classed as Black Carribean, but only 55% among those of Indian origin, 45% among persons of Pakistani origin, 20% in the case of persons of Bangladeshi origin and 41% among those of Chinese origin. Within some of the different groups there was also a range of languages spoken: for example, 32% of those of Pakistani origin spoke Punjabi and 20% spoke Urdu.

In terms of what may be described as indigenous languages other than English, England is basically mono-lingual apart from one county in the far south-west of the country, Cornwall, where a small number of citizens speak the Cornish language (in Cornish this is Kernowek, Kernewek or Curnoack). There has been a revival of interest in the language within Cornwall and it is supported by the local authority, the county council. It is estimated that there are 3,500 fluent speakers of Cornish, which has been recognised as a minority language under the European Charter for Regional or Minority Languages. (The UK signed the Charter on 2 March 2000 and ratified it on 27 March 2001.) Cornish is recognised for the purposes of part II of the Charter, which sets out the objectives and principles to be applied to such languages by the States Parties. Cornish is one of the Brythonic group of Celtic languages that includes Welsh and Breton. Indeed, it shares about 80% of its basic vocabulary with Breton and 75% with Welsh. Another of these languages is Manx, which is spoken by a small minority on the Isle of Man (an island in the Irish Sea to the west of England which is not technically part of the UK but is represented internationally by the UK government). The last native Manx speaker died in 1974, but interest in the language has revived and in the 2001 census 2.2% of the population of the island were identified as Manx speakers.

The Welsh language, also protected under the European Charter for Regional or Minority Languages, is the most active of all the indigenous minority languages in the UK. In the 2001 census 21% of the population of Wales aged 3 or over (or 580,000 people) could speak at least some Welsh and 16% could speak, understand and write in the language. There is regional variation, with the Welsh language more frequently in use in western parts of Wales.

In Scotland there are two national languages other than English. The Scots language survives today only in the form of dialects spoken in different parts of Scotland, although it is regarded by the Scottish Executive as a ‘living language’. In May 2005 ‘Scottish Language Dictionaries’ was established to collect and maintain a dictionary of the Scots language in order to preserve Scots as a part of Scotland’s cultural heritage and support its ongoing use and development. There are no reliable data on the precise extent of Scots usage. Scots is covered by part II of the European Charter for Regional or Minority Languages, but not part III, which contains the measures to be taken to promote the use of the language in public life. The other national language, Gaelic, is however specified for the purposes of part III. The 2001 Census revealed that 92,396 people, or 1.9% of the population, could speak or read Gaelic, could write in it, or could understand it. As in the case of Welsh in Wales, this minority language is more prevalent in the west of the country. As discussed below, the use of Gaelic and the teaching of Gaelic in schools are strongly supported by the government in Scotland and by legislation.

Languages specifically for communication with and by persons with various disabilities are also important. Braille, for example, is a written language which is used throughout Great Britain by many persons who are blind or have other visual impairment. Also, there are various sign languages for persons who are deaf or have severe impairment of hearing. For the purposes of education, the use of these languages, which may form the medium of teaching, tends to be a matter falling for consideration within the framework of special education and disability law, which is a vast and complex area that cannot be accommodated within this chapter. Nevertheless, it is important to recognize the relevance of these languages.
2. SPECIFIC NATIONAL MEASURES TO PROMOTE AND PROTECT MINORITY LANGUAGES, WITH PARTICULAR REFERENCE TO SCHOOL EDUCATION

The discussion in this section concentrates on school education. The statutory and other arrangements apply to all those of school age in the relevant jurisdictions, irrespective of their status as citizens. Although there are provisions within the Nationality, Immigration and Asylum Act 2002 that specify that the children of persons who have claimed asylum and are awaiting a final decision should normally be educated within accommodation centres rather than in the schools system, the law has not been brought into force. The Department for Education and Skills says that it is ‘Government policy that children from asylum seeking and refugee backgrounds are given the same opportunities as all other children to access education’. It refers to the statutory duty of each local education authority to ensure that education is available for all children of compulsory school age in their area, being education suitable having regard to their age, ability and aptitude and to any special educational needs they may have. The vast majority of the children coming to Great Britain from abroad arrive and live in England, so the arrangements set out in the next section are of particular relevance.

2.1. England

There is no legislation prescribing the language by which children should be taught in schools in England. In practice, almost all teaching is through the medium of English. Pupils whose first language is not English may therefore face difficulties in learning through English-medium teaching. They may need extra language support, but the law specifically precludes these pupils from being classed as having a ‘learning difficulty’ where that difficulty is ‘solely because the language (or form of language) in which he is, or will be, taught is different from a language (or form of language) which has at any time been spoken in his home’. Consequently, these pupils will not have rights to specific provision under the legislation on special educational needs. In some cases it might, however, be difficult to determine whether a child’s lack of progress is due to language barriers or other causes of learning difficulty, and so care will be needed in relation to such pupils.

The content of the school curriculum in England is governed by the National Curriculum, prescribed by law (see below). Children for whom English is an additional language may be granted temporary exemption from the National Curriculum, at the discretion of the head teacher, in order to receive special language support. This power is most likely to be used in the case of children who have recently arrived to live in England. But the main source of provision specifically to help such children is the Education Standards Fund (ESF). Among the various types of funding possible under the ESF is the ethnic minority achievement grant (EMAG). The EMAG is for funding ‘to provide equality of educational opportunity for all minority ethnic groups, including in particular measures to assist pupils for whom English is an additional language and measures to raise standards of achievement for those minority ethnic groups who are at particular risk of under-achieving’. In one school that has benefited from EMAG funding in recent years English was an additional language for as many as 57% of the pupils. The government allocated £155 million to the EMAG in England in 2003-04 and £162 million for 2004-05. Research has found grants of this kind to make a positive contribution to raising attainment levels despite considerable variation across different areas.

EMAGs have also been used to meet the cost of extra assistance required for the education of asylum-seeker children within schools, including the hiring of interpreters, providing mother tongue teaching and the translation of school books. A report by the Office for Standards in Education (Ofsted) has painted quite a positive picture of the role played by schools in the integration of asylum-seeker pupils: in a survey of 37 schools, almost all pupils made satisfactory or good progress, despite the initial language barriers in some cases. However, the report stressed that schools should ‘ensure that all staff are up to date with their knowledge and understanding of the linguistic, educational and cultural needs of the asylum-seeker pupils’.

It is common for legislation to ensure that where documents, whether about education generally or about specific pupils, are to be made available for parents, there are translated versions in various minority languages for those whose first language is not English. For example, the Education (School Information) Regulations 2002, which require the publication of information about matters such as school admission policies or examination results, provide that translated versions are to be made available, including translations into Braille. Similarly, special provision for bilingual help may be needed for parents of children with special educational needs whose first language is not English, to ensure that the local education authority can meet its obligations to involve the parents and children in all aspects of the process of identifying and making suitable provision for the child.

Within the National Curriculum, which is compulsory only in state schools (these are attended by approximately 93% of all pupils), there are prescribed ‘core’ subjects (English, mathematics and science) and a range of other prescribed ‘foundation’ subjects. At ages 11-14 only, a modern foreign language must be one of the foundation subjects. In the past, there was a long list of prescribed foreign languages that could be offered by schools and it included, in addition to the main European languages such as French, German and Spanish, many but not all of the languages spoken within particular ethnic minority communities or used within their religious services. In 2004 the law was changed, so that schools may now offer any modern foreign language provided pupils are also able study one of more of the official languages of the European Union. However, the cultural benefits of being able to study a minority language may be somewhat limited by it being restricted to this age range only. Children may therefore have to attend classes in their local communities or places of religion if they or their parents want them to receive a more complete minority language education. Pupils may also select a modern foreign language, including subjects such as Arabic or Modern Hebrew, as part of their General Certification of Secondary Education course at ages 14-16 and Advanced Level studies at 16-18, although, as a result of teacher shortages, choices may be limited.

The teaching of Cornish in Cornwall does not take place within this framework at present. The limited provision that is made is extra-curricular and, according to a survey approximately five years ago, it was provided in 12 primary schools and 4 secondary schools. There is currently no General Certificate in Secondary Education (GCSE)
2002-03. The Scottish Executive earmarked some £3.5 million for Gaelic education in education has increased from 45 (1,080 pupils) to 58 (1,925) pupils between 1993-94 to support might be needed. The number of primary schools providing Gaelic-medium among other things, supporting Gaelic-medium pre-school and primary school education, strategic objectives is to ‘Celebrate Scotland’s cultural heritage in its full diversity’. It involves, The promotion of Gaelic through and within the education system is part of the Scottish Executive’s National Cultural Strategy. One of the National Cultural Strategy’s defined strategic objectives is to ‘Celebrate Scotland’s cultural heritage in its full diversity’. It involves, among other things, supporting Gaelic-medium pre-school and primary school education, where demand is sufficient, and establishing an action group to consider what further support might be needed. The number of primary schools providing Gaelic-medium education has increased from 45 (1,080 pupils) to 58 (1,925) pupils between 1993-94 to 2002-03. The Scottish Executive earmarked some £3.5 million for Gaelic education in 2003-04. The Scottish Higher Education Funding Council has funded additional teacher education places for persons to train to teach in the medium of Gaelic.

Courses leading to qualifications in Gaelic are still taken by only small numbers of people. In 2004, only 230 people entered for a ‘higher’ (typically taken at the age of 18) in Gaelic, compared with 4,614 who entered for French; and at intermediate levels 1 and 2 (normally taken by 14-16 year olds) the numbers sitting Gaelic were 11 and 57 respectively, whereas the entry numbers for French totalled 2,144. Although the Scottish Qualifications Authority has announced plans to axe qualifications in subjects taken by very small numbers of people, it has confirmed that its Gaelic qualifications will continue.

2.3. Wales

Unlike Gaelic in Scotland, Welsh is well-absorbed into the national culture and has acquired formal legal recognition. Road signs and government reports and guidelines, among many other public notices and official publications, are bilingual (English and Welsh). The Welsh language has been promoted by the establishment of a Welsh Language Board, which advises the Welsh Assembly and makes grants for bilingual education. Welsh is recognised as an official language within which business may be conducted in the Welsh Assembly and in legal proceedings; moreover, the Welsh Assembly has a duty to conduct its business on the basis that Welsh and English shall be treated as equal. The Welsh Assembly has a power to do anything it considers necessary to support the Welsh language. The Assembly’s government has a national action plan, Iaith Pawb (Everyone’s Language), which has the aim of increasing the use of Welsh and creating a ‘bilingual Wales’. To this end £228.3 million was allocated to a programme that commenced in 2003 and a significant proportion of that sum is for initiatives which aim to increase the use of Welsh among young people and within the education system.

Approximately 27% of primary schools in Wales are mainly Welsh-medium schools. A further 5% use Welsh for teaching some of the time. In the remaining 68% of schools Welsh is taught as a second language only. Among secondary school pupils, some 14.4% are taught in Welsh as a first language and 84.5% as a second language. While parents have no legal right to insist on a place in a Welsh-medium school for their child, there does not seem to be a problem in securing admission to one, at least in those parts of Wales where such schools are located. Moreover, if the parents prefer a Welsh-medium school that is further from their home than an English-medium school, it is unlikely that the local education authority could refuse to meet the transport costs by arguing that ‘suitable arrangements’ can be made for the child to attend the nearer school, since it is likely to be accepted that for a child of a Welsh-speaking family an English-medium school may not be suitable.

The statutory National Curriculum in Wales does not specify the medium of teaching but has Welsh as one of the ‘core’ subjects in Welsh-speaking schools for pupils aged 5-16 or as an ‘other foundation subject’ in non-Welsh speaking schools. There is comparable provision to that made in England (above) in the following areas: temporary exemption from part or all of the National Curriculum (for example, in the case of persons whose first language is neither examination (usually taken at age 16) in the subject of Cornish, but pupils may sit Language Board examinations. Cornish language teaching will need further funding and support, plus a nationally recognised qualification equivalent to GCSE, if the language is to make any real advances within the county in which it survives. Finally, it should be noted that outside the state education system in England there are independent (private) schools. The Education Act 2002 introduced a new system for the regulation of these schools, including a power for the government to specify standards that the schools must meet as a condition of registration. These standards were introduced in 2003 and they include a requirement that the school must have and implement effectively a written policy on the curriculum and appropriate plans and schemes of work which, if the principal language of instruction is a language other than English, must provide for ‘lessons in written and spoken English’, apart from where the school ‘provides education for pupils who are all temporarily resident in England and which follows the curriculum of another country’. So various international schools in England would be exempt from this requirement. Otherwise, all pupils who are mostly not being taught through the medium of English must receive appropriate language teaching in English. That would appear to be consistent with their proper enjoyment of the right to education under the European Convention on Human Rights, Article 2 of Protocol 1.

2.2. Scotland

Scotland does not have a prescribed National Curriculum as such, but by law the Scottish Ministers must define priorities in educational objectives for school education and may include measures of performance in relation to those priorities. The current priorities include: ‘to promote equality and help every pupil to benefit from education, with particular regard to… Gaelic and other lesser used languages’. Each education authority must endeavour to improve the quality of education in schools they manage and to raise standards of education. They must publish an ‘annual statement of educational improvement objectives’ which must include an account of the ways or circumstances in which they will provide or seek to develop Gaelic-medium education. These various provisions show that Gaelic is treated as an important aspect of national culture to be promoted via education, in the face of evidence (noted above) that very few citizens of Scotland have any competence in the language. Inclusion of the Scots language within the school curriculum is also encouraged, through national guidance advocating teaching that provides an awareness and appreciation of the language, although this does not seem to have any legal force.

The promotion of Gaelic through and within the education system is part of the Scottish Executive’s National Cultural Strategy. One of the National Cultural Strategy’s defined strategic objectives is to ‘Celebrate Scotland’s cultural heritage in its full diversity’. It involves, among other things, supporting Gaelic-medium pre-school and primary school education, where demand is sufficient, and establishing an action group to consider what further support might be needed. The number of primary schools providing Gaelic-medium education has increased from 45 (1,080 pupils) to 58 (1,925) pupils between 1993-94 to 2002-03. The Scottish Executive earmarked some £3.5 million for Gaelic education in...
English nor Welsh); the law of special educational needs; and the modern foreign languages that may be offered at a school as part of the National Curriculum.

Finally, independent (private) schools in Wales are subject to a similar regulatory regime to that introduced for independent schools in England (above). There is a parallel requirement as regards teaching in schools where the medium of teaching is other than English, but in Wales it applies where pupils are mostly taught neither through the medium of English nor Welsh. In such schools provision must be made for lessons in written and spoken English or Welsh, unless it is a school providing education for pupils who are temporarily resident in Wales and their education follows the curriculum of another country.

3. FURTHER AND HIGHER EDUCATION

So far as tertiary education is concerned, within national law there is no specific provision dealing with the medium of teaching or provision of particular courses. However, in Wales, the Welsh Language Act 1993 requires public bodies, which include universities and colleges of further education as well as school governing bodies, to prepare a Welsh language scheme showing how they will ensure that Welsh and English are treated as equal languages. Universities in Wales have been particularly active in provision for Welsh-medium teaching within their schemes. Cardiff University, for example, has an action plan which reveals a commitment by many academic departments to develop Welsh-medium provision. However, in many instances, an insufficiency of Welsh-speaking staff at Cardiff has prevented this from being carried forward. The University of Wales, Aberystwyth, located in a heavily Welsh-speaking region, offers a wide range of degree courses in which 70% or more of the teaching is through the medium of Welsh.

There appears to be no provision for Gaelic-medium further or higher education in Scotland, but three universities (Aberdeen, Edinburgh and Glasgow) have Celtic Studies departments in which the Gaelic language is studied. Several colleges of further education also provide courses in Gaelic, for example, those on the islands of Lewis and Skye.

4. CONCLUSION

There is some disparity across and within the three constituent countries that comprise Great Britain in relation to the nature and extent of linguistic diversity both among their populations as a whole and within their education systems. Essentially, English is the universal medium of teaching in England, although opportunities for pupils to learn a range of minority languages is available through the National Curriculum at the secondary stage of education or as part of religious education (for example, to facilitate study of religious texts or to understand devotional expression), plus an opportunity for persons of any age to obtain national academic qualifications in them. There is some language support for the minority of pupils in England for whom English is a second/additional language, both through specific funding schemes and the possibility of temporary exemption from the National Curriculum in order to study English more intensively. But there is little or no scope for mother tongue teaching in minority languages for such pupils within the state education system, despite the fact that among a significant number of pupils, at least in particular towns and cities, English is an additional rather than the first language. Outside the state system, in independent schools, there is a very small amount of such teaching, but pupils must nevertheless generally be taught written and spoken English.

In Wales, the Welsh language is strongly supported in government policy and reinforced by legislation and through the provision of state resources. Welsh is an important feature of cultural life. There are, for example, Welsh language television channels and a considerable Welsh language literary tradition. The Welsh education system is playing a key role in the Welsh Assembly’s goal of a ‘bilingual Wales’, and while English is still the dominant language, an education through the medium of Welsh, where sought, is pretty much guaranteed in practice if not in law. Scotland, on the other hand, has two heritage languages, Scots and Gaelic, but is some way behind Wales in weaving them into the cultural fabric of the nation. Education is nonetheless playing an important role in the promotion of Gaelic, and this is reinforced by statutory requirements. But curricular provision is very patchy and few pupils seek and obtain formal academic qualifications in Gaelic.

As English is recognised as important as an international language, whilst also being the national language of England and the UK as a whole, its predominance within education in England is uncontroversial and has not resulted in legal disputes. Within Wales and Scotland, there is sufficient autonomy at government level for indigenous national languages to be given support and recognition within education law and policy, and to meet most parents’ aspirations as regards mother tongue teaching, but without disturbing the overall primacy of English. Here also there is an absence of legal conflict despite the ongoing nationalist political campaigns within Wales and Scotland. As yet, no cases asserting minority linguistic rights in education have been brought within the courts in Great Britain under the Human Rights Act 1998, which incorporates the main articles of the European Convention on Human Rights, including Article 2 of Protocol 1 (right to education, including teaching in accordance with parents’ religious or philosophical convictions) or Article 14 (right to equal treatment). The Strasbourg jurisprudence on linguistic rights, to which the courts in Great Britain must have regard under the Act, has so far not offered much encouragement to any potential complainants.

Endnotes

5. SI 2000/443


10. Ibid. The three districts where minorities total more than 50% of the populations are Brent, Newham and Tower Hamlets.


26. The Education Standards Fund (England) Regulations 2002 (SI 2002/510), Sch 1 para 3(b)(i) – in force until 1 April 2004. The statutory provisions under which these regulations were made have been replaced by the Education Act 2002, ss 14-18. These provisions confer very wide powers indeed on the Secretary of State to provide financial assistance for the provision of education on any conditions he or she wishes to impose.


33. Under the Education Act 2002, Part 6, and various statutory instruments made under the powers contained in that Act.

34. Education Act 2002, s 84(4).


36. Although the law does not expressly say so, English would not be treated as one of those official languages for this purpose, since it is already prescribed as a core subject and can hardly be described as ‘foreign’ within England!


39. Str. (Jugocjet objective 2.

40. Education (National Priorities) (Scotland) Order 2000 (SI 2000/443), art. 3(3).

41. Standards in Scotland’s Schools etc Act 2000, s (3).2.

42. Standards in Scotland’s Schools etc Act 2000, s 5(2).


46. Defined as a school where more than half of the subjects taught (including, for this purpose, only religious education and all National Curriculum subjects other than English and Welsh) are taught in Welsh, ss 105(7) and 106(4).


50. Defined as a school where more than half of the subjects taught (including, for this purpose, only religious education and all National Curriculum subjects other than English and Welsh) are taught in Welsh, ss 105(7) and 106(4).


55. Defined as a school where more than half of the subjects taught (including, for this purpose, only religious education and all National Curriculum subjects other than English and Welsh) are taught in Welsh, ss 105(7) and 106(4).

56. Education Act 2002, ss 105(2), (3) and 106(2), (3).


58. The statutory provisions noted earlier apply also in Wales.


61. Although the law does not expressly say so, English would not be treated as one of those official languages for this purpose, since it is already prescribed as a core subject and can hardly be described as ‘foreign’ within England!

63. Belgian Linguistics (No 2) (1979-80) 1 EHRR 252; but see Cyprus v Turkey Application no. 25781/94 (2002) 35 EHRR 731. See Williams and Rainey, above n. 53.
Linguistic Rights and Education in Northern Ireland (2005)
Laura Lundy

1. INTRODUCTION

Northern Ireland is part of the United Kingdom; the official language is English and English is taught in all state-funded schools. The languages which are indigenous to Northern Ireland are Irish and Ulster Scots. However, like many of the other factors which define and impact on an individual's identity, the issue of language is inextricably connected to the religion and politics which are at the heart of Northern Ireland’s conflict. The conflict can be traced to the plantation of Ulster (the nine counties in the northern part of Ireland) in the seventeenth century. After Ireland was conquered by Britain, new settlers (who were usually English or Scottish Presbyterians) were given lands confiscated from local people. Many of these English or Scots speakers settled in the geographical north of the country. Irish-speaking Catholics who were living in the plantation areas were evicted from their lands with the result that the northern counties became almost exclusively English-speaking. By the end of the 19th Century the use of Irish experienced a significant and general decline throughout the island, one of the contributory factors being a ban on the teaching of Irish in state schools.

In the late 19th century, the majority Catholic community on the island sought independence from Britain. The Protestant minority, concentrated in the north-east of the island, wanted to maintain the link with Britain. In 1921, the island was partitioned, with six of the northern counties forming Northern Ireland. Although the partition boundary had been drawn to reflect religious demography on the island as a whole, about a third of the population of Northern Ireland was Catholic and retained a desire to join the rest of Ireland (the Republic of Ireland) in a separate state. After Partition, politics in Northern Ireland became fixed around religion, with the Protestant majority supporting Unionist (pro-British) political parties while most Catholics supported Nationalist/Republican (pro-Irish) unity parties. At the time of partition, there were very few native Irish speakers remaining in Northern Ireland. Moreover, attempts to revive the use of the language were often associated with Republican and Nationalist politics with the result that Irish was regarded with suspicion by many Unionists. Irish was not taught in controlled (state-managed) schools and public signs in Irish were banned by law.

Throughout the history of Northern Ireland, Republican para-military organisations waged a violent campaign against the British State generating a counter offensive by loyalist (Pro-British) para-military organisations. The main paramilitary organisations declared cease-fires in 1994 and an agreement on shared governance between the two main religious/political traditions ('the Belfast Agreement') was signed in 1998. One of the key provisions of the Belfast Agreement was the establishment of a power-sharing Assembly, with devolved responsibility for legislation. However, the Northern Ireland Assembly was dissolved in 2002 as a direct result of Unionist concerns about insufficient progress on the decommissioning of paramilitary weapons and Northern Ireland is once again governed by ‘direct rule’ from the British Parliament in Westminster. There are currently negotiations underway to restore devolved government. In the meantime, there has been what might be best described as an uneasy peace. The worst forms of violence (indiscriminate bombings and ‘tit for tat’ murders) are over although there is still unacceptably high levels of violence within certain communities. Moreover, Northern Ireland remains a deeply divided society. In fact, there is evidence that the attitude of Northern Ireland’s Catholic and Protestant communities towards each other have become increasingly negative since the Belfast Agreement.

Northern Ireland’s education system reflects the wider divisions in Northern Irish society. Schools are almost completely religiously segregated in terms of their pupil profile. Just over 5% of children attend ‘integrated’ (mixed religion) schools. Protestant children generally attend state-owned controlled schools (managed by local education authorities) and Catholic pupils generally attend state-funded voluntary schools which are in the ownership of the Catholic Church. One of the outward manifestations of the segregation in the school system can be seen in the study of Irish. After the partition of the island in 1921, Irish was made compulsory in all schools in Southern Ireland. In Northern Ireland, it has been observed that the government engaged in a policy of ‘planned neglect’ with the hope that Irish would eventually be suppressed in the education system. In spite of this, Catholic schools continued to teach Irish, and indeed it was actively promoted in some schools by religious orders such as the Christian Brothers. This pattern continues today: Irish is taught in all Catholic secondary schools and is rarely taught in the state-owned (de facto Protestant) schools. Just over 2,500 children are educated in Irish Medium schools (schools in which the main language of instruction is Irish) – a sector which has witnessed considerable growth since the Belfast Agreement in 1998.

The Belfast Agreement recognises the need to respect and value Northern Ireland’s diverse cultural traditions, including in particular issues of language. The Agreement states that: ‘All participants recognise the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster-Scots and the languages which are part of the cultural wealth of the Island of Ireland.’ Moreover, it was as a direct consequence of the Agreement that the United Kingdom agreed to ratify the European Charter for Regional or Minority Languages. The Agreement also contains a number of joint commitments made by the British and (Southern) Irish governments. One of these was the establishment of a North/South Language body. This has two implementation bodies: the Ulster Scots Agency and the Irish Language Agency, both of which promote the use of their respective languages, for example, through the provision of funding to develop educational materials.

2. THE IRISH LANGUAGE

The use of Irish within Northern Ireland is frequently associated with the cause of Irish Republicanism. As one commentator has observed: ‘In a society which is fundamentally divided on political grounds, to learn or speak Irish is perceived as an act with political implications.’ It is partly as a result of this that the Irish language has enjoyed something of a renaissance in Northern Ireland since the 1970s. However, it was only after the introduction of ‘direct rule’ in 1972 (whereby Northern Ireland is governed directly from the
British Parliament in Westminster) that state attitudes to the Irish language began to change: "From having suffered state discrimination in Northern Ireland, the Irish language has gradually progressed to becoming a state beneficiary." This process of increasing state recognition culminated with the Belfast Agreement in which the British Government agreed to take 'resolute action' to promote the Irish language. This recognition is the product of a long-running campaign to secure state recognition for the language, a campaign which relied to a large extent on arguments based on the minority rights protections in the international human rights covenants.

Irish is the most widely spoken language in Northern Ireland after English. The 2001 Census indicated that 10.4% of the population have some knowledge of Irish. However, knowledge of the language varies considerably depending upon the individual's age and religious background. The highest concentration of knowledge is in the age group 12-15 (23.8%), an indication of the fact that many young people are learning to speak Irish while at school. This, combined with the data on the religious background of Irish speakers, indicates that the knowledge of the language is gained primarily within the Catholic school sector: 22.2% of Catholics had some knowledge of Irish compared to 1.1% of Presbyterians and Methodists and 1.3% of Anglicans. Children in Northern Ireland normally learn to speak Irish in one of two ways – in Irish Medium schools and as a subject option in other English speaking schools.

2.1. Irish Medium Education

An Irish medium school is defined by law as one in which religious education and more than two-thirds of the curriculum is taught exclusively in Irish. The legal position in relation to the curriculum in Irish Medium schools which are publicly-funded is prescribed as part of the statutory curriculum in Northern Ireland. In Irish Medium primary schools, Irish is compulsory in each year of primary education. However, Irish medium primary schools are exempted from the requirement to teach English to children in the first three years of primary school. This exception was lobbied for by the Irish-speaking community who considered that it was important that children were taught exclusively in Irish in the early stages of their schooling, given that they were living in English-speaking environment. English remains a compulsory subject throughout the pupil's remaining years at an Irish Medium primary school. The legal position represents a balance which enables children to settle in to the use of Irish as the language of instruction but which does not completely deprive them of an opportunity to learn the main language of the society in which they live.

The numbers of children attending Irish Medium schools has almost doubled since the signing of the Belfast Agreement in 1998. There are currently around 2,500 children attending Irish medium schools. Moreover, pupil numbers are targeted for a 5% increase year on year within Northern Ireland's Programme for Government. This period of growth has followed years of campaigning for recognition and funding for the sector following the establishment of the first Irish medium primary school in the 1971. Irish medium schools tend to be established by groups of parents on a voluntary and charitable basis (i.e. without public funding). When they have sufficient pupils enrolled, they apply to the Department of Education for official recognition and state funding. Whether or not they gain recognition depends to a large extent on whether they meet the Department of Education's 'viability' criteria (which specify minimum numbers in terms of pupil enrolment). These criteria have been very contentious, with many in the sector arguing that the numbers were unrealistically high and set well above the actual numbers of children attending some of the existing state-funded schools.

The legal options for challenging the viability criteria were, however, limited. An application to the European Court of Human Rights was ruled out as an option in the wake of the Belgian Linguistic Case. However, in one domestic case, In Re Scullion's Application, a parent challenged the Department of Education's refusal to provide funding and recognition to an Irish Medium secondary school. The school has been established on a charitable basis by parents and later sought recognition and state funding from the Department of Education. The legal issues in the Scullion case focused mainly on the Department's application of the viability criteria. The court decided that the Department was legally entitled to apply the criteria which it was using. However, it is interesting that, in support of this, the judge referred directly to the European Charter for Regional and Minority Languages. This was not binding on the court (the UK had not ratified the Charter at that time). However, in deciding that it was both legitimate and necessary for the Department to apply objective criteria to determine which schools were eligible to receive ongoing state funding, the judge cited a provision of the European Charter which states that minority language education could be provided 'where demand exists in a number considered sufficient'.

The key change for the Irish Medium sector was negotiated as part of the Belfast Agreement. It was in the Belfast Agreement that the UK committed itself to signing the European Charter for Regional or Minority Languages. Irish is designated under both Part II and Part III of the Charter. Part III in particular, requires the UK to comply with a series of educational commitments set down in Article 8. These include, for example, a commitment to make primary and secondary education in the language available to ‘pupils whose families so request and whose number is considered sufficient’. The Belfast Agreement also included an express commitment to introduce domestic legislation requiring the Department of Education to support and facilitate the development of Irish language education (enacted in the Education (NI) Order 1998, article 81). This has had two very immediate practical effects. First, the state now funds Comhairle Na Gaelscolaíochta, a voluntary organisation committed to the development of Irish Medium education. Secondly, there has been a review of the viability criteria for the establishment of new Irish Medium schools which have made it easier to establish new Irish Medium schools. There are currently 19 state-funded primary schools and 10 funded Irish Medium units attached to existing English speaking primary schools. There is one state funded secondary school in Belfast and two Irish Medium units attached to English-speaking secondary schools.

The new obligation to 'facilitate and support the development' of Irish medium education is not without its limitations, particularly in relation to Irish Medium schools which have not yet been afforded state recognition and funding. For example, children attending Irish-medium schools can experience considerable difficulty securing suitable transport to school. The wider geographical spread of schools means that children often have further to travel and,
there is a concern that, as newcomers, the sector loses out to more established schools in transport planning.\textsuperscript{21} For example, in one case, \textit{In Re Martin's Application}, a parent complained about the failure to make transport provision for a child attending a non-grant-aided Irish Medium school.\textsuperscript{22} The court decided that the local education authority did not have the power to provide transport assistance to children attending schools which were not publicly funded. However, at the end of the decision, the judge suggested that the position might have been very different if it had been argued under the European Convention on Human Rights (ECHR). This is in spite of the wide discretion which the ECHR gives to individual states as to the manner in which they regulate and finance their education systems.\textsuperscript{23}

There are several other areas where there is unmet demand for provision, particularly at secondary level. In Comhairle Na Gaelscoileachta's view, part of the difficulty is that Irish medium education is still viewed as 'a luxury rather than a fundamental right'.\textsuperscript{24} In recent research conducted by the author for the Northern Ireland Commissioner for Children and Young People, the following concerns were raised about provision in Irish medium schools: there is an insufficient number of places for Irish medium specific teacher training which impacts on the sector's capacity to expand and to provide an effective range of subjects for secondary school students are required to study at least one of the modern European languages: Irish, French, German, Italian or Spanish.\textsuperscript{29} Under the Northern Ireland Curriculum (as it was in the \textit{Ferris} case), it would be difficult for a school to justify the mandatory nature of the programme on the basis that an exemption would result in the pupil being denied his or her right to an effective education. On the other hand, the court considered that the school was required 'to avoid a narrow biased programme for education that promoted to a position of dominance one particular viewpoint and neglected another.' It did not consider that the teaching of an elementary course in Gaelic studies had been complied with. Secondary school students are required to study at least one of the following modern European languages: Irish, French, German, Italian or Spanish.\textsuperscript{29} Under the original proposals Irish was not part of the list. It was inserted following a consultation period on the statutory curriculum in response to representations by the Catholic Church and Irish language pressure groups. Pupils can opt to study Irish instead of any of the other European languages offered by their school. In practice, Irish is the most widely chosen language of study after French.\textsuperscript{30} However, schools are under no obligation to offer Irish as one of their language choices. Moreover, if they do offer Irish, they must offer an alternative European language as well. In effect, this means that no pupil can be required to study Irish to fulfil the modern European language.

Irish is taught in many secondary schools in Northern Ireland but these are almost exclusively Catholic schools. The teaching of Irish outside the Catholic school system can be controversial to the point where it has generated litigation. For example, in \textit{In Re Ferris Application} the plaintiff was a Protestant who was the father of a child attending the integrated (mixed religion) secondary school.\textsuperscript{31} The school had a compulsory programme of Gaelic studies in its first year in which the children learned to speak Irish. This was additional to the statutory curriculum. The father argued that the requirement to study Irish was in breach of the school's obligation to provide a 'balanced and broadly-based' curriculum as required by Article 4 of the Education Reform (NI) Order 1989.\textsuperscript{22} Witnesses were called to argue that a balanced and broadly based curriculum would also have included instruction in Ulster-Scots, a language identified primarily with the Protestant community (see below). The court considered that the school was required 'to avoid a narrow biased programme for education that promoted to a position of dominance one particular viewpoint and neglected another.' It did not consider that the teaching of an elementary course in Gaelic studies had that result.

The plaintiff in the \textit{Ferris} case did not argue that there had been a breach of Article 2 of the First Protocol of the ECHR, apparently because the case was initiated just prior to the incorporation of the ECHR by the Human Rights Act 1998. It would have been interesting to see if the outcome would have been any different if it had been possible to deploy European Convention arguments. It is possible to see an argument for respecting the parent's philosophical convictions in situations where the parent has a cultural or political objection to the topic or activity. Moreover, if the activity is extraneous to the standard content of Northern Ireland curriculum (as it was in the \textit{Ferris} case), it would be difficult for a school to justify the mandatory nature of the programme on the basis that an exemption would result in the pupil being denied his or her right to an effective education. On the other hand, the European Court of Human Rights has shown that it is also reluctant to interfere in curricular programmes provided that the course of instruction does not amount to a form of indoctrinartion and that the information is presented critically, pluralistically and objectively.\textsuperscript{32}

### 2.2. Irish in English Medium Schools

The Northern Ireland Curriculum makes specific provision for the teaching of Irish in publicly-funded schools. The Irish language does not have to be taught at primary school although it may be offered as an addition to the curriculum once the other statutory requirements have been complied with. Secondary school students are required to study at least one of the following modern European languages: Irish, French, German, Italian or Spanish.\textsuperscript{29} Under Ulster-Scots is a variety of the Scots language which is spoken in parts of Northern Ireland. Its roots lie with the Scottish (and Presbyterian) planters who came to Ireland in the 17th Century. As is the case with Irish, its tradition and long-standing associations with one section of the community (in this case the Protestant community) has meant that public

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### 3. ULSTER SCOTS

Ulster-Scots is a variety of the Scots language which is spoken in parts of Northern Ireland. Its roots lie with the Scottish (and Presbyterian) planters who came to Ireland in the 17th Century. As is the case with Irish, its tradition and long-standing associations with one section of the community (in this case the Protestant community) has meant that public
debate about the language is often politicised. It has been observed that: 'Ulster Scots is increasingly used by Unionists to assert identity in a post-Agreement Northern Ireland that they fear is bent on 'privileging' the Nationalist Irish contingent.'33 Moreover, some Nationalists and Republicans also believe that Ulster Scots is a contrived language and that interest in it has developed solely as counter-reaction to the promotion of the Irish language within the Catholic community. There is no official indication of the prevalence of Ulster Scots speakers within Northern Ireland and data on usage was not gathered as part of the 2001 census. However, in one study, it was estimated that around 35,000 people (or 2% of the Northern Ireland population) can speak Ulster Scots. 34

The Belfast Agreement recognises Ulster Scots as ‘part of the cultural wealth of the island of Ireland’.35 There is, however, some dispute about whether it is a language in its own right. Some claim that it is a separate language derived from Scots, while others argue that it is simply a collection of local dialects, a mixture of Scots and Hiberno-Irish. It is defined in law as ‘the variety of the Scots language which has traditionally been used in parts of Northern Ireland and in Donegal in Ireland’.36 Moreover, Ulster Scots is also the only other language (apart from Irish) which is recognised in Northern Ireland for the purposes of the European Charter for Regional and Minority languages. Ulster Scots has been designated under Part II of the Charter. This requires the UK to base their policies, legislation and practices on a number of objectives which include: the provision of appropriate forms and means for the teaching and study of the Ulster Scots language at all appropriate stages; the provision of facilities enabling non-speakers living in the area where it is used to learn if they so desire; and the promotion of study and research on the language at universities or equivalent institutions.

These objectives have, in part, been achieved through Government funding for the Ulster Scots Agency (‘Tha Boord o Ulster-Scottch’), another product of the Belfast Agreement. The Agency’s mission is to ‘promote the study, conservation, development and use of Ulster Scots as a living language; to encourage and develop the full range of its attendant culture; and to promote an understanding of the history of the Ulster Scots.’ There is no specific statutory provision for the teaching of Ulster Scots within the statutory curriculum. However, schools can provide education in Ulster Scots language, literature and culture through the cross-curricular themes of Cultural Heritage and Education for Mutual Understanding. Moreover, there are several government-supported initiatives which are intended to promote education in Ulster Scots, including the development of curricular materials by the Ulster Scots Curriculum Development Unit which is based at Stranmillis University College in Belfast. There is, as yet, no Ulster Scots Medium school, although there are current plans to establish an Ulster Scots Academy.37

4. EDUCATIONAL PROVISION FOR CHILDREN FROM ETHNIC MINORITY COMMUNITIES

Northern Ireland has a very small ethnic minority population – less than 1% of the population.38 The single largest ethnic minority group is the Chinese community. It is estimated that approximately 4,500 people speak Chinese, making it the third most widely spoken language in the jurisdiction. No provision is made for the study of ethnic minority languages at all within the statutory curriculum, a position which can be contrasted to other parts of the UK. There are insufficient numbers to justify, and no apparent demand for, schools which instruct children in ethnic minority languages as the medium of instruction. However, ethnic minority children and their families have expressed concern about the lack of formal routes for studying and gaining qualifications in their mother-tongue languages within Northern Ireland’s existing state schools.39 If demand grows for instruction in non-European languages as part of the statutory curriculum, human rights instruments could provide the necessary legal grounding for rights-based advocacy. Although the ECHR does not require states to provide education in a particular language, there is a requirement not to discriminate in terms of the languages offered by schools (Article 14 in conjunction with Article 2 of the First Protocol).

The Department of Education in Northern Ireland does not have a specific policy on the education of ethnic minority children, although some of the needs of ethnic minority children are addressed in other policy documents and circulars. For example, schools receive extra funding for children for whom English is a second language. The Department of Education is proposing to increase this to provide additional financial support to children for at least two years with the possibility of extension if the child continues to have difficulty.40 Additional resources will also be given to children born in an English-speaking country but of non-English speaking parents. Research indicates that refugees and asylum seekers, particularly adolescents, who may be poorly educated in their first language, experience particular difficulty in school.41 A further difficulty is the limited availability of interpreters and thus the fact that some minority ethnic parents find it difficult to liaise effectively with their children’s school and hence to play a full and proper role in their children’s education.42

5. CONCLUSION AND PROSPECTS FOR THE FUTURE

The Belfast Agreement (and the Northern Ireland Act 1998 which implements it) includes a range of human rights provisions which have had or have the potential to have a significant impact in the area of language rights and education. For example, section 75 of the Northern Ireland Act 1998 introduced an innovative statutory equality duty which requires public authorities, including the key education agencies, to promote equality of opportunity (and good relations) between people of different racial backgrounds. Public authorities are required to consult with groups on all policies which may affect them. This has provided pressure groups within the Irish language, Ulster Scots and ethnic minority communities with specific opportunities to highlight linguistic rights issues in the development of public policy, for instance in the consultation around a new statutory curriculum for Northern Ireland.

The Belfast Agreement also makes provision for a Bill of Rights for Northern Ireland.43 The Bill of Rights is intended to supplement the rights in the ECHR to reflect the particular circumstances of Northern Ireland. The Belfast Agreement suggests that two issues, both of which have potential ramifications for education, require particular consideration in the context of a new Bill of Rights. The first is an obligation on government and public bodies to ‘respect on the basis of equality of treatment, the identity and ethos of both communities in
Northern Ireland’. The second is the need for ‘a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors’. The Northern Ireland Human Rights Commission (NIHRC) was given the task of preparing the proposed Bill of Rights and has recently made revised recommendations as to the potential content of the Bill of Rights.44

One of the most contentious aspects of the proposals are those in relation to linguistic rights. The NIHRC’s most recent draft of the Bill of Rights acknowledges this and indicates that the Commission itself could not agree whether Irish should be recognised as an official language equal to English, as an official language secondary to English or whether the Bill of Rights should contain a clause which says: ‘Legislation shall be enacted to prescribe the situations in which people have the right to use the language of their choice.’45 However, the ‘Language’ section of the proposed Bill of Rights contains a proposal that members of linguistic communities in Northern Ireland shall have a right to ‘be educated in and through their language, where there are substantial numbers of users and sufficient demand,’46 a provision which echoes the UK’s obligation under the European Charter for Regional or Minority Languages. Moreover, there are also several recommendations in the area of education which are connected to linguistic rights. For example, the NIHRC has proposed that the state shall ‘respect the right of parents to choose for their children schools with a particular religious ethos, education in integrated schools and education in Irish-medium schools’.47 This reflects the considerable influence of the various educational interest groups, in particular the Irish-medium sector, in the consultation process and, if implemented, would exert additional pressure on the authorities to take parental demand for such education into account when making decisions on the future development of educational provision.48

Much will depend on whether the Bill of Rights actually makes it into legislation. Its future is far from certain. There has been a significant level of complaint about specific aspects of the proposals, particularly from the Unionist community.49 It is difficult to see how they might be engaged in the process and more difficult still to see how the Bill of Rights might be implemented if it is not broadly acceptable to both communities. Given that linguistic rights are inherently political and always contentious within Northern Ireland, this is undoubtedly one of the areas where securing a consensus will be most challenging. Nonetheless, at the time of writing there are ongoing attempts to reach a political accommodation which will restore power to the Assembly and secure other key elements of the Agreement, including the Bill of Rights. If it does go ahead, even in a more limited form, Northern Ireland could be at the forefront of linguistic rights protection in education, offering a unique legal framework for tackling the problems which arise in societies with embedded ethnic divisions.

Endnotes

1. For a detailed history and analysis of the reasons underlying the conflict see, Stewart A.T.Q. (1989), The Narrow Ground: the Roots of the Conflict in Ulster, Faber, London.
15. Education (Reform) (NI) Order 1989, Article 35(2).
18. (1968) ECHR 252 at p.281 where the European Court of Human Rights stated that the right of access to education did not require states to ‘establish at their own expense, or to subsidise, education of any particular type or level’ and further that access to education ‘by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals.’
20. Art. 8, para. 1b(v) and 1c(iv).
22. Unreported decision of the High Court of Northern Ireland, 8 May 2000.
23. See, n. 18 above.
30. In 2002/3 2,689 pupils studies Irish at General Certificate of Secondary Education Level.
32. The Danish Sex Education Case (1976) 1 ECHR 711.
37. See, for example, the Joint Declaration of the British and Irish Governments, 1 April 2003.
38. The Census 2001 indicates that 0.85% of the population does not have a white, European background.
Language Rights in Education in Norway

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Trond Welstad
Language Rights in Education in Norway
Svein Egil Vestre and Trond Welstad

1. BACKGROUND

a) Swedish and Danish are understood by Norwegians, and pupils with a Swedish or Danish language background are expected to cope with Norwegian as mother tongue and language of instruction.
b) All pupils have to learn English in primary and secondary school, normally as first foreign language. From grade 8 onwards a second foreign language is encouraged, and schools are obliged to offer one of the following: German, French, Spanish or Russian. In addition, other languages may be offered, European or non-European, if the school owner decides to do so. The most popular second foreign language is Spanish (31 per cent), than German (25 per cent).
c) Sami and Kven (the language of Norwegian Finns) are recognized as regional or minority languages in Norway, with legal implication as described below. In 2011 the number of pupils with Sami as first language in primary and lower secondary schools was 855 (0.14 per cent of the total).

a) Between 1990 and 2010, a total of 471 000 non-Nordic citizens immigrated to Norway and were granted residence here. Of these, 22 per cent came as refugees, 28 per cent were work immigrants and 11 per cent were granted residence for study purposes. Twenty-three per cent came to Norway due to family reunification with someone already in Norway, and 15 per cent were granted residence because they had established a family.

The number of immigrants residing in Norway varies with government immigration policy, labour market needs and shifting global crises. Immigration increased during and after the Balkan wars of the 1990s. In recent years, the majority of new immigrants have come to Norway as a result of family immigration.

Legal principles

Migrants
Master the Norwegian language is seen as important for new citizens coming to the country. The act on an introductory program and Norwegian language instruction for newly arrived immigrants from 2003 [Introduction Act], states that it is both a right and obligation to participate in Norwegian language training and social studies for a total of 300 hours free of charge. (Introduction Act, section 17). This shall applies to foreign nationals between 16 and 55 years of age who have been granted a residence or work permit.

Compulsory education

In Norway "school for all" is central in the education policy. The aim is to provide learning opportunities for all, with special consideration for specific groups of children, e.g. children from language minorities or who need special support.

1) According to the Norwegian Education Act, Chapter 6, pupils attending the primary and lower secondary school in Sami districts all children at the primary and lower secondary level have the right to receive their education both in Sami and through the medium of Sami.

Outside Sami districts, if at least ten pupils in a municipality wish to receive instruction in and through the medium of Sami, they have the right to such education as long as there remain at least six pupils in the group.

The Sami Parliament issues regulations concerning curricula for instruction in the Sami language in primary and lower secondary education and in upper secondary education and training, and concerning curricula for specific Sami subjects in upper secondary education and training. The regulations must lie within the scope and allocation of resources determined by the Ministry.

The Ministry issues regulations concerning other special curricula for education in Sami districts and for pupils outside Sami districts who receive Sami instruction. The Sami Parliament shall draft these regulations in consultation with the Ministry.

2) Instruction in Finnish for pupils with a Kven-Finnish background (Ed.act Section 2-7). - When so required by at least three pupils of Kven-Finnish stock (Kvens) attending primary and lower secondary schools in Troms and Finnmark, the pupils have the right to receive instruction in Finnish. From grade 8 onwards, pupils decide themselves whether they wish to receive instruction in Finnish.

3) Adapted language education for pupils from language minorities (Ed.act Section 2-8). - Pupils attending the primary and lower secondary school who have a mother tongue other than Norwegian or Sami/Kven-Finnish have the right to adapted education in Norwegian until they are sufficiently proficient in Norwegian to follow the normal instruction of the school. - If the student has sufficient proficiency in Norwegian to follow the normal instruction, mother tongue education will be the responsibility of the parents.

If necessary, such pupils are also entitled to mother tongue instruction, bilingual subject teaching, or both. The mother tongue instruction may be provided at a school other than that normally attended by the pupil.

When mother tongue instruction and bilingual subject teaching cannot be provided by suitable teaching staff, the municipality shall as far as possible provide for other instruction adapted to the pupils' abilities.

The number of pupils with adapted education in Norwegian increased during the period from 2006-2007 to 2010-2011. The number of pupils with adapted education in Sami districts and for pupils outside Sami districts who receive Sami instruction. The Sami Parliament shall draft these regulations in consultation with the Ministry.

Higher education
Students in higher education have the right to use Danish, Swedish or English in their exams as an alternative to Norwegian.
2. APPEALS AND COMPLAINTS

1. The individual pupil’s right to mother tongue education is provided in the Education Act, section 2-8 and 3-12. This statutory provision was included in the act in 2008. We also had a provision with much of the same content in the previous education act (before 1998), but it was not formulated and given as an individual right. The main condition for the right to mother tongue education, is that the pupil has a first language other than Norwegian or Sami. As far as we can see, there have been no appeals to the Norwegian courts concerning the right to mother tongue education.

2. Language minority pupil are not found among complaints to the County Governor. During 2010 a total of 31 cases of appeal to the County Governor of Oslo and Akershus, were analyzed.

Given that immigrant students in the Oslo and Drammen schools now constitute close to 40% of the student population, and Statistics Norway (SSB) estimates that the number for Oslo schools will move up to half of all pupils in 2020, it is striking that they are practically not present in the complaint material. The researchers found this interesting, but also disturbing, and read through another 67 cases, now looking only for foreign names. Again, the result was the same: of all 98 cases they only found one parent with a non-Norwegian name and background. The pupil had a Norwegian mother and a foreign father.

3. CURRENT ISSUES AND DEBATES

Importance of language in a nation-building context
In 2014 our Norwegian constitution has its 200 year anniversary (the 17 of May 1814). In this connection there is a discussion about renewal of the constitution and how, and how far, the human rights should be present in the constitution text. The main proposal is that the right to education is to be expressed as an individual right in a new paragraph 109. This is in accordance with the European Human Right Convention, UN Child Convention, UN convention on social and political rights, among others. Education is of importance for understanding the basic democratic values that we want to characterize our society, such as peace, solidarity and inclusion. In this perspective, language is a basic element to ensure education and fulfill the most important purpose of education.

Immigrants and aspects of integration
Despite a broader focus on school law, and more individual rights for the pupils – conducted both in the human rights declarations and the national curriculum, there is concern that the law design might be an obstacle for implementing the same rights on daily basis in the practical school context. In particular, the right to mother tongue education is an individual right designed in a way that gives the schools much of the responsibility for fulfillment. This may be a problem because this kind of education requires resources, both money and expertise. Secondly, the law text itself is of a rather vague character, open to interpretation and decisions on school level. Seen in light of the absence of complaints to the County Governor of Oslo on inadequate implementation of the right, these facts make it relevant to ask how present the right to mother tongue education actually is in the practical school life of the minority children. The right to mother tongue education has not been debated in depth in Norway. From time to time question are raised about the contents and scope of the education. But the discussions have been limited.
Linguistic Rights in Education in Poland

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1. BACKGROUND

1.1. The importance of language in nation-building in that country

Historically, Polish language, together with Catholic religion, was one of the most dominant factors of nation-building. Already in 18th century Polish became the most widespread Slavic language, used not only in Poland, but also beyond. Polish language was then attractive thanks to the Polish nobility and civic freedoms it represented. By the time of Partition of Poland (1772–1795 – the partition, only in 1918 Poland was independent again), language was one of the key symbols of nostalgic longing for independence. Knowing Polish language and spreading Polish literature was one of the means to fight for free Poland, but also a way to protect Polishness – a new concept evolving during the partition period (Tazbir n.d.).

Nowadays Polish society is homogenous nationally, ethnically and linguistically. According to the National Census of 2011, 99.7% of people inhabiting Poland are Polish citizens, while 91.6% is ethnically Polish. Only 1.4% feels non-Polish, while 2.2% identifies themselves with Polish and other ethnicity. Out of these ethnicities the most frequent one is Silesian (809 thousand people), followed by Kashubian (228 thousand) and German (109 thousand) with other ethnicities scoring less than 50 thousand members (GUS 2012). Also foreign citizens constitute a tiny minority in Poland, even smaller than ethnic and national minorities. Therefore it is not surprising that that three out of four Polish citizens don’t know any foreigner in person (CBOS 2010: 4).

Polish language is perceived as the second most important factor of national identity. According to a nation-wide survey of 2011, self-perception is the most important factor (68% of indications), while knowledge of Polish language scored 52%. Other factors include: Polish nationality (49%), knowledge of Polish history and culture (43%), cultivation of Polish traditions and customs (39%) and Polish ancestors (38%; CBOS 2011: 4).

According to the National Census of 2002 there are around 511 thousand people who use at home Polish with other language, and 564 thousand – who use a foreign language only. That means that only 1.5% of the population doesn’t speak Polish at home (what doesn’t mean that they don’t know the language). The biggest group constitute German speakers (204 thousand), then those who speak English (89 thousand), Silesian (89 thousand), Belarusian (40 thousand), Ukrainian (22 thousand), Romani, Russian, French and Italian (around 15 thousand; GUS 2002: tab. 5).

1.2. The formal recognition of the various languages and their status in that country

The Polish Constitution defines Polish language as the national language of the whole country (Art. 27). In terms of education it is the language of curriculum, the language of examination in public and non-public schools of all kinds as the Law on Polish language stipulates (Art. 9). Apart from Polish there are also national, ethnic and regional languages, used by some of Polish minorities.

There are nine, officially recognized national minorities in Poland, that is: Armenian, Belarusian, Czech, German, Jewish, Lithuanian, Russian, Slovak, and Ukrainian (Art. 2, s. 2); four ethnic minorities: Karaim, Roma, Ruthenian, and Tatar (Art. 2, s. 3). Moreover, one regional language is recognized – Kashubian (Art. 19, s. 2). Not all minorities use their own language in education. Karaims and Tatars are too few, and anyway assimilated linguistically, Romans use Romanian or Polish, but developed no schools on their own; there are also no Czech schools in Poland.

There are currently 51 bilingual districts in Poland, of which 31 have an auxiliary language, including five with Belarusian, three with Kashubian, one with Lithuanian and twenty-two with German. An auxiliary language can be used only in districts inhabited by at least in 20% by the minority (Act on national and ethnic minorities and on regional language, Art. 9).

1.3. An overview of current debates

Since over 98% of Polish population speaks Polish there are hardly any debates related to language or linguistic rights, which would refer to the situation inside Poland. National and ethnic minorities have their legal rights, including linguistic rights, while foreigners are simply too few to have a proper educational infrastructure. Some foreign communities have their own media and events, but in most cases it is their own initiative, or – in case of communities from third countries with vulnerable status – initiative of Polish NGOs.

If any debates take place, they rather refer to linguistic rights of Polish people abroad, especially in so called Eastern borderlands. While the situation of Polish in Ukraine is rather stable, there are some political tensions in Belarus and Lithuania. In Belarus they refer to the general political situation and Polish efforts to support local opposition, while in Lithuania – with some recent actions aimed at getting rid of Polish labels in some villages, changing Polish names into Lithuanian, and standardization of the school-leaving examination in Lithuanian language for Lithuanian and minority schools.

2. LANGUAGE RIGHTS IN COMPULSORY EDUCATION

The fact that Polish society is homogenous makes it very hard to focus on any legal cases – since they are hardly existing – or present any of the mentioned groups in detail (e.g. displaced people, third country nationals without residence permit, etc.). What is more, national and ethnic minorities are well established in Polish tradition and enjoy their rights, strengthen by EU regulations. On the other hand, foreigners started to arrive to Poland in bigger numbers only recently. According to one of studies carried out in Warsaw in 2010,
over 95% had less than 3 years' experience in working with foreign pupils (Bleszyńska 2010: 48).

Taking into account that around a half of foreign pupils learn in the capital city or nearby clearly indicates the scanty experience of Polish educational system when it comes to foreign pupils. The data only starts being collected and situation diagnosed. Therefore the section below will only describe in general terms situation of Polish citizens and foreigners.

2.1. General legal principles

According to the Act on the System of Education schools can help their pupils to support their ethnic, national, linguistic or religious identity, and especially education of language, their history and culture (Art. 13, s. 1). Such education is carried out – if parents put forward a motion – in dedicated schools, as extra classes on language, history and culture, or in interschool groups (s. 2).

The Ordinance of the Minister of National Education on conditions and ways of carrying out by pre-schools, schools and public educational units tasks enabling support of national, ethnic and linguistic identity of pupils belonging to national and ethnic minorities, and using regional language of 14th November 2007 provides the details of such education. Pupils from recognized minorities might learn the language, but also history, culture, and if needed, geography, arts, or other additional classes. Such education is facultative and only in case of a written request by pupils' parents or legal supervisors.

In preschool education minority or regional language might be taught as the sole language, or as one of two languages (with Polish), or as additional 4 hours weekly classes, or in an inter-preschool groups (Art. 3). In case of schools, education can be organized mostly in the same manner that is: in schools or units with curriculum in minority language except for Polish language class as well as history and geography of Poland; in schools or units of bilingual education; in schools or units with additional classes of minority or regional language taught in that language; or in interschool groups (Art. 4). The minimum number of pupils is set to seven – in case of preschool, primary and lower secondary school, and fourteen – in case of above lower secondary school (Art. 5). If the number of pupils is smaller, interclass or interschool groups are established (Art. 6). In case of an interschool group the required number of pupils is from three to twenty (Art. 8, s. 2) and they have the language class three hours per week (Art. 8, s. 3). Only one ethnic minority – the Romas – is entitled to educational assistants (Art. 11, s. 2).

Education of minority and regional languages is free of charge and financed by the state. Schools in which pupils of minority background enroll get a pupil subvention increased by 20% in case of large schools, and by 150% – in case of small schools (i.e. with the total number of pupils being lower than 84 in primary and 42 in lower and general secondary school; MoIA 2007: 78).

2.2. Special categories

Citizens

The Act on national and ethnic minorities and on regional language guarantees all recognized minorities the right to use their national and ethnic languages, including: writing their names (Art. 7, s. 1), using their languages in private and public live (Art. 8, s. 1), distributing and exchanging information (s. 2), as well as placing information (s. 3) and learning their language, or having education in their language (s. 4).

There are four possibilities of teaching language of minorities or the regional language as foreseen in the Ordinance od 14th November 2007: – Teaching in minority language in schools, with the minority language being the language of the curriculum.

– Bilingual education in two equivalent languages – Polish and a minority language.

– Minority language as additional subject at school.

– Teaching minority language in interclass or interschool groups.

Currently following languages are taught in Polish educational system: national minority languages – Armenian, Belarusian, German, Lithuanian, Slovak and Ukrainian; ethnic minority language of Rutherians, and a regional language of Kashubians, as presented in the table below.

Table 1: Teaching national and ethnic minorities’ language and regional language in schools and interschool groups in 2005/6

<table>
<thead>
<tr>
<th>Language of curriculum</th>
<th>Bilingual</th>
<th>Additional classes</th>
<th>Interschool groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armenian</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belarusian</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>German</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jewish</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kashubian</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuanian</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rutherian</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovak</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ukrainian</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: MoIA (2007: 81)

Choosing additional classes is the most prevalent type among most of minorities, except for Lithuanians and Armenians. Lithuanians choose mostly schools with their mother tongue being the language of the curriculum, or opt for bilingual schools. Armenians have just two interschool groups, due to their marginal number. In the case of Roma minority most pupils attend public schools together with Polish pupils, while some of them – a decreasing number
is enrolled in so called “Roma classes” (there are around ten such classes in Poland: MoIA 2007: 79).

Table 2: Pupils learning national and ethnic minorities’ language and regional language in 2005/6

<table>
<thead>
<tr>
<th>Language of curriculum</th>
<th>Bilingual</th>
<th>Additional classes</th>
<th>Interschool groups</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>primary</td>
<td>lower secondary</td>
<td>primary</td>
</tr>
<tr>
<td>Armenian</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Belarusian</td>
<td>0</td>
<td>0</td>
<td>1722</td>
</tr>
<tr>
<td>German</td>
<td>1271</td>
<td>91</td>
<td>22620</td>
</tr>
<tr>
<td>Jewish</td>
<td>0</td>
<td>0</td>
<td>65</td>
</tr>
<tr>
<td>Kashubian</td>
<td>0</td>
<td>0</td>
<td>3715</td>
</tr>
<tr>
<td>Lithuanian</td>
<td>346</td>
<td>163</td>
<td>0</td>
</tr>
<tr>
<td>Rutherian</td>
<td>0</td>
<td>0</td>
<td>135</td>
</tr>
<tr>
<td>Slovak</td>
<td>0</td>
<td>0</td>
<td>182</td>
</tr>
<tr>
<td>Ukrainian</td>
<td>112</td>
<td>216</td>
<td>98</td>
</tr>
</tbody>
</table>

Source: MoIA (2007: 82)

Distribution of pupils reflects the structure of available school forms, that is each school form has more or less proportional number of pupils. Three minorities – Lithuanians, Rutherians and Ukrainians – differ from this rule. Almost all (90%) Lithuanians choose a school with Lithuanian language curriculum, even though these schools constitute only around 50% of all schools offering Lithuanian language. In case of Rutherians the vast majority (around 80%) opt for additional language classes, while such schools constitute slightly over 60% of all schools offering Rutherian language. Bilingual and Lithuanian only schools constitute less than 10% of all schools with Ukrainian, but they are attended by over 20% of all pupils who wish to learn Ukrainian. The general rule is that pupils prefer more stable and focused forms of education, i.e. having the minority language as the language of curriculum, or a bilingual school (in the case of Rutherians it is the prevalence of additional classes comparing to interschool groups, since they have no other options).

The challenge of the population decline that Poland is facing also refers to schools offering minority or regional language. Not only there are less and less pupils, but also less and less they know their minority languages from home. Often they only start learning them at school (MoNE 2005: 58).

There was so far only a handful of legal cases regarding language rights, mostly individual (e.g. having the right to use one’s name written according to his native language), or related to naming locations (e.g. whether a second, minority name shall be used). Even though some Lithuanian schools were recently closed, since too little pupils were enrolled and district authorities have to subsidy it chiefly, there was no opposition from the Lithuanian side, rather understanding (Wprost 2011).

Non-citizens

Polish Constitution obliges every person up to 18 years of age to education. The amended Act on the System of Education gives both Polish and foreign pupils up to 18 years of age access to free education (before the amendment education free of charge was provided for foreign pupils to general secondary school level). Foreign pupils are therefore treated equally as their Polish counterparts. This regulation covers all foreigners, regardless if they are legally or illegally in Poland.

Educational rights of non-Polish citizens residing in the Republic of Poland are set in the Ordinance of the Minister of National Education on enrollment of persons who are not Polish citizens to public preschools, schools, units for teacher training and units and organisations of additional Polish language education, additional compensatory classes and teaching of language and culture of the country of origin from 1st April 2010. In case of foreigners who are obliged to participate in compulsory education and don’t know Polish enough, or at all, additional classes in Polish language are foreseen, free of charge (Art. 5, s. 1), not less than 2 hours a week (s. 2; but also not more than 5 hours weekly, including other subjects).

A foreign diplomatic post or a cultural and educational association of a particular nationality are entitled to organize classes in language and culture for foreign pupils. There should be at least seven pupils in case of primary and lower secondary education, and at least fourteen pupils in case of arts school, and the total number of hours cannot exceed five hours weekly (Art. 8). It is up to the schools headmaster to set up the days of the week and hours when the language class can take place (Art. 8, s. 3). In other words the school itself is not obliged to organize language classes, but it has to provide rooms for such classes, if there is an institution willing to organize them.

Foreign pupils have the right to get support from a cultural assistant, that is a person who knows the language and the culture of the country of origin and helps them to integrate into a Polish class. This law was introduced in 2009 as by the amendment to the Law on education system of 1991.

Foreign pupils constitute barely 0,06% of all pupils in Poland and there are in total 775 foreign teachers (Szelaewa 2010: 25). In school year 2006/7 there were just 3.618 foreign pupils out of 6,2 million enrolled, with around a half living in Mazowieckie voivodship (that is in practice, in Warsaw and surroundings). The distribution in major Polish cities is presented in the table below.

Table 3: Foreigners in major cities of Poland (excl. Warsaw, 2009)

<table>
<thead>
<tr>
<th>City</th>
<th>Citizens of EU, EFTA or Switzerland</th>
<th>Other citizens</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cracow</td>
<td>33</td>
<td>80</td>
<td>113</td>
</tr>
<tr>
<td>Katowice</td>
<td>4</td>
<td>38</td>
<td>42</td>
</tr>
<tr>
<td>Poznań</td>
<td>32</td>
<td>273</td>
<td>305</td>
</tr>
</tbody>
</table>
Most foreign children are Chechen (i.e. refugees), Ukrainians and Vietnamese (i.e. economic migrants). There are also minor communities of children from EU or US (diplomat or highly qualified labour migration), as well as Asia and Africa (labour migrants and refugees; Todorovska-Sokolovska 2009: 3). The legal structure of pupils enrolled in schools in the city of Warsaw is presented in the table below.

Table 4: Foreign pupils enrolled in schools of Warsaw (2008)

<table>
<thead>
<tr>
<th></th>
<th>Pupils from EU</th>
<th>Pupils from outside EU</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>total</td>
<td>refugees</td>
</tr>
<tr>
<td>pre-school</td>
<td>13</td>
<td>140</td>
</tr>
<tr>
<td>primary school</td>
<td>16</td>
<td>432</td>
</tr>
<tr>
<td>lower secondary school</td>
<td>13</td>
<td>190</td>
</tr>
<tr>
<td>above lower secondary</td>
<td>4</td>
<td>80</td>
</tr>
</tbody>
</table>

Source: Adapted from Dąbrowa and Markowska-Manista (2010: 56).

Most foreign pupils in Warsaw are Vietnamese (over 300), there is also a number of Ukrainians (around 250), Chechens (over 150) and British (around 100). Other groups include Armenians, Belarusian, French, German, Korean, Mongolian, and Russian (around 50; Szelewa 2010: 29).

The dominant system of introducing foreign pupils to the educational system is integration, that is foreign pupils are obliged to attend the same classes as their Polish counterparts regardless if they know Polish or not. Additional Polish classes and complementary classes – if needed – are (in most cases) provided after the regular class. Polish belongs to a Slavic family of languages, is spoken only in Poland and is believed to be one of the most difficult languages of Europe. Therefore the language barrier is one of the most prevalent issues in education of foreigners. Not knowing the language means lack of understanding what is happening in the classroom, limited possibilities of getting to know other pupils, and as a result boredom, frustration and falling behind. While children who are just starting education are able to learn Polish relatively easily, it is much harder for older children – especially combining the language and following the curriculum at the same time (Chrzwnowska 2009: 4).

Since the experience of teachers with foreign students is very fresh and shallow, there are no institutional solutions created yet, but rather few individual cases worked out by schools, often as initiatives of individual teachers or school headmasters, accompanied by an NGO or local educational office. An exception from this rule is a lower secondary schools (no. 20) in Warsaw, which has a long tradition of enrolling foreign pupils. It set a “multi-kulti” class for children who do not speak Polish in which they learn the language for one year or a half. They also participate in a social programme aimed at getting to know Warsaw (communication, museums, customs of Polish people etc.). Then they are enrolled into primary school (Markowska-Manista and Januszewska 2011: 8).

Another institutional exception is a handful of foreign, non-public schools located in major Polish cities, mostly in Warsaw, including American, British, French and German. They usually serve children of diplomats, and respective country nationals, with a small minority of Polish children, willing to have foreign education. These schools follow mostly curricula of their home countries. Some of them provide facultative Polish classes for foreign pupils.

Since the dominant groups of pupils come from Ukraine, Vietnam and Chechnya the focus will be on these groups. Ukrainians can attend schools and classes provided for the Ukrainian national minority, if they wish. There is also a Saturday school for Ukrainians in Warsaw.

Neither Vietnamese pupils nor their parents expressed a wish to have classes in Vietnamese language or culture at their schools. There is however demand for additional Polish classes. At least one lower secondary school in Warsaw offers extracurricular classes on Vietnamese language and culture on Saturdays (Mačzyńska-Dilis).

The case of Chechen pupils is more complex, since the vast majority of them are refugees. There are around 3.5 thousand people willing to acquire a refugee status in Poland yearly. Even though the number seems to be small, comparing to many old EU countries, refugee seekers are a very diversified group coming from even over 100 different countries (as in 2005-2007: Rafalik 2012: 13). The vast majority (around 2/3) comprise people from Russia, that is mostly the Chechen.

There are cases in which refugee children cannot get enrolled to school or their rights to additional classes are limited. The report of the Association of Legal Intervention on discrimination of foreigners indicates several such cases. In one of them two pupils who didn’t speak Polish were enrolled into a Polish school, but during the whole year they didn’t get any assistance neither in language, nor in any other subject, so they were only sitting passively in the class and noting down from the blackboard. Another case was of a 8 years old refugee who was refused from school, without letting her parent know the reason. In the case of another child the decision was based on the fact that it had the child didn’t have a residence permit in Poland. The Association informed the Chief Educational Office of Mazovia region, which intervened in all cases mentioned, which were solved eventually (Klaus and Wencel 2008: 7-8).

Poland is treated by most refugees as a transit country, what often impacts school participation of their children. Since their destination country is located beyond Poland’s western border they try to be on the move, even if placed into a refugee center. That is why their children often come to school and after a couple of months suddenly drop out and disappear. Also the motivation to learn Polish language is limited, since there won’t be any use in the destination country. According to UNHCR, 53% of refugee children in Poland don’t go to school, while 49% don’t take examination in Polish language (Bernacka 2010: 9).

There is only a handful of initiatives, mostly local, which support education of refugee children in their local language. For instance, the only bilingual Polish-Chechen pre-school is...
located in the city of Białystok. There is one class headed by two teachers – Polish speaking and Chechen speaker (communicating with each other in Russian). Only Chechen children attend the class. This way they can learn Polish and school environment, so that they can more smoothly enroll in the primary school (Gawina 2009). Another good practice is a cultural assistant, a Chechen woman, who is employed in a lower secondary school at Raszyńska, where a number of Chechen children learn (Markowska-Manista and Januszewska 2011: 9).

3. LANGUAGE RIGHTS IN NON-COMPULSORY EDUCATION (ESPECIALLY HIGHER EDUCATION)

Foreigners have a right to enroll in higher education, guaranteed by the Law on Higher Education of 27th July 2005 (Art. 43). In 2009/2010 there was 17 thousand foreign students in Poland. The countries of origin represents the table below.

<table>
<thead>
<tr>
<th>UE, EFTA</th>
<th>Third country citizens</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Norway</td>
<td>Ukraine</td>
<td>3499</td>
</tr>
<tr>
<td>Sweden</td>
<td>Belarus</td>
<td>2329</td>
</tr>
<tr>
<td>Lithuania</td>
<td>USA</td>
<td>972</td>
</tr>
<tr>
<td>Germany</td>
<td>Taiwan</td>
<td>657</td>
</tr>
<tr>
<td>Czech Rep.</td>
<td>Russia</td>
<td>464</td>
</tr>
<tr>
<td>Slovakia</td>
<td>Canada</td>
<td>456</td>
</tr>
<tr>
<td>Spain</td>
<td>China</td>
<td>392</td>
</tr>
<tr>
<td>France</td>
<td>Kazakhstan</td>
<td>375</td>
</tr>
<tr>
<td>UK</td>
<td>India</td>
<td>324</td>
</tr>
<tr>
<td>Bulgaria, Hungary, Austria</td>
<td>Nigeria</td>
<td>258</td>
</tr>
<tr>
<td></td>
<td>Armenia, Malaysia, Mongolia, Saudi Arabia, Turkey, Vietnam</td>
<td>between 200–101</td>
</tr>
<tr>
<td></td>
<td>Albania, Angola, Cameroon, Georgia, Iran, Kenya, Moldova, Uzbekistan</td>
<td>between 100–50</td>
</tr>
</tbody>
</table>


Availability of third level education to foreign students grew significantly in recent years and also Polish students have a lot opportunities to enroll for a semester or a year in a foreign university. This is mostly thank to various EU programmes (Erasmus, Tempus, etc.) and a number of bilateral agreements. Still, comparing to other European cities, Poland attracts only a handful of foreign students. One of the reasons is lack of exposure to Poland since it has relatively later joined the EU, but another is due to a scanty educational offer in languages other than Polish. BA or MA programmes in English are still rather rare and only recently introduced even in the best and biggest universities.

Foreign students who wish to study in Polish usually start with an intensive 9 month preparatory Polish language course (around 800–900 hours) offered at the School of Polish for Foreigners in the city of Łódź. Then they start education at a university in Polish language.

4. CONCLUSION

The Polish case differs significantly from the West European context, since there are still hardly any migrants and almost everyone speaks the country's official language. This has good and bad sides. The good one is that Poland can draw and build on best practices from other countries, which have been dealing with the language in education problem for many years. Introduction of the post of a cultural assistant is definitely one of such borrowed practices. The bad one is that the 'critical mass' of foreign pupils has still not been achieved, and so it is treated as a minor problem; minor – because hardly noticeable in quantitative terms. This leaves teachers and headmasters of schools attended by larger groups of foreign pupils (e.g. near refugee centers) on their own. So the foreign pupils.

On the other hand, autochthonous national and ethnic minorities have secured their place in the educational scene of Poland. Introduction of the school leaving exam in Kashubian language few years ago is one of the examples. The legal and institutional framework might maybe work for other minorities in Poland, if they get numerous enough. But this won’t happen in the nearest future.

5. REFERENCES

1. Warsaw School of Economics, Poland
2. Silesian is considered an ethnolect of Polish language rather than a separate language, even though this issue is not unambiguous.
3. If a different than Latin alphabet is used, names shall be transliterated (Art. 2, s. 2).
4. There are also other places, but this is definitely the biggest one and the oldest one. It started in 1952 and the first students came from socialist countries of Asia and Africa.
Language Rights in Education in Romania

Raluca Bigu
Language Rights in Education in Romania

Raluca Bigu

1. BACKGROUND

1.1. The importance of language in nation-building in Romania

The Romanian language played an essential part into the nation’s conscience and sense of unity, but as an ethnically diverse society, the Romanian society has also a long tradition of hosting historical minorities, such as the Hungarian, the German or the Turkish minorities. This tradition allowed some of these minorities (especially the Hungarian one) to develop a separate and complex system of education and is also reflected in the current policy of the Romanian state towards historical minorities, which ‘monopolize the interest of the state’ to the detriment of more recent minorities (Andreeescu 2004, p.21). In communist times, the regime evolved from an initially favorable attitude toward some of the national minorities (and their languages) to a nationalistic discourse, based on the idea of an ethnically homogenous state of Romanians, in which the minorities were forcibly assimilated and their languages less used in education. After the fall of communism in 1989, the problem of minorities’ rights came rapidly into public attention, when violence erupted in March 1990 in the town of Târgu-Mureș (Transylvania), following the reactions of the Romanian community to Hungarians requests to separate the mixed schools in Hungarian and Romanian, established by the communists. Twenty two years later, Romania hasn’t yet adopted a special law for national minorities and regional/minority languages - while the issue has become much politicized - but the country can be cited, at least at the legal level, as a good example of protecting and promoting the rights of all historical ethnic minorities on its territory. This becomes obvious as we take a closer look at the treatment of minorities, their languages and their rights in Romania.

1.2. The formal recognition of the various languages and their status in Romania

Romania ratified the European Charter for Regional or Minority Languages (the European treaty adopted in 1992 under the auspices of the Council of Europe to protect and promote historical regional and minority languages in Europe) on 17 July 1995, and The Charter entered in force in Romania on 1 May 2008. The number of regional or minority languages to which the Charter is applied by Romania is 20. From the total, Albanian, Armenian, Greek, Italian, Macedonian, Polish, Romani, Ruthenian, Tatar and Yiddish are covered by Part II only, while the remaining ten languages by both Parts II and III of the Charter. These last ones are Bulgarian, Croatian, Czech, German, Hungarian, Russian, Serbian, Slovak, Turkish and Ukrainian.

Beside the Charter, Romania also signed and ratified important international and European treaties and acts protecting and promoting minorities and linguistic rights, such as the Council of Europe’s European Convention for the Protection of Human Rights and Fundamental Freedom or the Framework Convention for the Protection of National Minorities.

The discussion concerning the 20 languages Romania applies The Charter cannot be separated from that regarding the 20 national minorities recognized in Romania. According to the preliminary results of the 2011 census, people belonging to the national minorities make up 11.38% from a population of 19,043,767 people (INS 2012, p.2), proportionately increasing from 10.52% of a total population of 21,698,181 persons in the 2002 census.

Still, if we look at the two tables below, we notice that for the vast majority of minorities, the use of mother tongue has a lower percentage than the self-identification as an ethnic group member. The notable exception is the Hungarian language, which function not only as the mother tongue for the corresponding ethnic group, but for other ethnic groups as well. The most important disproportion can be observed in the case of Roma minority (in both censuses), as less than a half of the community speak the mother tongue Romani (Table 1 and Table 2). The situation is further complicated by the fact that several reports place the real number of Roma between 1.8 and 2.5 million persons in the country (U.S. Department of State 2011).

Moreover, comparing the census data from 2002 and 2011, we can notice a decrease both in mother tongue speakers as in those who identify themselves as member of ethnic group, for a significant proportion of the ethnic minorities. The only exception is again the Roma community, where the number of those who declare themselves as Roma increased from 535,140 to 621,395 persons (according to preliminary results), while the Romani mother tongue speakers saw a more modest increase. These can be considered very good news for the Roma inclusion and anti-discrimination programs, whose tasks include raising the awareness among the Roma people about their common identity. Moreover, the results regarding the Roma community can also prove beneficial for the study of Romani in schools, as it becomes clear that education into this language should be extended.

<table>
<thead>
<tr>
<th>Minority</th>
<th>Ethnic group</th>
<th>Mother tongue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>21,680,974</td>
<td>21,680,974</td>
</tr>
<tr>
<td>Romanians</td>
<td>19,399,597</td>
<td>19,736,517</td>
</tr>
<tr>
<td>Hungarians</td>
<td>1,431,807</td>
<td>1,443,970</td>
</tr>
<tr>
<td>Roma</td>
<td>535,140</td>
<td>237,570</td>
</tr>
<tr>
<td>Ukrainians</td>
<td>61,098</td>
<td>57,407</td>
</tr>
<tr>
<td>Germans</td>
<td>59,764</td>
<td>44,888</td>
</tr>
<tr>
<td>Russian-lipovans</td>
<td>35,791</td>
<td>29,246</td>
</tr>
<tr>
<td>Turks</td>
<td>32,098</td>
<td>28,115</td>
</tr>
<tr>
<td>Tatars</td>
<td>23,935</td>
<td>21,272</td>
</tr>
</tbody>
</table>

Table 1. Population of Romania: ethnic group vs. mother tongue (census 2002)
### Table 2. Population of Romania: ethnic group vs. mother tongue (census 2011, partial results)

<table>
<thead>
<tr>
<th>Minority</th>
<th>Ethnic group</th>
<th>% from the total</th>
<th>Mother tongue</th>
<th>% from the total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>19,043,767</td>
<td>% from the total</td>
<td>19,043,767</td>
<td>% from the total</td>
</tr>
<tr>
<td>Romanians</td>
<td>16,876,946</td>
<td>88.62</td>
<td>17,263,561</td>
<td>90.65</td>
</tr>
<tr>
<td>Hungarians</td>
<td>1,237,063</td>
<td>6.50</td>
<td>1,268,444</td>
<td>6.66</td>
</tr>
<tr>
<td>Roma</td>
<td>621,395</td>
<td>3.26</td>
<td>247,058</td>
<td>1.30</td>
</tr>
<tr>
<td>Ukrainians</td>
<td>51,725</td>
<td>0.27</td>
<td>49,547</td>
<td>0.26</td>
</tr>
<tr>
<td>Germans</td>
<td>36,228</td>
<td>0.19</td>
<td>27,019</td>
<td>0.14</td>
</tr>
<tr>
<td>Russian-lipovans</td>
<td>23,887</td>
<td>0.13</td>
<td>18,971</td>
<td>0.10</td>
</tr>
<tr>
<td>Turks</td>
<td>28,302</td>
<td>0.15</td>
<td>26,179</td>
<td>0.14</td>
</tr>
<tr>
<td>Tatars</td>
<td>20,458</td>
<td>0.11</td>
<td>18,143</td>
<td>0.10</td>
</tr>
<tr>
<td>Other ethnic group or undeclared</td>
<td>147,763</td>
<td>0.78</td>
<td>124,845</td>
<td>0.66</td>
</tr>
</tbody>
</table>

Source: INS (2012a, p.2)

### Source: INS (2012a)

Returning to minority rights, it is important to note that under the 1991 Constitution, every national minority is entitled to its own representative in the Parliament, even it cannot gain the necessary 5 percent threshold the others parties need to enter into the Legislative. The only important exception is that of the Hungarian minority – also the largest minority in Romania (with 6.6% of the population) – whom party, UDMR (Democratic Alliance of Hungarians in Romania), obtains over the 5 percent threshold. The party proved to be one of the most important political forces in the Romanian political life after the fall of communism, being in governing coalitions, with some interruptions, from 1996 to 2012. The party is also one of the leading promoters of extending minority rights and adopting the Statute of national minorities4, postponed several times.

The other minorities in the Parliament are the German, Roma, Jewish, Ukrainian, Ruthenian, Serbian, Polish, Greek, Czech, Albanian, Italian, Turkish, Armenian, Bulgarian, Slovak, Tatar and Croatian minority. The Czech and the Slovak minorities have a common representative, so the number of minorities represented in the Parliament (excluding the Hungarian Minority) is 18. They are represented in the Chamber of Deputies (the lower chamber of the Romanian Parliament) by the following parties, associations or political entities, grouped in the ‘Parliamentary group of the national minorities’:

1. Armenians Union of Romania
2. Union of Bulgarians in Banat-Romania
3. Union of Croats in Romania
4. Cultural Union of Ruthenians in Romania
5. Democratic Union of Slovaks and Czechs in Romania
6. Turkish Democratic Union of Romania
7. Democratic Union of Turkish-Muslim Tatars in Romania
8. Hellenic Union of Romania
9. Union of Poles in Romania ‘Dom Polski’
10. Union of Serbs in Romania
11. Union of Ukrainians in Romania
12. Association of Italians in Romania - RO.AS.IT
13. Partida Romilor ‘Pro-Europa’
14. Democratic Forum of Germans in Romania
15. Jewish Communities Federation in Romania
16. Community of Russian-Lipovans in Romania
17. Association of Macedonians in Romania
18. Association League of Albanians in Romania

Beginning with 1993, the minorities are also represented in the ‘Council of National Minorities’, a consultative body of the government, without legal personality, under the coordination of the Department of Interethnic Relations. The council has the task to maintain the contact with the national minority organizations and is formed by three members from each national minority organization represented in Romanian Parliament. At the level of governmental bodies, two other institutions are worth mentioning for their involving in the protection the rights of minorities. The first is The National Council for Combating Discrimination (CNCD) – an independent governmental agency under parliamentary control, with competence in the enforcement of non-discrimination legislation. The other is the Office of the Ombudsman, a body responsible for investigating and addressing complaints made by citizens against government institutions. According to the (US Department of State 2011), although both CNCD and Ombudsman’s Office ‘enjoy public trust’, the last one is perceived as ‘less effective’, citing in the regard the critics formulated by NGO Romani CRiSS which accused the body for failing to address the cases brought in front of it.

The legal framework of Romanian policy towards minorities and their languages is enshrined in the Romanian Constitution and in several laws, but none which can serve as a special law for national minorities.

The first Romanian Constitution after the fall of communism was adopted by referendum in 1991 and contained fundamental provision for a democratic state, but also the protection of national minorities and their language rights. In the light of European Integration, the modification of Constitution was validated by referendum in 2003, bringing along other important provisions concerning minorities, such as the right to use mother tongue in relation with public administration and in courts.

In Article 6, ‘Right to identity’, paragraph 1, the State recognizes and guarantees to national minorities ‘the preservation, development and expression of their ethnic, cultural, linguistic and religious identity’, while paragraph 2 details that these protection measures ‘shall conform to the principles of equality and non-discrimination in relation to the other Romanian citizens’. Article 23 on ‘Individual Freedom’, paragraph 5, grants to persons questioned or
arrested by the authorities the right to be informed in the language they understand of the reasons for arrest or questioning. In Article 32, 'Right to education', paragraph 3, the persons belonging to national minorities are offered the right to learn and to be educated in their mother tongue in schools and universities, under the conditions specified in the laws (Education Law).

But the use of mother tongue is not restricted only to education. In a new paragraph introduced in 2003 in the Article 120 (old Article 119 in 1991 Constitution), the State grants national minorities the right to speak their minority language in relations with public administration – in one of the most important amendment for minorities brought by 2003 Constitution. More specifically, the Constitution states that ‘in the territorial-administrative units where citizens belonging to a national minority have a significant proportion, provision shall be made for the oral and written use of that national minority’s language in the relations with the local public administration authorities and the decentralized public services, under the terms stipulated by the organic law’. The concept of ‘significant proportion’ of the citizens belonging to national minorities is clarified in Law on Local Administration no. 215/2001, Article 17: ‘In the territorial administrative units where citizens belonging to national minorities have a share of over 20% of the number of residents, the local government authorities, the institutions subordinated to them and the decentralized public services shall assure, in relation with these citizens, also the use of their mother tongue, according to the Constitution, the present law and international treaties to which Romania is party’. It is important to note that the Constitution introduces the very important concept of ‘local autonomy’, along with the principles of decentralization and deconcentration of public services, on which the public administration in territorial-administrative units shall be built. This principle became one of the points of dispute concerning the statute of minorities in Romania, with voices from Hungarian minority proposing several types of autonomy for the areas in which this minority is concentrated.

Another important amendment brought by the 2003 Constitution regards the use of mother tongue in legal proceedings. Thus, according to Article 128 (former Article 127), Romanian citizens belonging to national minorities have the right to speak in their mother tongue in front of the judicial courts, and also to use interpreters and translations (paragraph 2), while the foreign citizens and the stateless persons who do not understand or speak the Romanian language have the right to acknowledge the judicial proceedings, to speak in the court and to draw conclusions by using an interpreter (paragraph 4). This marks an important difference from the 1991 Constitution, where people belonging to national minorities could speak in court only through interpreters and translations.

The linguistics rights presented in the Constitution are supported by several laws that address the language rights of minorities. One of the most important is the Law on public administration, Law no. 215/2001 (amended and completed by the Law no. 286/2006), which accounts for the use of minority languages in administrative-territorial units where a minority represents at least 20% of the population. Provisions regarding linguistic rights were also included in 2002 in the Law concerning the status of police persons (Law no. 360/2002), where Article 79 states that in administrative-territorial units where a minority represents at least 20% of the population, the police should hire staff knowing the language of that minority.

1.3. An overview of the current debates

The statute of national minorities proved to be a very ‘hot potato’ for every Romanian government in the last ten years, given its political potential. Although several drafts were proposed, none of them received the political and public support, so the Law is blocked for several years in the Parliament. The debate became every time very politicized, as playing the nationalist card still represents one of the most successful electoral strategy in some geographical areas.

In the absence of such a law, debates were concentrated on the issue of establishing a Hungarian-language faculty within the University of Medicine and Pharmacy (UMF) in Tîrgu Mureş, decided by a government decree, at the request of UDMR. Later, one court suspended the enforcement of the decree and a new government abrogated it. The issue was regarded as highly politicized, especially given the fact that the latter government had a different ‘political color’ from the previous one.

Another issue touching the subject of minority rights was the proposal to establish a high school with tuition in Romanian and mandatory classes in Romani language and civilization, in the capital Bucharest, at the request of the minorities group in the Romanian Parliament. But the initiative proved to be controversial, as the NGO Romani CRISS accused, in an open letter sent to the prime-minister, the initiative of being ‘chaotic, ad hoc and unprofessional’, while also leading to segregation (Romani CRISS 2012). Moreover, the high school was supposed to be hosted in a former military facility and would have had mandatory Romani classes, an aspect that, the NGO states, breaches the current legislation, according to which the parents have the legal right to choose if their children would enroll in these classes.

2. LANGUAGE RIGHTS IN COMPULSORY EDUCATION

At supra-national level, Romania signed and ratified several treaties protecting and promoting linguistic rights in education such as the UN Convention on the Rights of the Child, the Council of Europe’s European Convention on Human Rights, the Framework Convention on the Protection of National Minorities and the European Charter for Regional or Minority Language.

At national level, the legal infrastructure for guaranteeing language rights in compulsory education in Romania is set up in the Romanian Constitution and detailed in the Education Law no. 1/2011, replacing Law no. 84/ 1995, amended in 1999. The education in the minorities’ languages is supervised by the General Directorate for Education in the Languages of Minorities, within the Ministry of Education, whose main tasks include organizing and coordinating the process of education in language of minorities. More precisely, the Directorate coordinates both the tuition in the languages of minorities, and teaching of mother tongues literature and language, history and tradition of minorities in the
schools with tuition in Romanian or in other language other than mother tongue. In addition, the Directorate coordinates the protection and the educational support for Roma pupils, the most vulnerable category in what concerns the access to education.

The current Education Law (hereafter ‘EL’) devotes an entire section (Section 12) to the right to education for minorities, stating detailed provisions regarding the pupils, the teachers, the subjects and the textbooks involved in the education act in the language of minorities. Nevertheless, in Article 10 (paragraph 3), the Law stipulates that learning of the Romanian, ‘as a state official language’, is mandatory for all the Romanian citizens, and in this regard the local authorities shall provide the appropriate means for learning Romanian. Actually, the provisions set in the Articles 45, 46 and 47, devoted to tuition in the language of minorities can be seen as a development of the Article 32, ‘Right to education’, paragraph 3, in the Constitution, according to which persons belonging to national minorities are offered the right to learn and to be educated in their mother tongue in schools and universities, under the conditions specified in Education Law.

The Article 45 begins by stating that persons belonging to national minorities have the right to study and to receive instruction in their mother tongue, at all levels and forms of education. More precisely, taking into consideration the local necessities, following the request of parents/legal guardians and respecting the provisions of the law, there can be organized groups, classes, sections or school with teaching in the languages of national minorities. According to Article 45 (paragraph 6), in the case of gymnasium and high school education, if there is a single school in a municipality, town, or village with classes taught in minorities’ language, then that school receives legal body status, regardless of the number of students. In Article 45 (paragraph 7), the Law states that the children that cannot learn in their mother tongue in their hometown will have the transport costs paid or free food and accommodation in the nearest school with tuition in mother tongue. In what concerns the representation in the board of the schools with tuition in minorities’ languages or at the level of school inspectorates, the board of these schools will be set taking into consideration the number of classes taught in minorities’ languages (paragraph 8). Moreover, in the schools with tuition in minority languages, one of the headmasters of the school will come from minority whose language is taught in the school (paragraph 9). In what concerns the teaching staff in those schools, the teachers will have to prove their competency in the language they are teaching and have the right to be trained for it that both in Romania and abroad (paragraph 11).

Furthermore, Ministry of Education, Research, Youth and Sport will provide the textbooks for the pupils learning in a minority’s language. These can be textbooks written in the mother tongue of minorities, textbooks translated from Romanian textbooks, or textbooks from abroad, validated by the Ministry (paragraph 13).

Finally, the article states that children coming from national minorities will benefit a higher coefficient for state funding granted to pupils in public, private and confessional elementary education (paragraph 17). This funding takes the form of a standard sum for each student, established by the Ministry of Education, and will ‘follow the pupil’, being transferred to the school he/she learns. According to Efrim and Zanfir (2011, p. 4), this paragraph can pose a problem, if read together with Art. 45 (paragraph 6) and Art. 19 (paragraph 1), the last one stating that the schools with less than 300 pupils will lose ‘legal status’ and will be attached to other schools. The argument goes the following way: if ‘money follows the pupil’, then the schools with pupils learning in a mother tongue are more likely to receive more money, so parents will probably want to enroll their children to those schools to the detriment of other schools. Eventually, other schools will lose pupils and risk to be attached to other schools, and thus the right to equal opportunities will be breached in regard to students taught in Romanian.

In what concerns the subjects taught in schools, in pre-tertiary schools with tuition in minority languages, all the subjects are taught in the mother tongue of the minorities concerned, with the exception of ‘Romanian Language and Literature’ (paragraph 1), which will be taught after a curriculum and textbooks specially designed for the minority concerned (paragraph 2). Nevertheless, at the request of parents/legal tutors and of the association representing a minority in the Parliament, or of the minorities group in the Legislative (when the minority in question doesn’t have a representative in the Parliament), the teaching of Romanian can follow the textbooks designed for the pupils studying in Romanian. The same article details that, in the aforementioned schools, the subjects ‘History of Romanians’ and ‘Geography of Romania’ shall be taught in the mother tongue of minorities, using the same curriculum and textbooks as the classes in Romanian, with the obligation to transcribe and acknowledge the Romanian toponymy and Romanian proper names. This marks a departure from the previous EL, in which the two subjects mentioned were taught in minority’s language only at the level of primary schools, the rest being taught in Romanian, using the same curricula and textbooks as classes in Romanian. Moreover, the Law stipulates that a subject called ‘History and traditions of national minorities’ will be introduced in gymnasium education with tuition in minority language.

Another important provision concerning the education in mother tongue can be found in Article 63 (paragraph 2). Although that in pre-tertiary educational system with tuition in Romanian, the Law establishes requirements for the minimum number of pupils enrolled in a class, in the towns where there are requests for education in a minority language in a school, the number of pupils can be lower than that established by the Law. Moreover, the decision of setting up and functioning of such classes is taken by the Ministry of Education, after consulting the school board of the school that made the request. In 2011, some provisions of EL were submitted to the Constitutional Court for breaching the Article 16 (paragraph 1) and (paragraph 2) of the Constitution, regarding the citizens’ equality of rights, by positively discriminating the pupils belonging to national minorities. One of these provisions stated that in an administrative-territorial unit with several schools teaching in minority languages, at least one of them should have legal status for each native language, regardless of the number of students. Or, this provision breaches Article 16 (paragraph 1) and (paragraph 2) of the Constitution, as in Harghita, Covasna and Mureș, Satu Mare and Bihor counties there is a risk that the Romanian children do not have a school of their own, and thus be discriminated. This could happen because the Law stipulates that the number of students required for setting up of a school with legal status is 300, while for a school with tuition in minorities tongue such a clause is not required. Another
The second category of languages is used in some schools as a partial language of tuition. The Italian language is used as a partial teaching language in few elementary schools and high schools. The Croatian and Czech languages are partial language of tuition in few elementary schools. In addition, there is a high school in which Croatian can be taught. The Polish language is taught in twelve schools in Suceava County (grades 1-8) and currently 409 pupils learn Polish (CoE 2012, p. 14). In the same county, there is also a high school with partial tuition in Polish.

The third category of languages is used in some schools as a language of tuition for all subjects. The Serbian language is used as a language of tuition for all subjects in a school. More precisely, 89 students (grades 5-8) and 107 students (grades 9-12) learn in Serbian in Romania, while other 449 pupils learn Serbian as a subject in schools (CoE 2012, p. 105). Similarly, the Slovakian language is used as a language of tuition for all subjects in a school. 272 pupils (grades 1-4), 273 students (gymnasium) and 220 students (high school) learn in Slovakian in this school (CoE 2012, p. 105). The Ukrainian language is used as a language of tuition at all levels of compulsory education. Thus, 100 pupils attend elementary education in Ukrainian, 274 students high school education (CoE 2012, p. 145), while other schools teach Ukrainian language as a subject on request. The German language is used as a complete language of tuition in many elementary schools and high schools. About 14,000 students are enrolled in German-language elementary schools and high schools (CoE 2012, p. 182). The Hungarian language is also used as a complete language of tuition in many elementary schools and high schools, with around 142,000 pupils enrolled in Hungarian-language elementary schools, high schools and professional schools (CoE 2012, p. 182).

In what concerns the linguistic rights in education for special categories of foreigners (such as refugees, asylum seekers or stateless people), provisions in this regard can be found in 2 main places. One is the Ordinance no. 44 /2004 (updated in 2006) on the social integration of foreigners who obtained a form of protection or a right to stay in Romania, as well of citizens of Member States of the European Union and European Economic Area Romania and the other is Law 122 /2006 on asylum in Romania.

According to the last activity report available from the Romanian Office for Immigration (ORI 2009, p.5), at the end of 2009, there were 1,117 registered foreigners who obtained a form of protection in Romania and continued to live in the country, with more than half coming from Iraq (52.5%). From the total, 73.5% have refugee status, while only 26.5% benefited from subsidiary protection, with both categories having equal rights. The report remarks that most foreigners with a form of protection in Romania are adults, with minors representing only 20%.

It’s important to note that foreigners who have obtained a form of protection in Romania have access to all forms of education under the same conditions established by law for Romanian citizens. Nevertheless, before entering into the Romanian educational system, the minors will follow a free initiation course in Romanian, for a whole academic year, organized by schools inspectorsates (Ordinance 44/2004, Article 10 (1)). In addition, in that year, the minors in question have the right to take part freely to several school activities (2). In 2009, the Ministry of Education has developed a new methodology for organizing and conducting the
initiation course in Romanian and the procedures relating to the preparation, approval and distribution of appropriate curricula and textbooks for the Romanian language course (ORI 2009, p. 5).

3. LANGUAGE RIGHTS IN NON-COMPULSORY EDUCATION

During communist times, higher education in minority languages was complexly affected. The universities with full tuition in mother tongue were attached to other institutions with tuition in Romania, a lot of principals were changed, and any resistance, from the part or teachers or students, crushed. One of the best known cases concerns the three universities which included Hungarian-language programs: the Babeş-Bolyai University (BBU), the University of Medicine and Pharmacy in Tîrgu Mureş and the University of Theatre Arts Tîrgu Mureş (currently the University of Arts Tîrgu Mureş). In none of them the Hungarian language component received any autonomy. The last Hungarian language university was abolished in 1959, when the Janos Bolyai University and the Romanian language Victor Babeş University merged.

Since the fall of communism, the issue of higher education in minority languages, especially in the Hungarian language, proved to be a strongly debated political issue. The attempts of the representatives of the Hungarian minority to gain new rights in higher education for the Hungarian community faced, in most cases, a strong opposition. More precisely, beginning with 1990, there were several projects for re-establishing an independent state-funded Hungarian language university, but this aim was not achieved until today.

The three public universities established during the communism continued to exist, with an increasing number of specializations taught in Hungarian. Thus, in present, BBU, one of the largest and best ranked Romanian universities, offers programs in Hungarian and Romanian in 17 from a total of 21 faculties, and provides 59 specializations in Hungarian from a total of 111. There are also two denominational faculties (Reformed Theology and Roman-Catholic Theology) in which Hungarian is the only study language. In addition, BBU has some Hungarian-language ‘academic extensions’, operating in other towns of Transylvania, while the University of Bucharest provides a BA program in Hungarian language and literature. Altogether, during the 2007-2008 academic year, 29 587 students studied in Hungarian in state universities (CoE 2012, p. 75). In the same time, BBU provides also 16 specializations in German. Other state universities, in Sibiu and Bucharest, provide tuition in German, not especially for the members of the German minority.

More important, the members of the ethnic minorities gained the right to establish private universities in their language. Thus, the Government Emergency Ordinance no. 36/1997, which amends the previous Education Law (84/1995), stipulates in Article 3 (2) that ‘the persons belonging to national minorities shall have the right to set up and manage their own private higher educational institutions according to the law’. The Hungarian community used this right in 2001, when the Sapientia University, a private Hungarian-language university, with four branches (Cluj, Tîrgu Mureş, Miercurea-Ciuc and Oradea) was established in Transylvania. The University was created by the Sapientia Foundation, with the support of the four Hungarian historical churches of Transylvania (the Roman Catholic, the Calvinist Reformed, the Unitarian and the Lutheran Churches), and funded by the Hungarian Government. The Oradea branch of the Sapientia became a separate university, under the name Partium Christian University, with the support of the Hungarian Reformate Church. In 2008, Partium Christian University was fully accredited by law, and became the first Hungarian-language university after 1959. In this year, the Sapientia University was fully accredited too, and it is now offering 27 BA programs. The same Ordinance states the possibility of establishing multicultural universities, but fails to offer details about the structure of such an institution.

The current Education Law reiterates the possibility of establishing faculties and programs in minority language. Furthermore, the law ensures the possibility of establishing multicultural and multilingual universities, including more than one line of study (representing the university’s study languages). The law ensures the representation of all lines of study in the governing bodies of the faculties and of the university. Thus, all lines of study in a faculty must be represented by a vice-dean, while all lines of study in the university by a vice-rector. The lines of study are granted a degree of autonomy. Nevertheless, the law has no provisions to ensure the use of minority language in the internal documents and publications of the university or in other written materials. The law states that the three universities mentioned at the beginning of this section are multicultural and must respect, by their Charter and internal regulations, these legal provisions. It has to be noticed that the new Education Law allows the budget financing of the private universities and, thus, of the two Hungarian-language universities.

Since 1989, BBU have had a special interest to develop a multicultural model (Marga 2004, p.83) and although it received some criticisms in this regard, this model is considered in generally successful. For this reason, the modification of its Charter in accordance with the Education Law was not difficult. The University of Arts Tîrgu Mureş was in the same situation. Some debates concerned The University of Medicine and Pharmacy of Tîrgu Mureş. Anyway, these debates regarded rather the establishment of a separate Hungarian-language faculty, decided by a Government decree (No. 966/2011), which was suspended by a Court and later abrogated. However, the provisions regarding the representativeness and the autonomy of the Hungarian are respected.

4. CONCLUSION

The last 22 years witnessed an important increase in the national minorities’ rights in Romania, including in their linguistic rights in education. This trend could be observed in the important changes brought by the amendments made both regarding the Romanian Constitution and the Education Law.

The current legal framework guarantees the persons belonging to national minorities to use their mother tongue in relation with local administration, to study and receive instruction in their mother tongue at all levels and forms of education, and to set up and manage their own private higher educational institutions according to the law. Moreover, the Constitution
guarantees every national minority its own representative in the Parliament and recognizes and protects 20 regional or minorities’ languages. Still, the Romanian state lacks any special educational policy towards the newer minorities, coming into Romania after the fall of communism (Andreescu 2004, p.21).

One of the remaining problems for the educational policies in Romania regards the integration of the Roma children into the Romanian school system. Despite the progresses made by several programs - which saw results both in the number of people declaring themselves as Roma and in the number of Romani classes - the cases of segregation of Roma children in schools continue to be frequent. The problem is not that these programs fail to give the expected results. The problem seems to be related to the perception and treatment of Roma by the majority population; if that won’t change, the results of the programs for Roma integration, in schools or in society, will be limited.

5. REFERENCES

Articles
(http://www.gencat.net/lengcat/noves/hm04tardor/docs/constantin.pdf)

Reports
- Council of Europe/CoE (2012), European Charter for Regional or Minority Languages, Application of the Charter in ROMANIA, 1st monitoring cycle, June.
- Romanian Office for Immigration/ORI (2009), Report on the situation of foreigners who obtained a form of protection in Romania.

Documents consulted

Press releases
- National Institute of Statistics/INS (2012a), Right to reply to newspaper ‘Cotidianul’, August
- Romani CRISS (2012), Open Letter to the Prime Minister concerning the initiative to establish a highschool with Romani Classes, March.
(http://www.romaniCRISS.org/PDF/Scriesoare%20deschis%20liceu%20pentru%20romi%20mar%202012%20Romani%20CRISS.pdf)

Main sites consulted
- Chamber of Deputies, Romanian Parliament www.cdep.ro
- Council of Europe http://hub.CoE .int
- Ministry for Education, Research, Youth and Sport www.edu.ro
- Romani CRISS http://www.romanicriss.org
- Romanian Office for Immigration http://ori.mai.gov.ro

Endnotes
1. University of Bucharest
2. A definition of ‘national minority’ in Romanian legislation can be found several laws, as in the Law 35/2008, on the election to the Chamber of Deputies and the Senate, where it is stated that a ‘national minority’ is an ‘ethnic group presented in the Council of National Minorities’.
3. Some of the rights acquired by the minorities in post-communist Romania were the result of ‘the common pressure applied by European Union, NATO, Council of Europe and Hungarian minority political representatives’, and considered as criteria for the democratization of the candidate states to EU accession (Constantin 2004, p. 1).
4. See the draft law on ‘Statute of National Minorities in Romania’.
6. According to the new EL, compulsory education in Romania covers both primary (preparatory class and grades 1 to 4) and gymnasium education (grades 5 to 9). Currently, primary and gymnasium education are taught in elementary schools, excepting the ninth grade which is still taught in high schools, until the current EL will be fully implemented. This is the reason why high schools are taken into account in this section.
7. See for instance (Motion CoE 2007, p.1).
8. In the last CoE report on the application of European Charter of Regional or Minority Languages, the German-language line of study of UBB is considered an example of best practice (CoE 2012,
p.59), while the Hungarian line of study has a significant contribution in fulfilling the undertaking regarding higher education in the Hungarian language (CoE 2012, p.75).
Multilingualism, Multiculturalism and Autonomy (2005)

Andrei Marga
Multilingualism, Multiculturalism and Autonomy (2005)

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In Europe as a whole and in many countries of the continent, multilingualism is the de facto situation. Especially after 1989, against the background of liberalizations and of the broadening of citizen's freedoms, minorities look for their cultural identity, so that multiculturality has gained ground and requires new approaches. The various communities that have discovered their own identity claim autonomy. European countries and the European Union are asked today to find a balanced solution that would allow for the unlimited expression of their specific differences, avoiding at the same time the falling into fragmentarism.

The article will first evoke the fundamental issues resulting from the multilingual situation and from multiculturalism, and the pursuit of autonomy. These observations emerge from the organization of a multicultural university (Babeș-Bolyai University of Cluj) and from experiencing transition within a multilingual and multicultural region (Transylvania) in Romania. The article will briefly characterize multilingualism and note the problems that derive from it (1). Secondly, it will emphasize the challenges of multiculturalism (2) and finally clarify the meaning of autonomy (3).

1. Europe is characterized by multilingualism not only in the sense that it is linguistically diversified. Throughout the European continent, over thirty languages are spoken, and many more dialects have been used as well. Multilingualism is a characteristic of many European countries, where natural languages resulting from a complex history, are diversified.

Certainly, Europe and most of the European countries are not only multilingual; on the grounds of multilingualism people find common languages, so that the linguistic unity is constantly preserved not only by the relatedness of different languages, as branches of a European protolanguage, but also by the factual reality of an inter-lingual comprehension. This comprehension is made possible on the grounds of a common education in different European countries, established on acquiring practical skills, cognitive competencies and civic virtues.

It must be noted that multilingualism is, in present day Europe, not only a reality with historical origins, but also a choice in the making of the European Union. The EU preserves its multilingual character, even if there is a lingua franca, for the main reason of ensuring the conditions for self-expression for every citizen of the continent, but also for satisfying the need to adjust to the conditions of activity in the different regions of Europe. From the latter point of view, that of the adaptability to these conditions, "multilingualism concerns every citizen", and not only those with an education in language teaching.

In the last decade, the European institutions and the professional associations of those involved in language teaching drew up a coherent position on multilingualism and on the practical activities necessary for its promotion. Of great importance is the concern of the Council of Europe with "developing the individual's capacity for participation in the democratic process" as part of "education for democratic citizenship". Along the same lines goes the option of the Lisbon Strategy (2000) in favor of adapting "education and training to demands of a knowledge society" and the focus on new basic skills, which include IT skills, foreign languages, technological culture, entrepreneurship, and societal skills. It is a realistic option of the Bologna Declaration (1999) that higher education should be oriented towards training graduates for the European labor market. It is useful that the European associations of language teachers carry out strategies to promote multilingualism: the early teaching of foreign languages, the acquisition of partial competences, exchanges and mobility, and innovative methods (interactive learning, CALL, new educational environment, multilingual education, etc.). As a result of these options and approaches, multilingualism became an effective and specific policy for many European universities and schools, with significant results.

2. Sometimes, multilingualism broadens to multiculturalism, other times linguistic differences occur within the same culture. If by culture we understand historical affiliations, general perspectives on the world, religious traditions, language that set an ethnic community apart; and if by ethnic community we identify a community built up in the succession of generations, in a certain territory, having its own history and language, then we encounter multiculturalism – in a strong sense – when, on the same territory, different ethnic communities with a historically acknowledged culture can be found. This conception of multiculturalism is different in major aspects from the situation resulted from the claim of collective cultural recognition of the groups of immigrants from different countries. When we talk of multiculturalism in Europe we use the term in this sense, understood as plurality of historical cultures, linked to "ethno-cultural" profiles.

The terms of the discussion are contoured as firmly as possible, that, regardless of the ways the borders of some regions of Europe are drawn, the resulting entities are without exception multicultural, as in these regions, different cultures cohabitate in the same territory. For this reason, the issue in question is the adequate shaping of cultural cohabitation and interaction. Consequently, whereas multilingualism mostly entails measures regarding the professional training and its certification and recognition, multiculturalism brings about beliefs on the organization of the modern state and has a preeminent legal facet. Let's tackle the issue of multiculturalism from its grounds, in the European environment following 1989.

The politics of equal dignity assumed as a basis for the modern state, the universalisation of equality among people as citizens. But in the recent decades it is in the very name of the equal dignity of citizens that ethnic communities are claiming the right to assert their cultural specificity and, consequently, the right to cultural differentiation. The historical situations, at least in some Eastern European countries, points to the following state of affairs: the advocates of the traditional national state who adhere to the politics of equal dignity in terms of the equality of citizens and the avoidance of particular enclaves are at odds with those who promote the assertion of the specific cultural character of ethnic communities and who
defend the politics of difference, even if the latter might mean a change, and possibly a collapse of existing state organization.

Certain approaches to this problem are designed to avoid such a conflict. The first of these, one that is organized around a renaissance of the nation-state, concedes that civic nationalism, stimulating the commitment to exemplary liberties and performances, can continue as a real alternative to that nationalism which is being manipulated by demagogues. However, given the realities of the framework of thinking required by this approach, linked as it is to the national state that tends to neglect cultural differences, it can hardly be generalized and implemented. Moreover, it cannot cope with the global tendencies that already characterize the economy, communications, and scientific research of this time.

The approach of the new pluralism, meant to be an alternative to the old pluralism and to consociationalism, endorses cultural pluralism, but outstrips the passivity that characterizes laissez-faire by laying emphasis on the unlimited autonomy of ethnic communities and on the improvement through democratic procedure of their representation in the state. The new pluralism brings to the fore the recognition of cultural diversity by steering it towards the implementation of the solution shared by society and is meant to protect the culturally specific character of ethnic communities. The practical problem that this kind of pluralism has to cope with does not characterize pluralism, but remains open, i.e., the generation of cultural diversity not as diversity in itself but as a diversity which is recognized by the communities that interact.

Federalism, that has outstanding success in the United States, Germany and Switzerland, represents an approach that has resources which enable a true cultural and recognizable diversity without jeopardizing the political equality that the modern state guarantees. But it is unlikely that federalism will succeed in areas that have not been historically prepared for it and that do not have the cultural premises to support it.

But, for the time being, and as a reaction to the forced homogenization undertaken by the nation-state, minority ethnic communities are promoting the politics of difference cultivating the cultures that already characterize the economy, communications, and scientific research of this time.

According to this approach, the politics of difference stem from the politics of equal dignity as a more thoroughly assumed consequence. They start from the idea that the modern state encompasses, in its historical evolution, not only the positive law that provides individual liberties but also the possibility to assume these liberties so as to make cultural differences possible. We agree that intercultural understanding is rife with difficulties; however, to abandon or to restrict individual rights as they are designated by the modern state is not a solution. The legality and, more precisely, the generality of law remain the indispensable foundation for problem solving, but the legal approach must obviously be endorsed by awareness of its assumptions. In this respect, collective rights ought to be recognized without any curtailing of the individualistic structure of legislation. Legislation itself should be conceived not only as a package of positive laws, but as an expression of certain political (in the classical sense) and cultural objectives. Moreover, according to the conditions of cohabitation, each of the cultures that make up a multicultural society must be open to examination and, ultimately, be periodically revised.

3. Autonomy is the current aim of cultural communities and of professional groups. In the life of universities, autonomy represents a condition for efficiency, together with taking responsibility for performance. Etymologically, autonomy means to make your own “law” (nomos) for your own actions. How is it possible for autonomy to work in a multicultural environment, considering the circumstances that, on the one hand, for multiculturalism to be present, the various coexisting cultures must freely express themselves, and on the other hand, that multiculturalism disappears when the diversity of cultures vanishes into self isolation of the respective cultures? Multiculturalism has full sense as interculturalism. In fact, multiculturalism is as far from hegemonism as it is from fragmentarism. How is a functional multicultural organization put into practice?

The Babeș-Bolyai University, a particularly comprehensive university, has over 45 000 students, and is situated in the multilingual and multicultural context of Transylvania. It has been subject to successive international evaluations (starting with the evaluation of the OSCE High Commissioner for Minorities). The multicultural organization started in 1995, with the new University Charter, which drew on the conclusion of the history of the region – that showed that, in Cluj, no form of university organization, which was conceived apart from the other, but not together with the other, proved to be time lasting. It proclaimed the trilingual organization (in Romanian, Hungarian, and German) of the most representative university of Transylvania as well as the assuming of the entire academic history in Cluj. The Charter of 1995 set Babeș-Bolyai University on the track of trilingual and multicultural development.

The synthesis of results achieved through multicultural development is that, from then on, no complaint regarding any limitation of rights on cultural or ethnic grounds was presented. There were several proposals for the development of the multicultural organization, but not complaints regarding limitations. On the contrary, never before have so many Romanians studied at the main university of Transylvania; never before have so many Hungarians studied here; never before have there been more opportunities for studying in German; never before has the history and the culture of the Jewish people been so broadly studied and the opportunities for studying Hebrew been greater. Never before has there been such a
diversified range of specializations ensuring complete studies in Romanian, in Hungarian and in German.

This encouraging result was possible by making use of the framework created by university autonomy in order to develop new agreements regarding the expression of autonomy of the Romanian, Hungarian, and German lines of study, and of the faculties and chairs, according to the legal provisions in force, the latter being themselves in constant motion. The Act of Education (1995) in Romania and the subsequent legal provisions in the field deals with issues such as the name of a university (in what concerns state universities), the official language for certificates of study (which is, increasingly, English), the mechanisms of financing (in principle, per capita), the amount of budgetary allotment. Babeș-Bolyai University enjoys autonomy concerning the establishment of its own organization and functioning, freedom of research and of transfer of knowledge, the freedom to set up scientific research programmes, the choice of criteria for granting academic titles, the freedom to publish, the freedom to carry out international cooperation programmes, the autonomous managing of resources and of patrimony. Within Babeș-Bolyai University, the lines of study (Romanian, Hungarian and German) – whose leaderships function at chair, faculty, and university level, and are elected by the teaching staff and the students of the respective line of study – have effective autonomy. The autonomy of the lines of study consists of: the right to choose their own representatives at any level of organization the right to establish their own curricula according to European criteria; the right to hire their own teaching and research staff; the right to decide on the admission of students to their line of study; the right to decide on their scientific research programmes; the right to initiate and carry out international cooperation; the right to initiate publications and to publish; the right to have inscriptions in the respective language, according to the legal provisions in force; the right to participate in any decision taken at Babeș-Bolyai University. These rights are reinforced by the Charter (2003) of Babeș-Bolyai University, which defends a rational, modern link between the unity of the higher education institution and its internal differentiation.

Taking into account the size of Babeș-Bolyai University – with twenty-one faculties, over 120 specializations, 110 departments, and students enrolling in a demographic context where the proportion represented by ethnic communities varies as well – the representation of the teaching staff and of students in the commissions formed at faculty level, the University Senate and the Rector's Office, the Academic Council, and the Board of Administration combines the proportional reflection of the different lines of study with institutional measures (such as paritary commissions) so that viable projects, even if they are initiated by a proportionally smaller (according to the number of students and the size of teaching staff) line of study, can be promoted. There has never been a situation where a project is rejected for the reason that the line of study promoting it does not hold the numerical majority.

The ten-year experience of the multicultural organization at Babeș-Bolyai University permits the reconfirmation of certain conclusions reached by the local experience and by international experiences as well, which are:

1. Multicultural organization in universities depends on state policies and on the capacity of politicians to elaborate a conception focused on multiculturalism;
2. Multiculturalism is a fact that must be admitted and assumed, and the problem of joining together the politics of equal dignity and the politics of difference is of paramount importance for multicultural societies;
3. The politics of difference are realistic only as a consequence of the politics of equal dignity that derive from the sense of positive law;
4. Multiculturalism conceived in this way prevents the dangers inherent to ethnic nationalism and the fragmentations that eventually destroy the politics of equal dignity;
5. A solution based on the use of force (physical or public) is counterproductive to the same extent as it is counterproductive to constrain the universality of liberties trough attempts at enclaving;
6. No lasting solutions can be found for the institutionalization of multiculturalism without the step-by-step negotiation of specific arrangements;
7. It is a true cultural challenge of these times to diffuse an approach to social reality in which cultural differences do not imply the limitation of personal identity but an impetus for performance and, in fact, a source of wealth, and to switch from ethnic nationalism to civic “nationalism” and, broadly speaking, from historical patriotism to constitutional patriotism, from “national paradigm” to “European paradigm”;

Endnotes

11. Ibidem
Human Rights in Education

Juraj Vantuch
Danica Brendzová
1. BACKGROUND

1.1. Demography: Slovakia as a multiethnic and multicultural island in Central Europe

Slovakia’s neighbouring countries originally reflecting typical Central European heterogeneity lost their minorities as a consequence of diverse socio-political changes in the course of the 20th century. Slovakia also lost part of its minorities. German minority of important influence in medieval cities of Slovakia gradually diminished, and practically disappeared as a consequence of both forced and willing migration after World War II, similarly to other Central European countries. Out of 156,297 Germans in 1930 only a fragment remained. The Jews are the second large minority to almost vanish from the territory of today’s Slovakia. In 1930, there were 136,737 Jews, according to their religious belief (with accordance of nationality and religion in 47.8% cases); about 75,000 Jews died due to holocaust and the majority of survivors left the country, predominantly for Israel. On the other hand, the ethnic Roma minority increased substantially from an estimated 110,000 in late 1930s to estimated 537,920 in 2000. In comparison to other countries ruled by the Nazis, most of Slovakia’s Roma community survived, although the Roma holocaust at the end of WWII also affected many Roma, living originally on this territory. The Hungarian minority counting 650,597 in 1921 and 585,434 in 1930 remained, despite decrease, it was the largest minority counting 567,296 according to 1991 census and 520,528 according to 2001 census. The following table offers the structure of the population according to the latest census.

### Table 1

<table>
<thead>
<tr>
<th>Nation</th>
<th>Total</th>
<th>Slovak</th>
<th>Hungarian</th>
<th>Roma</th>
<th>Czech</th>
<th>Ruthenian</th>
<th>Ukrainian</th>
<th>German</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slovenia</td>
<td>5</td>
<td>379</td>
<td>4,614</td>
<td>854</td>
<td>520,528</td>
<td>89,920</td>
<td>44,620</td>
<td>24,201</td>
<td>10,814</td>
</tr>
<tr>
<td>%</td>
<td>100</td>
<td>85,79</td>
<td>9,68</td>
<td>1,67</td>
<td>0,83</td>
<td>0,45</td>
<td>0,20</td>
<td>0,10</td>
<td>1,28</td>
</tr>
<tr>
<td>2001/1991**</td>
<td>102</td>
<td>102</td>
<td>92</td>
<td>91</td>
<td>84</td>
<td>141</td>
<td>81</td>
<td>100</td>
<td>299</td>
</tr>
<tr>
<td>2001/1961***</td>
<td>128,9</td>
<td>129,6</td>
<td>100,3</td>
<td>-</td>
<td>102,7</td>
<td>98,8</td>
<td>86,4</td>
<td>-</td>
<td></td>
</tr>
</tbody>
</table>


* of which 2602 Polish, 2348 Moravians (who were subsumed under Czechs before 1991), 1590 Russians, 1179 Bulgarians, 890 Croatians, 434 Serbian, and 218 Jews were declared and the rest not identified or belonging to other even less populated groups; ** Index of change (1991 Census Data =100); *** Index of change (1961 Census Data =100), +Moravians included.

Census data are however biased in terms of ethnic diversity; the estimations of ethnic Roma are significantly higher - over 7% (see chapter 1.2.3). Many of the ethnic Roma declared themselves Slovaks or Hungarians making use of their right of free choice of nationality. Furthermore, significant for Central Europe there is a difference among identification of inhabitants according to mother tongue and declared nationality.

### Table 2

<table>
<thead>
<tr>
<th>Mother tongue</th>
<th>Declared Nationality</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slovak</td>
<td>4466683</td>
<td>9416</td>
</tr>
<tr>
<td>Hungarian</td>
<td>55236</td>
<td>507220</td>
</tr>
<tr>
<td>Roma</td>
<td>37803</td>
<td>2018</td>
</tr>
<tr>
<td>Ruthenian</td>
<td>28885</td>
<td>15</td>
</tr>
<tr>
<td>Ukrainian</td>
<td>1342</td>
<td>36</td>
</tr>
<tr>
<td>Czech</td>
<td>8199</td>
<td>314</td>
</tr>
<tr>
<td>German</td>
<td>2316</td>
<td>125</td>
</tr>
<tr>
<td>Others*</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Statistical office, www.statistics.sk, tabled by authors; *incl. unknown

1.2. The importance of language in nation building in the Slovak Republic.

1.2.1. Slovaks

For hundreds of years, Slovaks lived in the multiethnic Hungarian Kingdom, which managed to overcome linguistic diversity by making use of Latin as lingua franca. In the medieval Hungarian Kingdom multi-ethnicity and coexistence of Hungarians (Magyars) with other nations has been considered an advantage to other kingdoms. The Great Hungarian King of Magyar origin, St. Stephen, expressed this excellently in a message to his son – “weak and fragile is the realm which is based on a single language or on a single set of customs”. In addition to Latin, a must for men of letters, other languages were used in communication of the Royal Chancellery with non-Latin speaking people, e.g. municipal authorities, until the break of modern times. Nevertheless, all other languages, including Magyar, were overlooked by noblemen as plebeian, not appropriate for artisan expression nor for lawmaking until the 18th century.

The second half of the 18th century clearly demonstrated the replacement of Latin by other languages or languages indicating the incoming Spring of Nations. Maria Theresa and Joseph II, true representatives of enlightenment in the Austrian-Hungarian Empire,
The clash between “Czecho-Slovak” Protestants and “Slovak” Catholics has been resolved however returned back to the Latin liturgy later). The importance of unifying the nation, distancing the new written language from the Czech attitude towards codification of the written language. Protestants, who made use of Czech Kralice Bible and the Czech language in liturgy tended to use Czech or Slovacised Czech also as a literary language. Leading protestant intellectuals were consequently also supporters of a close cultural and political Czecho-Slovak cooperation, understanding Czechs and Slovaks a very close or even the same tribe of a large Slavic family. Catholics used Latin in liturgy; and had a more urgent need of distinguishing the Slovak culture from the Czech culture. 1787 saw the codification of the Slovak language based on the Western Slovakia dialect and was supported by the Catholic intelligentsia. Ján Hollý, the first great Slovak writing poet, contributed to cultivation of the language as well as the creation of national myths. This was done by reviving the legacy of the Byzantine mission of St. Cyril and Methodius of 9 century bringing Slavic liturgy and alphabet to the country (which however returned back to the Latin liturgy later).

The clash between “Czecho-Slovak” Protestants and “Slovak” Catholics has been resolved by the re-codification of the Slovak literary language in 1843. Young protestant priests led by Ľudovít Štúr (with J.M. Hurban and M.M. Hodža, other outstanding personalities of the movement) introduced a new codification based on Central Slovakia dialect, understanding the importance of unifying the nation, distancing the written language in the Czech language and stressing the belonging of Slovak not just to a Czecho - Slovak, but rather to a bigger Slavic family. Heavily influenced by German universities, and in particular by Herder and Hegel, these true romantics and passionate patriots found folk arts and language a genuine source of the nation in Central Slovak. They were gradually frustrated by development in the Empire, and as a result sought hope in panslavism and Russia. Significantly, a son of Hurban, an outstanding man of letters, and leading intellectual during hard times of Magyarisation in the late 19th and early 20th century, Svetožár Hurban Vajanský, who was frustrated and lost in conservatism, declared that in the future it would be better for the Slovak nation to sink in the Russian sea rather than in the Czech slop. It was the fight for language and cultural rights, which finally brought originally very radical and revolutionary Slovak leaders to leave the Hungarian revolution and to try gaining support from the Habsburgs. Words of Lajos Kossuth, leader of Hungarian revolution explain this turn: “Since the expression ‘nation’ for the modern state means much more than the knowledge of this or that language, I hereby proclaim that never, but never shall I recognize in the framework of the Holy Hungarian Crown another nation or nationality than the Magyar one. I know there are races and peoples here who speak other languages. The nation, however, here is only one.”

The Hungarian Revolution turned to be a Magyar Revolution. Refusal of Slovak desire for autonomy and Slovak school system expressed in 1848 national manifesto “Demands of the Slovak Nation” and later in the 1861 “Memorandum of the Slovak Nation” has been followed by discriminating policy in the Hungarian Kingdom after federalisation of the Empire into only two autonomous parts after 1867. The 1868 Nationalities Law declared Magyar language as the official language of government and administration, complemented by concessions with regard to the use of non-Magyar languages remained only declaratory and discrimination prevailed in practice. Slovak speaking high schools were closed and the property forfeited; elementary schools were gradually forced to replace Slovak language of instruction by Magyar. Oppression of Slovaks intensified after passing the discriminative Apponyi Lex in 1907 forcing compulsory education in Magyar language exclusively and lasted till the creation of the Czechoslovak Republic in 1918. At that time, the Slovak nation of about two million population had only about 300 Slovak speaking elementary and 20 secondary school teachers. Thus, times before the World War I are seen by Magyars as their best times within Austro-Hungarian Empire with flourishing culture and improving national institutions, but are considered the worst times, close to genocide, by Slovaks. In comparison to 1851 with about 4.5 millions and 1.7 millions Magyars and Slovaks respectively, there were over 9.9 millions Magyars and over 1.9 millions Slovaks in 1910 according to official censuses. Naturally, dissolution of the Empire and creation of Czechoslovakia has been welcomed by Slovaks. Disregarding the German Nazi satellite Slovak State (1939-1945) created along with the occupation of “Czech Lands” by Germans, and turbulences during and after the WWII (see later), Czechoslovakia finally served as a sort of incubator for full institutionalisation of the Slovak nation within an autonomous Slovak Republic since 1968, and for final creation of an independent state after friendly dissolution of the Czech-Slovak Federation in 1993.

Language rights play a crucial role in the genesis of the modern Slovak nation. In the history, fights for preservation of Slovak language against dominant Magyars and Magyarisation policy within the Hungarian Kingdom since the 19th century have made Slovaks oversensitive regarding the status of the Slovak language even in contemporary Slovakia. At the same time, however, lesson learnt from this fight for survival should make Slovaks sensitive towards the mother tongue and language rights of their fellow citizens.

1.2.2. Hungarians

Hungarians in Slovakia became an ethnic minority due to the dissolution of the Hungarian Kingdom. Most Hungarians live along the border with Hungary in compact rural settlements, over 70% in municipalities below 20 000 inhabitants. They enjoy the majority in many municipalities of far South Eastern Slovakia and in South West close to the Danube. The 1920 Trianon Treaty of Peace which established borders among new states, leaving many of Hungarians outside of the newly created Hungarian state, was a shock for Hungarian politicians and hit the Hungarian population as well. With the state border arbitrarily set on the Danube, hundreds of thousands of Hungarians unwillingly appeared in the new state, and of course, hundreds of thousands of Slovaks were left on the other side, spread through an originally unified country.
Czechoslovakia, a multinational state was recreated, however established on democratic principles guaranteed by the WWI winners led by the USA. Minorities in Czechoslovakia enjoyed international protection based on minority group rights set by the 1919 Treaty of Saint Germain, which was subsequently incorporated into domestic legislation. In regards to the rights to education and related language rights, Hungarians were served by an extensive network of Hungarian speaking kindergartens and primary and secondary schools. Far from being perfect, minority rights enforcement worked; minorities were served in Czechoslovakia above the level of other Central European countries due to the democratic character of that state and also due to traditional educational institutions, inherited throughout the past. In comparison, however, Slovaks in post WW II Hungary have never received a comparable network of minority schools. This caused complaints on the political scene and fuelled sentiments loading Slovak-Hungarian relations.

On the eve of WWII, Hungary gained substantial parts of former Hungarian Kingdom territory including southern parts of nowadays Slovakia with up to 60% Hungarians according to 1930 Czechoslovak census and over 85% Hungarians according to 1941 Hungarian census. The 1938 Vienna Award, forced by Hungary under assistance of Mussolini’s Italy and Hitler’s Germany, was reasoned in a similar way to territorial changes affecting Czech Lands after the earlier Munich agreement by national rights backing. Nevertheless, the award violated ethnic frontiers similarly to the Trianon Treaty and additionally loaded Slovak-Hungarian relations. Pre-war and WWII experiences undoubtedly contributed to the change in reflection of minority rights across Europe, and instead of collective minority rights, individual rights, including those linked to belonging to the minority, began to be stressed after the WW II as indicated also by the 1948 Universal Declaration of Human Rights. Before this, however regrettable, in practice a lawless period followed the end of war.12/12/ After WWII, extensive provisions of minority rights in restored Czechoslovakia were no longer enforced. Moreover, according to Articles 1 and 2 of the Presidential Decree 33/45, former Czechoslovak citizens of German and Hungarian national minorities, who obtained German or Hungarian (of previous Fascist regimes) citizenship, lost their Czechoslovak citizenship, unless they remained loyal to the Czechoslovak Republic. Furthermore the deprivation of minority rights indicated the change in policy: coexistence of nations was considered to be impossible, transfers to neighbouring countries and exchanges of inhabitants were thought to solve the problem of coexistence. Schools with Hungarian language of instruction were closed due to the assumption that Hungarian speaking families would be transferred, but were revitalised after the policy change. In 1946, Western European Allies decided not to support one-way transfer of Hungarians into Hungary, however exchanges of inhabitants between Slovakia and Hungary materialised, backed by the Czechoslovak-Hungarian Agreement on Population Exchange; around 55,000 ethnic Hungarians left Slovakia for Hungary and around 59 000 ethnic Slovaks came from Hungary to Slovak.13 Furthermore, up to 50 000 Hungarians and over 100 000 Slovaks were sent to the Czech Lands to settle in the depopulated border territories after the transfer of Germans. The majority of Hungarians returned to Slovakia.

Finally, in 1948, a new communist regime switched national clashes for class barriers. Nevertheless communists re-established Hungarian minority rights and networks of Hungarian speaking preschool and school institutions were recreated. This school system featured two weaknesses, many little schools serving small villages and were, therefore, permanently endangered by cost saving measures. Also, the underdeveloped subsystem of VET schools was unable to balance between provision of communicative skills necessary for employment in Slovak speaking environment and provision of training in mother tongue. Nevertheless, as presented below, this system consisting of fully Hungarian speaking schools, and some VET schools with mixed Slovak and Hungarian language of instruction, served the minority reliably.

After the Velvet Revolution in 1989 national issues ceased to be important for a limited period, followed by the break of nationalism among all nations and former communists (and former internationalists) where nationalism was discovered as a very good agenda for making up their profile and integrity. Gabčíkovo Dam conflict between Czechoslovakia and Hungary as well as right wing Hungarian prime minister stressed spiritual premiership of all Hungarians in the Carpathian basin, which contributed to the increase of tensions among the two nations. Nevertheless, there were some important minority rights executed and for minority languages relating to very important practices legislatively backed on request of the Council of Europe (see 2.1). In particular, in the period of 1994 – 1998, tensions escalated as a consequence of government fear of “anti Slovak activities” of Hungarian minority leaders and the “protection of Slovak interest”. Collective minority rights and autonomy become interpreted as first step to the revision of borders. Significantly, following the signing of the Treaty on Good Neighbourliness and Friendly Cooperation between the Slovak Republic and the Republic of Hungary, the Slovak Republic’s government, at its extraordinary session on 18 March 1995, declared “that it has never accepted and has not enshrined in the Treaty any formulation that would be based on the recognition of the principle of collective rights for the minorities and that would admit the creation of autonomous structures on ethnic principle,” and similarly, the parliament has confirmed this position. Slovak authorities always stressed amid Hungarian contracting party interpretation, that Slovakia has accepted the Recommendation of the Parliamentary Assembly of the Council of Europe No 1201 (1993), that this norm has been mentioned exclusively with the inclusion of restricting clause, “respecting individual human and civil rights, including the rights of persons belonging to national minorities” (Article 15 (4) b’).14 Furthermore, minority language rights restrictive Act No 270/1995 Coll. on the state language of the Slovak Republic has been adopted followed by status quo changing measures: issuing Slovak only instead of traditional bilingual school report cards, requirements of educational authorities to keep official pedagogical documents maintained by teaching staff in Slovak instead of Hungarian, in schools with Hungarian language of instruction and intention to introduce “alternative” bilingual education providing instruction of some subjects in Slovak and some subjects in Hungarian. This practice has been reversed since 1999 by the new government, which amended legislation in order to return to the earlier practice and since 2001 also the in 1996 suspended right of minority students to make entrance exams to enter Slovak speaking secondary schools in mother tongue has been restored. As visible in chapter two, deterioration of the minority rights standard has only been temporary. Slovakia gradually adopted all standard international documents in protection of minorities and minority rights; this very high standard could be
endangered in the future only by loss of trust among political representatives of respective nationalities.

1.2.3. Roma

The Roma minority living in Slovakia is one of the relatively largest Roma minorities in Europe and the fastest growing in Slovakia, according to the Demographic Research Centre estimation; the number of ethnic Roma was 373,200 in 2000 compared to 235,570 in 1981 and considering demographic prognosis approximately 520,000 ethnic Roma will live in Slovakia in 2025 (increasing from over 7% up to 9.6%) with the expected maximum 11% in 2035.

Roma are traceable back to the 14th century wars between Hungarian and Czech armed forces as well as later wars against Turks. Roma were reportedly welcomed as religious exiles from Egypt and also encouraged to settle particularly around castles. King Sigismund issued a safe-conduct document for Roma in 1423, which was similar to other ones used as a letter of protection in journeys of groups of Roma travellers maintaining the story of exiles from Egypt and also encouraged to settle particularly around castles. After the Turkish defeat, the country's attitude toward Roma changed and the first social engineering attempts to change Roma emerged. In 1761, the Empress Maria Theresa introduced the first assimilation policies, ordering nomadic Roma to settle under the name “New Peasant, e.g. Neubauer in German” (and no more Gypsies), and later supported moving children from their parents and sending them to peasant families for paid upbringing. In 1782, her son Joseph II, issued decree which was the first comprehensive “strategy paper”, considering compulsory education and religious services and simultaneously banning Gypsy culture and punishing Gypsies for using their gypsy language, as the best approach for “solving the Roma problem”. This approach dominated policies of the Hungarian Kingdom and Czechoslovakia until 1989, except for short periods in 1921. However, after WWII and after 1968, there was a positive shift towards recognising the Roma nationality and its rights, but no decisive action was taken.

During WWII, Roma faced extermination with plans of Nazi ideology influencing the Slovak State during war times. In 1939, in Slovakia, the Roma were classified a second class people and granted only reduced rights. Travellers were stopped and assigned to settlements. Roma already settled at important pieces of land were ordered to remove their residences to distant places separated from the majority population; and in 1942 a labour camp for “asocial people and gypsies” was opened. Roma escaped the annihilation in Nazi camps, unlike neighbouring countries; they were however subjected to discrimination of an apartheid style and at risk of physical extermination. Many were killed during the last year of war under direct Nazi Reich rule.

In the years 1945–1989, Gypsies again became victims of an ideology and centralistic powers. Shortly after the war, proposals for recognition of Roma as a nationality, and adjustment of schools for the needs of Roma pupils were overshadowed by dispersion policy, partly due to intention to replace expelled German in the Czech Lands, partly in belief of offering Roma a new opportunity within a new environment. Typical for the communist approach within which the social environment has been considered crucial is clear targeting with well recognised goals, yet authoritarian execution. According to the Resolution of the Government No. 502/1965 Coll. on Measures Concerning the Addressing Issues of the Gypsy Population accompanied by generous investment especially in new housing for Roma, “the following three steps were supposed to be made to refine the Roma population:

1) liquidation of the Roma settlements and solving housing problem of Roma settlers,
2) raising of the Roma youth and ensuring the Roma children’s school attendance,
3) integrating the Roma able to work into working process”.

On the turn of 1960s and 1970s, a short living Union of Roma-Gypsies, the first Roma independent civic institutions in Slovakia and Czech Lands created by Roma intellectuals, encouraged by the International Romany Union and several international documents, e.g. the 1977 UN Sub-Commission on the Prevention of Discrimination of Minorities Resolution on Roma, required recognition of Roma as a nationality; however without any effect. They were ignored due to a strong belief in the success of assimilation by means of dispersion, full employment and forced education of children. Act No.117/1966 Coll. on some consequences of neglecting the care of children, enabled to transfer family allowances to local authorities instead of parents tolerating school absenteeism; furthermore the practice of taking away children and placing them in children houses continued. Regardless the success in fighting illiteracy of Roma after WWII, their education remained limited to basic skills with marginal numbers of Roma having at least secondary education and with fatal consequences in the post communist era. It is believed it happened due to rejection of Roma as an independent ethnicity with their own culture and language, which made many Roma disinterested in education, individually passive in life strategy, adjusted to the classification of socially backward and needing special care and finally dependent on state activities and state will.

After the fall of communism, the policy changed. In April 1991, the Slovak Government officially acknowledged Roma nationality, making Roma equal with other ethnic minorities living in the country, guaranteeing support for development of Roma culture and education introducing the first non assimilation policy based strategy paper “The Principles of the Governmental Policy towards the Roma and Their Elaboration in Ministries of Education, Youth and Sports, Culture, Labour and Social Affairs and Finance”. Simultaneously however, the social situation of Roma deteriorated significantly after 1989: low educated, employed and often formally employed in vulnerable sectors and enterprises, Roma were fired first and reemployed last; many of them remained unable to adjust to the free market needs. Moreover, living in regions lagging behind in development resulted in multiplied marginalisation: individually marginalised and living in marginalised territory, developing life strategy of dependence, they gradually formed an underclass of exclusively on social benefits dependent people.

Consequently, the prejudices of the majority against the Roma became more visible. Roma’s anthropological difference from the majority was easily visible and also contributed to the false interpretation of individual cases of problems. Stereotypes towards Roma are produced and both socially and ethnically diversified Roma are seen as a monolith of a great number
of negatively perceived aliens threatening the majority. Although the non Roma perceive the Roma as a homogenous ethnicity, there are three main ethnic subgroups of Roma living in Slovakia: hundreds of years settled “Rumungro” i.e autochthon Roma of the former Hungarian Kingdom, who are named this way by another subgroup - Vlachka Roma, representing the second wave of 19th and 20th century migrants from Valachia (Romania). Vlachka Roma are descendants of travellers, finally settled by force in 1950s. The third subgroup, in population marginal, is German Sinti. Settled Roma often call themselves Slovácké or Ungrike Roma according to their links to communities of Slovaks and Hungarians living in the neighbourhood. It usually indicates their second or even first linguistic command. The Roma language of Slovácké Roma is usually divided into three dialects, according to the territory in which they are settled: Western, Central and Eastern. These dialects are similar to those of Czech, Polish and Western Ukraine Roma. In South Central Slovakia there are Roma speaking southern dialect similar to Roma from Hungary, Slovenia and Austria. In Slovakia, dialects of northern and southern language subgroups coexist and neighbour close to one another. The majority of Roma in Slovakia speak the Eastern dialect, and this is also the case of many Roma living separated or even segregated in settlements. About half of Roma in Slovakia live integrated into mixed neighbourhoods and the rest lives in settlements according to the sociological mapping.

Table 3
Number of Roma settlements and inhabitants in 2004

<table>
<thead>
<tr>
<th>Type of settlement</th>
<th>Settlements</th>
<th>Inhabitants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural and urban concentrations dominated by Roma</td>
<td>168</td>
<td>32 281</td>
</tr>
<tr>
<td>Placed on outskirt of municipality</td>
<td>338</td>
<td>64 661</td>
</tr>
<tr>
<td>Remote or separated from the municipality</td>
<td>281</td>
<td>49 586</td>
</tr>
<tr>
<td>Total</td>
<td>787</td>
<td>146 528</td>
</tr>
</tbody>
</table>


Thus, according to the survey, 281 Roma settlements have been identified as segregated with some 50 000 Roma living there with children are at an extremely high risk of social exclusion. Over 80% of these settlements, without standard housing infrastructure, are located in poor regions of Eastern and South Central Slovakia. When “the Roma problem” is discussed, it mostly refers to the Roma population living in such settlements inhabited by families, very often without any member employed and even families featuring generations, who have never worked.

In 1999-2003, crucial policy papers were elaborated under the responsibility of the Deputy Prime Minister for Human Rights, Minorities and Regional Development and the assistance of Slovak Government’s Plenipotentiary for Roma. These contained measures in mid-term (2003 – 2006) and long-term (until 2010) views, very positively assessed by policy analysts, followed by the National Action Plan of the Slovak Republic Regarding the Decade of Roma Inclusion 2005 – 2015, elaborated within the joint initiative of eight Central and East European countries in cooperation with the World Bank and the Open Society Institute with activities in the future to be co-financed by the Roma Education Fund, newly established under the assistance of the World Bank. The very ambitious “Concept of integrated education of Roma children and youth including the development of secondary and tertiary education” adopted by Government Resolution No 498/2004 aims to increase the currently very low level of education of Roma.

Where education is concerned, it is now widely accepted that the Roma language must be introduced in schools on a large scale in order to prevent the low achievement of Roma pupils caused by their insufficient command of Slovak and/or Hungarian language, which are used as languages of instruction in mainstream school. This is, however, only a partial solution and inevitable for kindergartens and elementary education and predominantly for children living in segregated settlements. It is very questionable, whether it would be effective in terms of quality of education and future quality of life and coexistence with the majority to create Roma speaking schools similar to the network of Hungarian speaking schools for all levels of education; not to mention the cost-efficiency of such a school system. Moreover, although, the Roma language was standardised in written form in 1971, there are still vivid discussions about re-codification, in order to identify language of instruction widely accepted by Roma.

Of course, there are also opinions which consider the Roma language as inappropriate for full use as language of communication: “The Roma language has expressions for everyday life, but for science and politics it doesn't have specific terms. And some expressions in the Roma language in Eastern Slovakia mean something different than in Western Slovakia.” Furthermore as indicated earlier, a large share of Roma adopted other languages as their first language of communication long ago. Thus, there is a gap between theory and practice: declared policies and legislation are in favour of full minority nation rights guaranteed also to Roma, but in practice these are not enforceable, and also very rarely demanded by Roma, except some Roma leaders and intellectuals. Significantly, language rights are fully granted, backed by constitution and specific laws, however neither authorities nor Roma are prepared to make use of it.

Although the earlier assimilation policy is officially dead, it is not crystal clear whether a policy of nation building in full extent is supported in practice by both the authorities and Roma themselves. It is clear, and this is the lesson learnt from communism, that it is ineffective and finally harmful to push Roma to accept the mainstream education format as it is, and to push them to adopt the same life style including working and housing as the mainstream prefers. It is also clear, that assistance to those Roma at risk of poverty and social exclusion is necessary and also in the interest of the majority, despite the criticism of extremists. It is however not clear, whether all widely declared minority rights are interesting also for poor Roma. It is likely that those Roma may consider them unrealistic and may stress general social rights over minority rights (and language rights) in their priority demands, unlike bi- or multilingual Roma intellectuals and/or other more wealthy minorities in Slovakia. Research findings, mentioned later, indicate also questionable support to the introduction of Roma language into practice.

1.2.4. Ruthenians and Ukrainians
Ruthenians (also sometimes designated as Rusyns) form an autochthon population originally spread over present Poland, Ukraine, Slovakia and Hungary. In Slovakia they inhabit North Eastern Slovakia, with 92 little municipalities featuring over 20% share of Ruthenians, of which only three have over 1000 inhabitants. The only town Medzilaborce with 6,741 inhabitants, of which one third declared themselves Ruthenians, is their cultural centre along with the regional seat Prešov, a multiethnic town with a long record of events important for Ruthenian culture. Significantly for Ruthenians, an artist known worldwide, with parents born on this territory, who was often called Czech or Slovak, has recently had his art and Ruthenian roots commemorated in the Warhol Museum of Art, established in Medzilaborce. Ruthenian ancestors can be traced back to the most important cultural and religious event which is shared with Slavic tribes of this territory- the Byzantine mission of St Cyril and Methodius. In contrast to Western Slaves, Slovaks, Czech and Moravians, they abide by this heritage. Eastern rite religion brought them to close contacts with other lands of orthodox religion in the East and South. Nevertheless they became part of Hungarian Kingdom in a similar way to Slovaks. Living in Hungary with dominant Roman Catholic Church led to a compromise with Rome in 1646. Breaking with the patriarch in Constantinople and unifying with Rome without changes in practicing their religion, they become known as "Uniat or Greek Catholic". This change substantially contributed to the nation building of Ruthenian making them different from orthodox Russians and Ukrainians.

Ruthenian national revival is also closely related to the revolutionary years of the mid 19th century. It is associated with two outstanding personalities, a Greek Catholic priest and the most important man of letters, Alexander Dukhnovich (an ethnic theatre established in Prešov in 1945 performed in Russian, Ukrainian and later Ruthenian languages is named after him) and the politician Adolf Dobriansky, architect of the plan of creating an autonomous Ruthenian territory within the Habsburg Empire. Frustrated by later development, many Ruthenians, similar to neighbouring Slovaks, left in the late 19th and early 20th century for America, where they established important national institutions. At home many Ruthenians assimilated, partly also due to schismatic perception of its own origin and split political leadership dating back to the 18th century and partly lasting until the present day: some leaders considered Ruthenians affiliated to Russians, other to Ukrainians and other as different from both.

The pro-Russian stream preferred using literary Russian as the language of culture and education, considering Ruthenian a regional variant of Russian, refusing Ukrainian language and/or autonomous Ruthenian language as dialects of the Russian language and an attempt to disintegrate the nation. The pro-Russian stream dominated among political leaders until the end of WWII. Thus, within interwar Czechoslovakia, a Russian speaking school network was created for the Ruthenian population living in Slovakia in hilly rural areas and extremely high illiteracy and absenteeism of children from education was successfully fought. At the same time, the autonomous Subcarpathia has been created using some of the territory of the former Hungarian Kingdom and joined to Czechoslovakia, according to the 1919 decision of political representatives in Uzhhorod supported also by influential Rutheno-American leaders. A short two decades of democracy were stopped by annexation of Subcarpathia and part of Eastern Slovakia to Hungary after a short war between the two Nazi Allies following the split of Czechoslovakia. Improving culture and flourishing education in Czechoslovakia led, despite harsh economic conditions, to the development of pro-Czechoslovakian sentiments and many Ruthenians and Ukrainians joined the Czechoslovak forces within the Soviet Army. In contrast to their expectation, Subcarpathia has been joined to Soviet Union, becoming a part of Ukrainian Soviet Republic. Consequently, also in post war Czechoslovakia a pro-Ukrainian stream dominated, backed by Communist parties, in affected countries. The Greek Catholic Church became persecuted and Ruthenian cultural institutions were changed into Ukrainian. People were forced to declare themselves Ukrainians. A new system of schools with Ukrainian language of instruction begun to be developed backed by initial and in service teacher training institutions in Prešov.

After the fall of communism, the pro-Ukrainian stream weakened substantially. Ruthenians are recognised as an independent nationality in Slovakia, Poland, Czech Republic and Hungary and their cultural institutions are revitalised. In January 1995, the Ruthenian language was codified in Slovakia. Since 1997, Ruthenian language is included into the programme of schools, however Ruthenian as a language of instruction suffers by lack of qualified teachers and limited interest of students from, as a rule, bilingual Ruthenian families. The Institute of Ethnic Studies within the University of Prešov was created in support of revival of the Ruthenian language and of training Ruthenian speaking teachers. In contrast to training of Ukrainian teachers with accredited university programmes, there are many administrative obstacles necessary to overcome as a consequence of non existence of academics, able to serve as guarantors of university programmes as required by the Higher Education Act and accreditation procedure.

The Church always played an extraordinary role in the life of Ruthenians and Ukrainians and both are very proud of their sacral art. From a simplified, external, point of view, the dominant difference between the two is the religion: Ruthenians are Greek Catholic, while Ukrainians are Orthodox. Although the language used by the rural population seems to be very similar in oral form, the written standards they refer to are different. The coexistence of Ruthenians and Ukrainians, and predominantly their elites, were deeply harmed by religious conflicts and forceful ukrainisation after WWII. Many Ruthenians living in Slovakia and refusing Ukrainian identity, and anti Greek Catholic attacks, preferred to declare themselves Slovak. After the revolution of 1989, the Ukrainian self-identity is in decrease, while the Ruthenian one in increase as visible e.g. from the comparison of the 1991 and 2001 censuses presented above. There are only six very tiny villages with an Ukrainian population over 20%, significantly less in contrast to Ruthenians. Assimilation of Ruthenians and Ukrainians in Slovakia into the similar Slovak culture and nationality is, regardless some fluctuations between the two, statistically evidenced. It is doubtful whether the assimilation is reversible, despite the currently supportive environment in Slovakia and wide backing of national rights inclusive language rights by the legislation.

1.3. The status of languages and current debates

The Slovak language is the state language on the territory of the Slovak Republic according to the Article 6 of the Constitution. The use of other languages in official contact and other language rights is determined by laws detailed later in 2.1. The status of these languages is best visible from regulations of the European Charter for Regional or Minority Languages.
The Slovak Republic specified that, in accordance with the Charter, the "regional or minority languages" in the Slovak Republic are Bulgarian, Croatian, Czech, German, Polish, Roma, Ruthenian, Ukrainian and Hungarian languages and declared

- with regard to the first five above listed languages to provide for the teaching of the relevant languages within primary and secondary (including vocational) education as an integral part of the curriculum; and to make at least a substantial part of pre-school education in the respective language available on the request of families
- with respect to Ruthenian, and Ukrainian languages to make a substantial part of pre-school, primary and secondary (including vocational) education in the respective language available, and:
- to make education from pre-school to higher education levels available in Hungarian.

Thus, languages are clustered in three levels according to the respective minorities’ specific conditions and historical traditions. After the establishment of a Hungarian speaking university in Komárno, there are no substantial problems in guaranteeing these rights, except those concerning the Roma minority. In fact, the education system is not yet prepared to use Roma language as the language of instruction and how appropriate this step is in the full extent envisaged by the Charter is questioned by educators and is very likely not to be demanded by a majority of Roma, as indicated by research findings. A research conducted by the Institute for Public Affairs in cooperation with UNDP in November 2001 based on a questionnaire, offered some very important findings.

### Table 4

<table>
<thead>
<tr>
<th>Item</th>
<th>An</th>
</tr>
</thead>
<tbody>
<tr>
<td>What would be the best way to provide your children with equal access to education to that the children from the majority have?</td>
<td></td>
</tr>
<tr>
<td>If they attend the school with majority children without special support on equal basis with the other children</td>
<td>84,6</td>
</tr>
<tr>
<td>If the teachers at school are Roma and teach them in Romani</td>
<td>12,5</td>
</tr>
<tr>
<td>If the children receive additional language courses and know well enough the official language</td>
<td>44</td>
</tr>
<tr>
<td>If the children are separated in a separate class but in common school with the majority children</td>
<td>8,2</td>
</tr>
<tr>
<td>If the children attend specialized Roma school</td>
<td>5,8</td>
</tr>
</tbody>
</table>

Source: IVO/UNDP Roma Human Development Project questionnaire; Question No 21, tabled by authors

Furthermore, the government and particularly local governments in municipalities with over 20% of Roma inhabitants are not prepared to make use of Roma language in official contacts, as Roma can require making use of their language similar to other officially recognised minorities: e.g. during municipal council deliberation (interpretation must be provided by the municipality, however neither Roma speaking specialists nor legislation is available in the Roma language), in public notices and in filling petitions, expecting answers and handling in their language. Local authorities should prepare and accept official forms in the Roma language, names on buildings of public administration authorities as well as important information, in particular warnings, cautions and health information, shall be displayed also in the Roma language. There is no doubt that Slovak authorities will face serious difficulties in implementing all their commitments if requested by the Roma minority.

The first steps at the central level of administration are however visible: in census 2001, the Roma language has been used for the first time and the Ombudsman office allows using Roma language on equal basis as e.g. visible from the office website. Nevertheless, out of the 2 667 cases reported in the third Ombudsman Activity Report only 39 were submitted in the language of minorities (38 in Hungarian, one in Ukrainian and none in Roma).

### 2. LANGUAGE RIGHTS IN THE SLOVAK REPUBLIC

#### 2.1. History of legislation

Minority rights are addressed by over 25 legal norms of the Slovak Republic. The following laws and European documents incorporated into Slovak legislation are of crucial importance concerning language rights:
- Act No. 23/1991 Coll., which introduced the Charter of Fundamental Rights
- Act No 300/1993 Coll. on Names and Surnames,
- Act No 154/1994 Coll. on Register of Births,
- Act No. 191/1994 Coll. on Denominations of Municipalities in National Minority Languages
- Act No. 270/1995 Coll. on the State Language of the Slovak Republic
- Act No. 184/1999 Coll. on the Use of National Minority Languages
- Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, (Anti-discrimination Act)

Language rights are guaranteed mainly by § 34 of the constitution, which were specified and made implementable in successive steps. The constitution's most important general articles guarantee the right to resist anyone, who would abolish democratic functioning of
human rights and fundamental freedoms (§ 32) and that international instruments on human rights and freedoms ratified by the Slovak Republic and promulgated under statutory requirements shall take precedence over national laws (§ 154c.) This e.g. affects the European Convention of Human Rights and other, for language rights, more important documents discussed later.

In 1993, in connection with the Slovak Republic’s accession to the Council of Europe, Slovakia extended its internal legislation with three minority rights executing and for minority languages peer esteem very important acts. In contrast to earlier practice, Hungarians could officially spell their names in a Hungarian way, that is instead of a Slovak transcription, e.g. Alexander Németh and Katarína Nemethová they may use a traditional Hungarian way Németh Sándor and Németh Katalin; or in case of a married woman Németh Sándorné (which literally means wife of Németh Sándor ); similarly this applies to other nationalities. Furthermore, official inscriptions including the name of the municipality on road signs in minority languages in municipalities with over 20% share of respective minority members were legislatively backed. According to the 2001 Census this applies to 502 municipalities and the Hungarian language, 6 municipalities and the Ukrainian language, 2 municipalities and the Ruthenian language, 54 municipalities and the Roma language and one municipality and the German language.

Act No 277/1995 on the State Language adopted in the period of dominance of nationalistic parties in the government reduced the minority rights. The right to use the languages of national minorities and ethnic groups in official contacts guaranteed by the Constitution, remained not regulated by legislation as a consequence of Act No. 428/1990 Coll. on the Official Language of the Slovak Republic, which detailed these rights. In 1997, the Slovak Constitutional Court ruled that this law was unconstitutional. New governments in power after 1998 fixed the problem amending the aforementioned law and restoring minority rights: the Act on minority languages removed the legal vacuum and extended the language rights of minorities. According to this law minorities with 20% of the total population in the community may use the minority language in such a community in official contacts. The Hungarian Coalition Party (HCP) voted against this law dissatisfied with limitations; HCP required the law to be expanded also to self governing regions; in Trnava region the Hungarian minority exceeds 20%. On the other hand, the law was welcomed by the OSCE High Commissioner on National Minorities, the Council of Europe and the European Union and reopened the door for Slovakia to enter the European Union. Consequently, Slovakia also ratified the European Charter for Regional or Minority Languages.

The latest norm in support of minorities is the Antidiscrimination Act. In conformity with the principle of equal treatment, any discrimination (precisely clarified as including all forms: direct, indirect, harassment; victimisation; instruction to and incitement to) is prohibited i.a. on grounds of language and ethnic origin. A mighty instrument has been given to persons believing in the principle of equal treatment; they could defend their rights in court under the procedure with reversed burden of proof – the defendant party has to prove that there was no violation of the equal treatment principle.

In contrast to aforementioned human rights related legislation, which could be regarded as generous in providing the language rights, the specific educational legislation is insufficient and caused legal conflicts (see 2.2), luckily enough it is not braking the provision of language rights in practice due to positive attitude and flexibility of educational authorities.

Act No. 29/1984 Coll. on the Network of Primary and Secondary Schools (The School Act) as amended in the Section 3 (1) stipulated the following: Training and education are provided in the state language. Citizens of Czech, Hungarian, German, Polish, and Ukrainian (Ruthenian) nationality have the right to education in their own language to the extent required in the interest of their national development. Apparently, it is an outdated wording. The Roma language has not been mentioned in a similar way to other Charter recognised languages. Furthermore, Ruthenian nationality is not mentioned in an appropriate form. A new law aimed at replacing The School Act, which should be submitted to the Government in November 2005, will rectify these failures.

2.2. Language rights in practice

A legislative act only makes sense if it regulates a living issue and can be used and implemented in practice. In the following, diverse right guarding practices are examined.

2.2.1. The Constitutional Court

Violation of rights of citizens belonging to minorities or ethnical groups was a subject of decision making in 11 cases, out of which nine cases have been rejected by the Constitutional Court and two led to judgments.

In case No 8/96 the Court ruled that § 3 (5) of the Act No 270/1995 Coll. on the state language is not in accordance with the Article 34 (2) b) of the Constitution. In addition to this decision causing abolishment of the respective article, amendments further improving minority language rights were later introduced by Act No. 5/1999 Coll., which reintroduced traditionally used bilingual school report cards and in minority languages written pedagogical documents, which were temporary, abolished.

In case No 18/02 the Court rejected a complaint of a Roma politician, which was objecting violating the right on education in the mother tongue of citizens belonging to minorities or ethnic groups because his rights were apparently not violated; at the same time however the Court ordered the Government of the Slovak Republic to amend the School Act, because § 3 of Act No. 29/1984 Coll. The School Act, as discussed elsewhere, might lead to violating rights on education in the Roma language.

One of the cases (No 21/96) was rejected by the Constitutional Court as the claimant did not dispute the violation of fundamental rights or freedoms by the governmental authorities resolution, but it is interesting as a subject matter. In this case a parent of a Hungarian nationality student with low performance made an objection to language discrimination of his daughter in a class in an agricultural school with Slovak language of instruction, as teachers
of vocational subjects did not have a proper command of Hungarian language and as a result were unable to provide the student with an explanation of vocational terminology in Hungarian. The Deputy head of the school suggested, that the student should not attend a class with Slovak as a language of instruction.

2.2.2. Ombudsman

Since the existence of the Office of the Public Defender of Rights, there were no motions lodged by natural and legal persons, which would have found violating minority language rights pursuant to the constitution of the Slovak Republic. There has been a reverse case only, in which a Slovak nationality citizen complaint that in a village with a majority of Hungarian population the local broadcasting is performing exclusively in Hungarian. The ombudsman’s intervention resulted in a promise from the major’ side that information will be broadcasted both in Hungarian and Slovakian.

As for case No 69/2005, which did not relate to nationalities’ rights, the ombudsman found a weak point in the legislation concerning language rights of minorities. In accordance with Act No 596/2003 Coll. travel costs should be reimbursed to primary school students of municipalities without school service. According to the ombudsman’s opinion, this stipulation could be discriminatory against minorities due to insensitivity towards the language of instruction: provided a family decides to send children to another municipality in order to receive education in their mother tongue, because there is no such a school in their municipality, the aforementioned law does not enable them to receive reimbursement of travel costs if there is a school, of any language of instruction, in their municipality. Although there were complaints of this kind so far, the ombudsman recognised this problem and therefore asked parliament to intervene and fix it.

2.2.3. Slovak National Centre for Human Rights

The Slovak National Centre for Human Rights which was established in 1993, has been reorganised and received wider competencies following approval in the Antidiscrimination Act. It is expected that the monitoring and reviewing of compliance with human rights and compliance with the principle of equal treatment, supported by authorities´ obligation to provide information in line with human rights; and conducting research and surveys in this field as well as the Centre’s authority to represent parties in the proceedings concerning violation of the principle of equal treatment, could make their annual report on the state of human rights compliance in the Slovak Republic into a serious instrument for strengthening human rights enforcement in Slovakia. There was no data available about discrimination of children on ground of language and violation of language rights in July 2005. But, a specialised project monitoring children rights, including language rights, did start in the second half of 2005.

2.2.4. State School Inspection

According to § 3 of the Ministry of Education of the Slovak Republic Decree No č. 137/2005 Coll. Z. on school inspection, the school inspection is supervising not just instruction in schools and results of education but also adherence to the generally binding legal and internal regulations concerning education. It means, that if a person encounters a violation of his/her language rights at schools, then his/her legal representative should address the school inspection with the complaint. During the reflected time period, however the Slovak School Inspection has not registered any grounds for violation of language rights.

2.3. Language rights in compulsory education

2.3.1. Officially recognised languages and rights of citizens

Children and pupils with Slovak (majority), Hungarian and Ukrainian mother tongues have school systems offering instruction fully or partly in their respective language at their disposal.

<table>
<thead>
<tr>
<th>Year</th>
<th>Type of school</th>
<th>Number of schools (with language of instruction)</th>
<th>Students</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Tota l</td>
<td>Slovak</td>
<td>SK/ H</td>
</tr>
<tr>
<td>1989</td>
<td>Kindergarten</td>
<td>205</td>
<td>3642</td>
</tr>
<tr>
<td></td>
<td>Basic</td>
<td>203</td>
<td>2039</td>
</tr>
<tr>
<td></td>
<td>Grammar</td>
<td>128</td>
<td>106</td>
</tr>
<tr>
<td></td>
<td>Secondary specialised</td>
<td>181</td>
<td>156</td>
</tr>
<tr>
<td></td>
<td>Secondary vocational</td>
<td>311</td>
<td>286</td>
</tr>
<tr>
<td></td>
<td>Special</td>
<td>..</td>
<td>..</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>697</td>
<td>6229</td>
</tr>
<tr>
<td>1994</td>
<td>Kindergarten</td>
<td>204</td>
<td>2892</td>
</tr>
<tr>
<td></td>
<td>Basic</td>
<td>254</td>
<td>2194</td>
</tr>
<tr>
<td></td>
<td>Grammar</td>
<td>183</td>
<td>160</td>
</tr>
<tr>
<td></td>
<td>Secondary specialised</td>
<td>361</td>
<td>332</td>
</tr>
<tr>
<td></td>
<td>Secondary vocational</td>
<td>359</td>
<td>323</td>
</tr>
<tr>
<td></td>
<td>Special</td>
<td>412</td>
<td>372</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>720</td>
<td>6273</td>
</tr>
<tr>
<td></td>
<td>Kindergarten</td>
<td>203</td>
<td>2649</td>
</tr>
</tbody>
</table>
The table above depicts the evolution of these systems since the fall of communism, indicating a general growth in the number of schools in early 1990s as a consequence of efforts to serve the population more generously, followed by the decrease of the number of institutions in 2000s due to the severe population decline (see the last column) and strive for efficiency (introduction of per capita funding) in financing educational institutions.

In contrast to the improving system of Hungarian speaking schools, Ukrainian schools are in decline, due to earlier explained Ruthenian–Ukrainian relations and revival of Ruthenian awareness.

The following table depicts the trend in servicing students in the three main languages of instruction and confirms the development of instruction in Hungarian and decline in Ukrainian.

<table>
<thead>
<tr>
<th>Year</th>
<th>Type of school</th>
<th>Number of students* (according to language of instruction)</th>
<th>Number of students in 1989</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Hungarian</td>
<td>Slovak</td>
</tr>
<tr>
<td></td>
<td>Number</td>
<td>Index</td>
<td>Number</td>
</tr>
<tr>
<td>1989</td>
<td>Kindergarten</td>
<td>241458</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Basic</td>
<td>724248</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Grammar</td>
<td>51531</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Secondary specialised</td>
<td>80545</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Special</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>125302</td>
<td>100</td>
</tr>
<tr>
<td>1994</td>
<td>Kindergarten</td>
<td>174436</td>
<td>72,2</td>
</tr>
<tr>
<td></td>
<td>Basic</td>
<td>675813</td>
<td>93,3</td>
</tr>
<tr>
<td></td>
<td>Grammar</td>
<td>72072</td>
<td>139,9</td>
</tr>
<tr>
<td></td>
<td>Secondary specialised</td>
<td>117145</td>
<td>145,4</td>
</tr>
<tr>
<td></td>
<td>Secondary vocational</td>
<td>138173</td>
<td>89,0</td>
</tr>
<tr>
<td></td>
<td>Special</td>
<td>29947</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>120758</td>
<td>96,4</td>
</tr>
<tr>
<td></td>
<td>Kindergarten</td>
<td>149232</td>
<td>61,8</td>
</tr>
</tbody>
</table>

Source: Institute of Information and Prognoses of the Ministry of Education

The very solid level of service for the Hungarian minority in Slovakia is also statistically confirmed by other sources. In 2004/2005 according to the Government Office for Hungarian Minorities Abroad in Budapest about 80% of Slovakia’s ethnic Hungarian children attended kindergartens, basic schools and secondary schools with Hungarian-language of instruction (in detail 82.2%, 82.79%, 76.9% respectively). Within secondary schools the distribution of enrolments matching Hungarian nationality and Hungarian as language of instruction in all subjects varies with the type of schools. VET schools featuring over 1000 specialisations and subspecialisation cover significantly less (50.8% at secondary specialised schools offering predominantly ISCED 3A and 24.2% at secondary vocational schools offering predominantly ISCED 3C studies) than grammar schools covering 83.8% of Hungarian students by Hungarian language instruction in all subjects. Nevertheless 72.65% of Hungarian students at VET schools receive instruction, fully or at least partly (not in all subjects), in Hungarian. Nevertheless, there are voices according to which all Hungarian minority students should attend only schools with Hungarian language of instruction.

Two other systems which should be established, according to legislation and the number of population belonging to the respective minority, are Ruthenian and Roma school systems. Nevertheless establishment of both is hampered by the lack of qualified teachers (first graduates from teacher training programmes of Ruthenian language at University of Prešov are from the year 2003 and there are only 25 qualified teachers of Roma language in Slovakia). The suitability of available codifications of these languages for practice as language of instruction in school of all educational levels is also questioned. Furthermore parental demand for instruction in mother tongue is quite limited.

There are three alternatives of curricula for schools offering Ruthenian language as a subject elaborated and approved from the school year 2001/2002. The first alternative being the Ruthenian language offered as optional subject, is currently the only used in practice in eleven basic schools and in one grammar school. From the school year 2005/2006, two basic schools will offer Ruthenian as an integral part of the curricula with two hours per week in all grades (alternative two) or two hours per week in the first two grades and expanded education of Ruthenian language to three hours in grades three to eight (alternative three). Nevertheless all these schools have to face two additional factors of threat. Ruthenian language and culture is linked with Cyrillic alphabet in contrast to the Slovak-Latin alphabet, which might make Ruthenian language unpopular in contrast to other languages of practical importance, predominantly English; secondly, large share of families make use of Slovak or different Ruthenian dialect as the family communication language.
Currently, six schools test the curriculum of Roma language as a subject and as a potential language of instruction within the experiment carried out by the National Institute of Education under the supervision of Government’s Plenipotentiary for Roma. Additionally a culturally sensitive curriculum should be elaborated for Roma, because the current curriculum, which is considered inappropriate as it is too academic, and sticking to memorising might prove to be not suitable for Roma culture due to lack of artisan education and lack of learning-by-doing activities.

Analysis of school failures of students carried out until the beginning of the nineties clearly showed an imbalance among performance profile of Roma children and basic school requirements. The share of Roma in performance failure students reached 50% on a long-term basis.

Table 7

<table>
<thead>
<tr>
<th>School year</th>
<th>Failing students (1. 2. 3. 4. 5. 6. 7. 8. 9. 1-9)</th>
<th>Basic school grade</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976/77</td>
<td>Total 2208 1021 1358 1272 1086 1316 872 426 25 9584</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>out of this Roma 1504 782 946 842 651 650 269 67 3 5714</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1987/88</td>
<td>Total 2609 1309 013 1115 1716 1297 837 56 - 9952</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>out of this Roma 1706 676 464 532 833 532 285 19 - 5047</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1988/89</td>
<td>Total 2569 1397 023 1069 1769 1297 838 81 - 10093</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>out of this Roma 1690 760 512 494 899 532 287 34 - 5283</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1989/90</td>
<td>Total 2871 1276 896 975 1560 1258 806 73 - 9715</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>out of this Roma 1852 681 455 436 876 587 341 12 - 5240</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1990/91</td>
<td>Total 3166 1438 1071 1182 1989 1687 1399 166 - 12098</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>out of this Roma 2148 847 602 668 1166 890 621 75 - 7017</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Ministry of Education of the SR, Conception of education of Roma children, 14.3.2001

Later this kind of analysis has been stopped as discriminatory and since the school year 1997/98 pupils from socially disadvantaged environment have been monitored. This group, whose members are very often of Roma origin, is showing similar results to the results above concerning the Roma. A low portion of Roma students in secondary schools and their over-representation in special schools for handicapped visible from the table 8 indicates that a structural reform is necessary; the need to expand the Roma language use in schools is only one of features of the required change.

Table 8

<table>
<thead>
<tr>
<th>School by type</th>
<th>Declared Roma (Absolute number and %)</th>
<th>All students in Slovakia (Absolute number and %)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kindergarten</td>
<td>1079 12,1</td>
<td>150587 13,8</td>
</tr>
<tr>
<td>Basic</td>
<td>4489 50,2</td>
<td>626645 57,3</td>
</tr>
<tr>
<td>Grammar</td>
<td>9 0,1</td>
<td>86239 7,9</td>
</tr>
<tr>
<td>Secondary specialised</td>
<td>79 0,9</td>
<td>91820 8,4</td>
</tr>
<tr>
<td>Secondary vocational and vocational</td>
<td>111 1,2</td>
<td>106775 9,8</td>
</tr>
<tr>
<td>Special</td>
<td>3176 35,5</td>
<td>32244 2,9</td>
</tr>
<tr>
<td>Total</td>
<td>8943 100,0</td>
<td>1094310 100,0</td>
</tr>
</tbody>
</table>

Source: Ministry of Education of the SR, Conception of education of Roma children, 14.3.2001

Other minority languages recognised by the European Charter for Regional or Minority Languages are very rarely represented in schools. Except aforementioned German and Bulgarian schools other minority schools are unlikely to emerge in the future. The remaining recognised languages, i.e. Croatian, Polish and Czech languages are not required as the language of instruction by parents; and there are no problems to introduce these languages as subjects of curricula if required. Other citizens’ rights, e.g. language rights of Vietnamese and Russian minorities are not covered by the law. While the first minority seems not to expect a special recognition so far, the Russian minority has been accepted for sending a nominee to the Government’s Minorities Board only, yet the Russian language has not been granted a status of official minority language.

2.3.2. Languages rights of non-citizens

The language needs of non citizens are covered depending on the status of the language and the demand, e.g. English speaking schools are mushrooming in the capital to cover demands of business people families living in Slovakia. Bilingual Grammar schools (English, French, German, Italian, and Spanish) are very attractive for local people and are accessible also for children of respective nationalities. Essentially, private schools are able to cover language requirements of solvent families if demanded. Authorities are open to allow for introduction of other languages of instruction if offered by the partner country within a bilateral agreement, or as a result of desire of an important strategic investor (e.g. a Korean school to be established in 2006).

There is however a problem to cover needs of asylum seekers and refugees. Their education rights are guaranteed by the §§ 34-37 of Act No 29/1984 Coll. on System of Primary and Secondary Schools (the Education Act) as amended and the subsequent Decree of the Ministry of Education on the Basic school No 143/1984 in latter wording, however a solid command of Slovak or other Slovakian languages of instruction is inevitable for efficient education. According to §34a of this act, children of asylum seekers, recognised refugees and foreigners, including non citizens with permitted residence are offered education on an equal basis with citizens of Slovakia. Children at the age of compulsory
education are enrolled in the appropriate grade of basic school by the decision of the director of the respective school. In practice they could also enrol into secondary school depending on the quality of the language command.

There is a bigger problem with adults who are significantly less flexible and their poor knowledge of Slovakian is a barrier to the possibility of finding a job. The current provisions for learning Slovakian are not sufficient for asylum applicants in the camps and also for asylum seekers in the integration centres. In cases where an asylum seeker is coming to a region directly from a temporary camp or integration centre, he/she does not usually have a command of Slovakian which would enable him/her to enter the labour market, even though he/she spent almost a year in the camps. This is caused by a low volume of language courses, an insufficient promotion of instruction and low motivation of participants. It might be necessary to provide a course, free of charge, counting at 360 hours within six months in the camp according to EQUAL ex ante analysis. Specific measures are also envisaged according to the European Social Fund (ESF) programming documents. New legislation stressed the importance of the Slovak language learning, however without substantial specification: § 28 (5) of the amended Act on asylum only stipulates that, recognised refugees have an obligation, in order to facilitate social integration, to attend a basic Slovak language course during his/her stay in the integration centre; § 23.(3) f) reiterates the responsibility to attend course of Slovakian of an asylum seeker in their respective age. The impact of the regulation, which came into force on 1 February 2005, is not yet visible.

The main group of asylum seekers in Slovakia is from the Russian Federation (many of Chechen origin) who would find it easier to acquire Slovak language and enrol into Slovak schools compared to other dominant groups such as, Indians and Afghans, where lack of experts with relevant language command endangers the quality of service. However, Chechen asylum seekers are rarely granted the status of refugee. In general, the hard asylum policy, the country’s low economic standard, the limited labour market and the hard-to-learn language make asylum seekers and refugees less interested in language rights in Slovakia and instead makes them consider Slovakia as a transit place to other EU destinations.

The harmonisation of relevant legislation is in progress and both Act No 283/1995 Coll. on asylum and Act No 73/1995 Coll. on foreigner residence were amended in order to meet EU standards. Nevertheless the practice suffers from inadequate capacity of service. The dramatic rise in asylum applications in 2000s has been linked to the expected entry of Slovaks to the EU; the statistics from the first quarter of 2006 show a substantial drop in the number of applicants (a decrease of 75% in arrivals) due to stricter policies on border control and the introduction of the Dublin regulation which impacts the inflow into EU. Nevertheless, Slovakia is not a final destination country of refugees; in total, there were 409 individually recognised refugees, according to 1951 UN Convention/Protocol 1967; 2916 asylum seekers and 7 stateless persons evidenced by the end of 2004. The United Nations High Commissioner for Refugees data indicates that the large majority of asylum seekers have left the country before accomplishing the asylum procedure. According to 2004 asylum applications statistics there were 4 653 application pending at the beginning of the year and 11 391 people applied since 1 January. However only 2 916 applications remained pending at the end of year. During the year only 15 people were granted refugee status and 1532 were rejected. Slovakia features one of the world lowest recognition rates due to restrictive policy of the Slovak Migration Office: only 10 to 20 people were granted refugee status annually in 2000s.

Slovakia as an EU member state will have to increase the number of recognised refugees. This will gradually develop pressure on the adoption of a more open asylum policy with subsequent challenges to the educational services. Slovakia will however hardly be able to expand services in languages spoken by asylum seekers and recognised refugees and definitely not be able to expand language rights above the already stipulated frames.

3. LANGUAGE RIGHTS IN NON-COMPULSORY EDUCATION

Compulsory education in Slovakia lasts 10 years; usually it means 9 years of Basic school and at least one year of a secondary school. However, the lowest level of qualification (ISCED 3C) which could be obtained after completing compulsory education requires at least three years of training at secondary vocational school. Thus, in practice language rights are guaranteed by law until the completion of a secondary school in a way explained earlier.

Post secondary education is offered in a full variety only in the Slovak language. The Hungarian minority could receive post secondary education including tertiary education in Hungarian language in some programmes. The János Selye University in Komárom established in 2004 offer teacher training at the Faculty of Education, theology (Calvinist) studies at the Faculty of Theology, and studies in economics at the Faculty of Economy. Some universities offer studies in English. There are no specific regulations aimed explicitly at non compulsory and especially higher education related language rights.

4. CONCLUSIONS

Slovakia could be considered a single real successor of former multiethnic and multicultural Austro-Hungarian monarchy. Without understanding the history of Central Europe and the genesis of respective nations it is impossible to understand why people in this region are so sensitive about their mother tongue and language rights protection. The history of willing and forceful assimilation on one hand and the large share of bilingual population and nationally mixed families on the other hand make many politics, policies and even hard data conflicts (e.g. differences in national statistics) more understandable.

The vitality of the Hungarian nation is often misinterpreted by Slovak politicians as a threat for the Slovak nation and the Trianon Treaty is still considered a trauma for the Hungarian nation by those not believing in civic society and friendly coexistence of nations in multietnic states. Hopefully both nations will manage to overcome their fundamental national narrations, which are only good for smashing souls of children during history lessons in schools: a kind hearted nation suffering thousand years from oppression on one side; and a
nation exceptional in spirit, betrayed and collectively punished in the 20th century, on the other.

Slovakia of the early 2000s offers a wide range of rights for minorities. Although not perfect in practice, language rights are exhaustive and enforceable; nevertheless declining in demand concerning the tiny minorities. The extent of Hungarian minority rights in Slovakia is an evidence of efforts to forget 19th and 20th centuries conflicts and achieve full harmony coexistence. Slovaks and Hungarians, a dominant minority in Slovakia, face a historical task: to assist Roma in genesis of a modern Roma nation and/or in the embracement of those, who willingly prefer their Roma-Hungarian or Roma-Slovak awareness. Similarly to medieval German settlers paving the way for Slovaks and Hungarians in the transition from rural to urban life, Slovaks and Hungarians have to contribute to the change of the life strategy of Roma.

Endnotes

7. Hungarian language does not have any specific term for Hungarian in the sense of political nation of pre-1918 Hungary, making no difference between “Hungarian” and “Magyar” and understanding Magyarország (Magyar country, Maďarsko in Slovak) as designating both, former multiethnic Hungarian and modern homogenous Hungary. In contrast to this, the Slovak language and other languages make a distinction between the two. Thus a Slovak person, in say the 19th century, could consider himself as Hungarian (Uhor) due to belonging to the Hungarian Kingdom (Uhorsko) and Slovak (Slovak) at the same time due to his ethnic origin. That is why the term “Magyar” is sometimes used in this chapter, in order to stress the ethnic origin.
12. On 11 June 2005 Christian Democrat Member of Parliament and former president of the parliament of the Slovak Republic František Mikloško apologised (“saying on his own behalf: I am sorry”) to Hungarians living in Slovakia for the persecutions carried out by the Czechoslovak Government in 1945-1948 after being awarded international Saint Adalbert Peace Prize in Hungarian Parliament;
13. e.g. Non paper of the Ministry of Foreign Affairs of the Slovak Republic on the Presidential decrees of the Czechoslovak Republic dated 10 April 2002: in 1945 – 1948, totally 89 660 persons left Czechoslovakia for Hungary and 73 273 persons came from Hungary to Slovakia according to Slovak historiography, see e.g. Štefan Šútaj at http://www.saske.sk/cas/1-2005/sutaj.html


26. Article 6 of the Constitution
(1) The Slovak language is the state language of the Slovak Republic.
(2) The use of languages other than the state language in official communications shall be laid down by a law.


30. The current wording of the Constitution of the SR, Article 34:
(1) Citizens belonging to national minorities or ethnic groups in the Slovak Republic shall be guaranteed their universal development, particularly the rights to promote their culture together with other members of the minority or group, to disseminate and receive information in their mother tongues, to associate in national minority associations, to establish and maintain educational and cultural institutions. A law shall lay down details thereof.
(2) In addition to the right to learn the official language, the citizens belonging to national minorities or ethnic groups shall, under the conditions laid down by a law, also be guaranteed:
   a) the right to be educated in their language,
   b) the right to use their language in official communications,
   c) the right to participate in the decision making in matters affecting the national minorities and ethnic groups.


33. This controversial § 3 (5) of the Act No 270/1995 Coll. reads as follows: Written presentations of citizens determined for public and legal bodies are presented in the state language.


35. Personal information of Government’s Plenipotentiary for Roma Ms Orgovanova.


37. see 2004 Global Refugee Trends at http://www.unhcr.ch
Language Rights in Education in Slovakia

Jaroslav Větrovský
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1. LANGUAGES AND THE SLOVAK LEGAL ORDER

1.1. Slovak self-determination and the role of the state language

The independent Slovak Republic appeared on the world map on 1 January 1993. It was created as one of the successor states of the dissolved Czech and Slovak Federal Republic. Putting an end to the process of the Slovak political self-determination, this day thus represents an important milestone in Slovak history. The Slovak people, after they had been possessing different status within various multinational political units (Austria-Hungary, interwar Czechoslovakia, the puppet state of the Slovak Republic during the World War II., the postwar Czechoslovak Socialist Republic etc.), established a sovereign nation-state with Slovaks as a constituting nation. Such a progress related to the political self-determination of the Slovak people has also had an inevitable impact on their cultural emancipation, including on the use of the Slovak language. In particular, in 1993 Slovak became for the first time the only official language which was to be used in the whole territory of the Slovak Republic.

The significant role that the Slovak language was deemed to play in the construction of the new state and in the consolidation of the common identity of its citizens found its expression in several legal documents. The most important has been the Constitution. Article 6 § 1 of the Constitution declares, in the very clear terms, that “the state language in the territory of the Slovak Republic is the Slovak language”. As to the other languages spoken in Slovakia, e.g. the minority languages, their use in official communications has not been constitutionally excluded. However, the regulation of their status as well as of the conditions of their use was not included into the Constitution and according to its Article 6 § 2 shall be “laid down by law”. The right to use other languages in communication with public authorities is not included into the Constitution and according to its Article 6 § 2 shall be “laid down by law”. However, in the case of Slovakia the constitutional guarantee related to the use of languages in Slovakia is nevertheless contained in Article 34 § 2 of the Constitution. However, it was also pointed out that this provision neither specifies what are the languages the use of which it permits, nor who are the persons being authorized to use them and under which conditions. The regulation of their status and legal standing was thus left to the domestic legal provisions. It was already mentioned that the basic norm allowing the use of different languages in Slovakia is contained in Article 6 § 2 of the Constitution according to which “[t]he Slovak Republic recognizes and honors general rules of international law, international treaties by which it is bound and its other international obligations”. Moreover, all the above mentioned treaties fall under the category of “ratified and promulgated international treaties on human rights and fundamental freedoms” within the meaning of Article 7 § 5 of the Constitution, which means, according to the same provision, that in case of conflict they “shall have primacy over the statutory law”.

In addition, the possibility or, eventually, the right to use languages other than Slovak in official communications is guaranteed by the domestic legal provisions. It was already mentioned that the basic norm allowing the use of different languages in Slovakia is contained in Article 6 § 2 of the Constitution. However, it was also pointed out that this provision neither specifies what are the languages the use of which it permits, nor who are the persons being authorized to use them and under which conditions. The regulation of these issues has been left for the subsequent work of the legislator. A more specific guarantee related to the use of languages in Slovakia is nevertheless contained in Article 34 § 2 of the Constitution. Article 34 § 2 is in principle based on the language regime set up by Article 6 § 2 of the Constitution. But unlike this provision it doesn’t consider the use of various languages in official communications as a mere possibility. It considers it as a “right” (Article 34 § 2-b) which, together with the “right to education in their own language” (Article 34 § 2-a), must be guaranteed to all “citizens belonging to national minorities or ethnic groups”.

As to the various legal issues that the language regime established by the Constitution necessarily implies (e.g. definition of minority languages, status of minority languages, conditions under which they can be used in official communications, relation of the minority languages to the Slovak language etc.), they are regulated by specific statutory acts or acts...
the existence of which Articles 34 § 2 and 6 § 2 explicitly assume. The most important is the Act on the Use of the Languages of National Minorities (AULNM). It was adopted in 1999, but has been amended several times since then; the last amendment act being passed in June 2011 (see below Chapter 1.3). The main role of the AULNM is to give effect to Article 34 § 2-b of the Constitution, i.e. “to lay down [...] the rules governing the use of Minority Languages [...] in official communications” (Article 1 § 1 of the AULNM). In order to achieve it, the AULNM contains several important provisions. First of all, Article 1 § 1 confirms that every “citizen of the Slovak Republic who is a person belonging to a national minority has the right to use, apart from the State language, their national minority language”. In addition, Article 1 § 2 includes an exhaustive list of languages being officially recognized as minority languages and determines the conditions under which they can be used in official communications. Pursuant to Article 1 § 2 of the AULNM there are nine minority languages spoken in Slovakia: the Bulgarian language, the Czech language, the Croatian language, the Hungarian language, the Polish language, the Roma language, the Ruthenian language, and the Ukrainian language. As to the conditions of their use, Article 2 § 1 of the AULNM specifies that only a citizen belonging to a national minority and residing in a municipality where “according to the last two censuses the minority represents at least 15% of all inhabitants” may invoke them in official communications and only in relation to the authorities having their office in such a municipality.

Concerning the implementation of Article 34 § 2-a of the Constitution, the right to education in a minority language, Article 5 § 2 of the AULNM states that the Act does not apply to “the pre-school education as well as the system of primary and secondary schools”. As a result, the use of national minority languages in education has been regulated by a specific legal act, the School Act of 2008, to which Article 5 § 2 of the AULNM explicitly refers. Similarly, the AULNM does not resolve the question of relation between the nine minority languages and the state (Slovak) language. This became a subject of regulation in the Act on the State Language (ASL), declaring without any ambiguity that “[t]he state language shall have priority over other languages used in the territory of the Slovak Republic” (Article 1 § 2). The ASL thus explicitly confirms what Article 6 of the Constitution only implicitly assumes: the privileged position of the Slovak language in relation to other (minority) languages.

Article 1 § 2 of the ASL and the privileged position it guarantees to the Slovak language can be regarded as one of the most controversial provisions within the whole Act. It was also one of the provisions attacked in the Constitutional Court for their alleged discriminating and, therefore, unconstitutional character. Immediately after the ASL was adopted a group of deputies complained that Article 1 § 2 “creates a situation, when other languages inevitably get into the position of second-class languages and people who speak another language than the Slovak become inferior and discriminated second-class citizens”. The claim was rejected. In its judgment the Constitutional Court argued that the privileged position of the Slovak language must be considered as legitimate, having regard to its special purpose of a “general vehicle of communication for all [Slovak] citizens” (see the Preamble of the ASL). As a result, the statutory law must ensure that if “this purpose can’t be achieved by other language than Slovak, the latter has priority over ‘other languages used in the territory of the Slovak Republic’”.

1.3. An overview of current debates

The ASL as well as the controversy about its constitutionality clearly shows that the relation between the minority languages and the state language is mostly considered as a matter of concurrence and not of complementarity. What the former gain, the latter inevitably loses. Activities aiming to strengthen the status of minority languages in Slovakia generally raise concerns of the majority that the role of their mother tongue would decrease. This is particularly true when the Slovak language is confronted with Hungarian, i.e. with language spoken by the most important national minority living in Slovakia. As to the other minority languages, their role and therefore the concerns they raise within the majority population are much less significant. This is partly because the number of persons belonging to a given minority is not so high, partly because unlike the Hungarian minority other national minorities are much less politically organized.

The tension related to the coexistence of the Hungarian and the Slovak language in Slovakia can be demonstrated on the recent parliamentary debates accompanying the process of amendment of the AULNM. As J. Laďáková and A. Chudžíková pointed out, these debates leave no doubt that the “principal motive affecting the legislative process was not metting out justice but the feeling of threat. In other words, the issue at stake was not how to draft legislation that would grant minorities best possible chances to preserve their mother tongue and ideally put them on equal footing while protecting them from apparent language assimilation that is further catalyzed by State Language Act. The legislators’ effort focused on how to prevent Magyarization of ethnic Slovaks through this law.”

The traditional opponents to any improvement of the status of minority languages were the deputies of the Slovak National Party. According to their leader, Mr. Ján Slota, “[t]his Magyarization amendment goes clearly at the expense of the state language because once it is passed no one will ever need to study or use Slovak as the state language”. But similar statements directed against the use of the Hungarian language, especially in official communications, were also made by several deputies of the SMER party (social-democrats). Mr. Marek Maďarič, who is currently the Minister of Culture, for example declared: “This bill will discriminate against Slovaks without sufficient command of a minority language [...]. It is logical that when hiring employees, authorities in Southern Slovakia will prefer those who speak Hungarian while others will be discriminated against because they don’t speak Hungarian. Or, if they don’t want to lose their jobs, they will have to learn Hungarian.”

The content of the quoted statements clearly illustrate the effort of several deputies to present the proposed amendments of the AULNM as profiling only the Hungarian minority and as representing threat to all persons belonging to the Slovak nation. Moreover, such attempts to juxtapose both languages “as if one automatically exclude[s] another” seem to be omnipresent in all debates about the minority language issues, irrespective whether they are held in Parliament or elsewhere. Mrs. Jana Dubovcová, a deputy of the Slovak Democratic and Christian Union, cogently described the general situation by the following terms: “From previous addresses presented by politicians – not only regarding this bill but in previous debates as well – I noticed that Slovak politicians most often present this issue in such a way as if we detracted from the majority nation’s rights by granting certain rights to minorities. They often create an impression that granting a certain right to the minority or
extending it would threaten stability and security of our country. Some of them even view it so dangerous that they mention, say, autonomy in this context. They try to present the rights granted to national minorities as inversely proportional to those of the majority nation, as if the two inevitably had to collide. I hereby reject this approach. And I believe it is erroneous; that this attitude is wrong.”

2. LANGUAGE RIGHTS IN PRIMARY AND SECONDARY EDUCATION

2.1. General legal principles

The right to education and the compulsory character of the school attendance are in a general manner guaranteed by the Constitution (Article 42 § 1). The Constitution also provides that the education at primary and secondary schools is free (Article 42 § 2). As to the other requirements related to the application of the right to education, they shall be determined by the statutory law.

The most important statutory act dealing with the legal issues of primary and secondary education, including the implementation of the language rights, is the School Act of 2008 (SA). Pursuant to Article 12 § 2 of the SA the teaching language at schools is the state language, if it is not provided otherwise. It follows that the SA does not challenge the privileged position of the Slovak language within Slovakia, already established by the Constitution and the ASL. However, as the wording of Article 12 § 2 suggests, it contains several exceptions, when the educational process can be conducted also in a different language. The close reading of the SA allows us to distinguish three situations when it can be done so: if the education is provided in a minority language (Article 12 §§ 3 a 5 of SA; see also Article 34 § 2-b of the Constitution), if it is provided in bilingual schools or classes (Article 12 § 6 of the SA) or if it is provided in private educational facilities for alien minors granted with permanent residence in Slovakia (Article 146 § 7 of the SA). Article 12 § 9 of the SA specifies that “language in which a subject is taught, is [generally] also the language in which the examination is performed”.

The application of the right to use a minority language in education has not raised any significant legal problems or controversy to this day. Unlike the right of national minorities to use their language in official communications (Article 34 § 2-b of the Constitution), there is no judgment of the Constitutional Court or other higher Court directly related to the issue. During the period of its existence the Constitutional Court of the Slovak Republic has dealt with only one application related to the language rights in education. This concerned Article 3 § 1 of the already abrogated School Act of 1984 which recognized the right to education in a minority language only to persons belonging to the Czech, Hungarian, German, Polish, or Ruthenian national minority. The applicant claimed that the absence of the Roma minority on this list was in contradiction with the Roma’s right to education in minority language guaranteed by Article 34 § 2-a of the Constitution. Unfortunately, the complaint was rejected for procedural reasons, without being considered in merit. Moreover, it should be pointed out that according to the School Act of 2008 actually in force the use of Roma language in education is allowed and benefits the same guarantees as other minority languages mentioned in Article 1 § 2 of the AULNM.

One of the reasons, why the case-law on application of language rights in education is not sufficiently developed in Slovakia, probably lies in the fact that the language rights matters are not in the center of attention of different NGOs involved in the minorities’ rights litigation. Their effort is mainly focused on the problem of segregation (of Roma children) in primary schools. As a result, there is also no judgment or decision of the European Court of Human Rights on this issue and no application, where the language rights are invoked, is actually pending and has been communicated to the government. The same is valid with respect to the UN Human Rights Committee.

2.2. Education of Persons Belonging to a National Minority

It was already mentioned that the teaching language at Slovak schools is primarily Slovak (Article 12 § 2 of the SA). Only citizens belonging to a national minority may invoke the right to education in a different language (Article 12 § 3 of the SA together with Article 34 § 2-a of the Constitution). Pursuant to Article 1 § 2 of the AULNM there are nine minority languages officially recognized in Slovakia. These are the Bulgarian language, the Czech language, the Croatian language, the Hungarian language, the Polish language, the Roma language, the Ruthenian language, and the Ukrainian language.

It was also pointed out that the Slovak Republic is the state-party to the main international treaties protecting national minorities and their language rights. In particular, Slovakia is bound by the Framework Convention for the Protection of National Minorities (FCNM) and the European Charter for Regional or Minority Languages (ECRML), i.e. by the key legal instruments adopted within the Council of Europe and dealing with the minority rights issues.

With regard to Article 8 of the ECRML (Education) and to the nature of commitments that the Slovak Republic is bound to observe, we can divide the minority languages into three groups. The first group is only comprised of the Hungarian language. Being the mother tongue of more than 500,000 people living in Slovakia, which is almost 10% of the Slovak population, it is by far the most spoken minority language in the country. It is also the only language in relation to which the Slovak Republic undertook the most rigorous commitment to make available the whole primary and secondary education in a minority language (Article 8 §§ 1-b-i and 1-c-i of the ECRML) and, moreover, a rare example of when the undertaken commitments are fulfilled in their entirety. According to the statistics, there were 118 primary schools and 29 secondary schools run by the state in the school year 2011-2012 with Hungarian as a teaching language. In other words, there were almost 30,000 pupils of public primary schools and 12,000 pupils of public secondary schools being taught exclusively in Hungarian. Furthermore, minority schools providing instruction in the Hungarian language are currently the only ones for which the textbooks in a minority language are available for the whole curriculum.

The Ruthenian and the Ukrainian languages belong to the second group of the minority languages. In their case the commitment of the Slovak Republic consists of making available
a substantial part" of primary and secondary education in the relevant language (Article 8 §§
1-b-ii and 1-c-ii of the ECRML). As the Committee of Experts pointed out, such an
undertaking "requires the provision of a substantial part of primary education in [the minority
language], meaning that in addition to teaching of the language other subjects must also be
taught in [this language]." However, in the school year 2011-2012 there were only two
classes in Slovakia with Ruthenian as a teaching language. As a result only 27 pupils
pursued their primary education in the Ruthenian language, although the Ruthenians
represent the third largest national minority in Slovakia consisting of more than 30,000
persons. Moreover, no secondary school providing "a substantial part" of instruction in the
Ruthenian language exists in Slovakia. As to the Ukrainian language, there are six primary
schools (28 classes) and one secondary school allowing the pupils belonging to the
Ukrainian national minority to complete their education, at least partly, in their mother tongue.
However, several representatives of the Ukrainian minority complained that the number of
subjects taught in their language has decreased in some schools. No textbooks are
available either in Ruthenian or in Ukrainian, except the textbooks for the teaching the
languages themselves.

The Bulgarian, Czech, Croatian, German, Polish, and Roma languages create the third
group of the minority languages. In their case the commitment undertaken by the Slovak
Republic is limited to the duty to provide for the teaching of a relevant minority language as
an integral part of the curriculum in primary and secondary schools. However, there is only
one public school facility in Slovakia satisfying the requirement in relation to German and no
public school satisfying the requirement in relation to any other of these languages. Such a
situation is particularly alarming in relation to the Roma language which more than 120,000
persons living in Slovakia consider as being their mother tongue. Although the government
officially declares that primary and secondary schools "have conditions" for the introduction
of the Roma language and the Roma literature into their educational program, only two
primary and secondary schools in the whole Slovakia, both private, offer the possibility to
study the Roma language as an optional subject.

2.3. Education of Alien Minors

All basic rules related to the legal regime of primary and secondary education of aliens in
Slovakia are contained in Article 146 of the SA. The same legal regime thus commonly
applies to various categories of non-nationals, irrespective whether they are citizens of other
EU member-state, third country nationals, asylum seekers, recognized refugees, aliens with
granted residence permit, or even the stateless persons (see Article 146 § 1 of the SA). The
only category of aliens not explicitly mentioned in Article 146, and therefore probably falling
outside the scope of this provision, is the category of persons without an authorization to
stay in the country (irregular migrants). Consequently, even though they are not completely
excluded from access to the school facilities, the practical enforcement of their right to
education is very difficult.

In 2005 the Ministry of Education adopted a strategic document called National Plan for
Human Rights Education for 2005-2014. It was created as a national response to the World
Programme for Human Rights Education announced by the UN General Assembly. Although
the primal aim of the National Plan was not to deal specifically with education of
aliens and their language rights, it contains two important directives related to this problem.
On one hand the document emphasizes the role of Slovak as a teaching language and calls
to "eliminate the [eventual] language barriers". On the other hand it acknowledges the
importance of mother tongues for their speakers and suggests to "implement the activities
aiming at promoting the mother tongue of children and their original culture". Such an
approach also corresponds to the general Conception of Integration of Aliens in the Slovak
Republic, adopted in 2009 by the government. According to this Conception the integration
process should be based on "mutual adaptation", which means that aliens “contribute to the
formation of a common culture and the majority society respects them and supports their
diversity”.

However, the level of implementation of the adopted strategies into the practice is very low.
As the text of Article 146 of the SA suggests and the subsequent practice confirms, the
educational process of alien minors in Slovakia is based rather on the assimilation principle
than on the principle of integration. Consequently, the instruction provided in the Slovak
language is still considered as a rule, while the possibilities of education “aiming at
promoting the mother tongue” of alien minors remain very limited.

2.3.1. Instruction of alien minors provided in the Slovak language

According to Article 146 § 2 of the SA the instruction of alien minors is provided “under the
same conditions” as to the citizens of the Slovak Republic. Consequently, Article 12 § 2 of
the SA, declaring Slovak as a teaching language, applies also to them. In order to enable the
alien minors, who don’t speak the Slovak language, to fully participate in the educational
process, Article 146 § 3 of the SA assumes that the courses of the Slovak language “shall be
organized”. However, as the recent report about the education of alien minors in Slovakia
pointed out, the system established by Article 146 § 3 is not working in practice. Only two
courses of the Slovak language were organized in the country between the years 2008
(adopt of the SA) and 2010. Moreover, according to Article 2-j of the SA the alien minors are
not considered as “children with special educational needs” within the meaning of this
provision. As a result the schools do not have any possibility to obtain state subventions
allowing them to adopt the necessary measures which would help the children cross the
language barrier (e.g. to provide them with a teaching assistant).

The negative consequences caused by the principle of formal equality embodied in Article
146 § 2 of the SA have been further increased by the Constitutional Court. In the case
concerning the Slovak Antidiscrimination Act the government requested the Court to declare
that a statutory provision allowing the adoption of “specific compensatory measures to
prevent disadvantages linked to racial or ethnic origin” is not conform to the constitutional
prohibition of discrimination (Article 12 of the Constitution). By a majority of seven votes to
four the Constitutional Court upheld the petition. According to the Court, while the possibility
to adopt specific compensatory measures is not completely excluded, “the constitutional
order of the Slovak Republic recognizes as a generally accepted approach to ensuring equal
rights only such a deviation from a universal understanding of equity (non-discrimination)
that has an explicit constitutional basis responding to natural inequalities among people which, if they are not compensated through legal measures, could lead to unjustified severity against certain groups of people. Therefore the Court concluded that the contested provision of the Antidiscrimination Act must be regarded as in breach of the Constitution which “prohibits positive as well as negative discrimination.”

Four judges expressed dissenting opinions. They criticized namely the way how the majority interpreted the notion of discrimination, without correctly distinguishing between the various key terms, in particular between direct and indirect discrimination, between material and formal equality and between specific compensatory measures and positive discrimination. Judge Mezsáros rightly pointed out in this context that “the specific compensatory measures […] can’t be considered without any doubt as the positive discrimination, i.e. the advantaging within the meaning of the Constitution, and for this reason they can’t be in breach with [its] Article 12 § 2.” Nevertheless, despite the controversies that the judgment provoked, it has not been overturned until now. By prohibiting any compensatory measures, except those explicitly stated in Article 38 of the Constitution, the judgment actually represents a serious obstacle to an effective fight against any indirect discrimination, including the discrimination in the field of education.

2.3.2. Instruction of alien minors provided in other languages

The principle of formal equality governing the education of alien minors does not imply that the education in the Slovak language is the only option available to them. Firstly, the prohibition of discrimination under the EU legislation requires the language rights guaranteed to national minorities living in one Member State to be extended also to citizens of other Member State when exercising their freedom of movement. These citizens are, according to the Court of Justice of the European Union, “in principle entitled […] to treatment no less favourable than that accorded to nationals of the host State so far as concerns the use of languages which are spoken there.” The right to education in a minority language thus belongs to the EU citizens residing in Slovakia to the same extent as to the Slovak nationals. And secondly, Article 12 §§ 6 and 7 of the SA assume that education may also be provided in a foreign language (i.e. other language than minority one), under the condition that the Slovak language and literature make an integral part of the curriculum. This so called bilingual education is opened to citizens as well as to alien minors.

3. LANGUAGE RIGHTS IN HIGHER EDUCATION

The system of higher education in Slovakia is regulated by a specific statutory act, the Higher Education Act (HEA). Consequently, all issues related to higher education fall outside the scope of the School Act (SA) which applies only to instruction provided at primary and secondary schools. However, the legal regime of language rights remains very similar, without regard to the various levels of education it concerns.

As to the citizens of the Slovak Republic who belong to a national minority, Article 34 § 2-b of the Constitution (right to education in a minority language) applies also to them. Similarly, the international obligations resulting namely from the European Charter of Regional or Minority Languages (ECRML) concern the education at universities too. As a result, Slovakia is bound to “make available university and other higher education in regional or minority languages” in relation to the Hungarian language (Article 8 § 1-e-i of the ECRML) and to “provide facilities for the study of these languages as university and higher education subjects” in relation to other minority languages recognized by the AULNM (Article 8 § 1-e-ii of the ECRML). Both undertaken commitments seem to be currently fulfilled. A possibility to study the minority languages exists with respect to all of them, except Czech “because of its extraordinary similarity to Slovak.” A higher education in the Hungarian language is also provided. Concerning the higher education provided for foreign nationals, Article 55 § 2 of the HEA emphasizes that the “rights provided in [the HEA] shall be guaranteed equally to all applicants and students in accordance with the principle of equal treatment in education”. Every person, irrespective whether they are citizens of the Slovak Republic, citizens of another Member State or third country nationals, has thus the right to pursue a chosen study programme if they satisfy the entry requirements (Article 55 § 1 of the HEA). Regarding the language aspects of education, it follows that an alien intending to study a programme, which is provided in the Slovak language, must complete the education in Slovak without any compensatory measures. On the other hand, if a study programme is taught in a foreign language, an alien is entitled to pursue it under the same conditions as the Slovak citizen. In particular, the calculation of the eventual tuition fees cannot be determined on the basis of the language in which the higher education is provided.

4. CONCLUSION

We can thus identify two important rules governing the legal regime of the language rights in education in Slovakia. The first is embodied in Article 1 § 2 of the ASL and determines the relation between the nine minority languages officially recognized by the AULNM and the state language. It provides that the state language shall have priority over any other languages used in the territory of the Slovak Republic. The second is based on the principle
of formal equality and concerns in particular the alien minors attending primary and secondary schools. It requires the educational facilities to provide instruction “under the same conditions” for aliens as for the Slovak citizens. Interpreted together with the constitutional prohibition of discrimination and in the light of the Slovak Constitutional Court’s case-law, this requirement currently represents a serious obstacle to adoption of any compensatory measures that could eventually help the alien minors cross the language barrier.

5. BIBLIOGRAPHY

Books, chapters, articles
Bargerová, Z., Fajnorová, K. and Chudžíková, A. (2011), Stav integrácie cudzincov s doplnkovou ochranou do spoločnosti (The State of Integration of Aliens Granted with the Subsidiary Protection into the Society), Stimul, Bratislava;
Dráľ, P. et al. (2011), Vzdelávanie detí cudzincov na Slovensku (Education of Alien Minors in Slovakia), CVEK-NMŠ, Bratislava;

Reports, newspaper articles, other documents
Institute for Information and Forecasting in Education (2011), Statistics Yearbook 2011-2012 [on line];
Ministry of Education (2005), National Plan for Human Rights Education for 2005-2014, Bratislava [on line];
Ministry of Labour, Social Affaires and Family of the Slovak Republic (2009), Concept of Foreigner Integration in the Slovak Republic, Bratislava [on line];
SME (newspapers), ‘Fašizoidný návrh zákona o štátnom jazyku (A fascist proposal of the Act on the State Language)’, published on 7 July 1995 [on line];
SME (newspaper), ‘Za programy v cudzom jazyku si zrejme študenti zaplatia (Students will probably pay for programs in a foreign language)’; published on 15 July 2012 [on line];
Statistical Office of the Slovak Republic (2011), Population in the Slovak Republic and in the Slovak Regions, Selected Results of the 2011 Population and Housing Census [on line];

Endnotes
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2. See in particular the Preamble of the Slovak Constitution containing, inter alia, the following declaration: “We, the Slovak nation [...] recognizing the natural right of nations to self-determination, together with members of national minorities and ethnic groups living in the territory [...] adopt through our representatives this Constitution.”
4. “Quite often the fact that a country becomes independent is a reason to introduce a language provision in the constitution. This provision is then seen as a guarantee of national identity and unity; maintenance of the national language is regarded as a constitutional value.” See European Commission for Democracy through Law (Venice Commission) (2010), Opinion on the Act on the State Language of the Slovak Republic, opinion no. 555/2009, adopted 15-16 October 2010, Council of Europe, Venice, §36.
5. Venice Commission (2010), op. cit., §34. One member-state, the United Kingdom, has no written Constitution.
8. The list of minority languages contained in the AULNM nevertheless applies, at least de facto, also to education. See below Chapter 2.2.
11. The main point of the debates and perhaps the most important point of the amendment act as such concerned the determination of proportion that the persons belonging to a national minority and residing in a certain municipality must attain in order to have the right to use their language in official communications. It was already mentioned that the current wording of the ASL fixes this proportion at 15% (see Art. 2 §1 of the ASL); it was 20% before the amendments and the governmental proposal was to lower it to 10%.11
15. CCSR, decision of 13 February 2002, no. III. ÚS 18/02.
Slovak Regions, Selected Results of the 2011 Population and Housing Census, p. 83, available in
republike-a-krajoch-SR.pdf.
18. Institute for Information and Forecasting in Education (2011), Statistics Yearbook 2011-2012,
19. Even though some concerns were raised about their out-dated character. Committee of Experts
(2009), op. cit., § 179.
20. Ibid., § 435.
23. Institute for Information and Forecasting in Education (2011), op. cit.
25. Institute for Information and Forecasting in Education (2011), op. cit. As to the private schools
there is only one primary and no secondary school providing instruction in Bulgarian and several
primary and/or secondary schools providing instruction in German.
27. The Slovak Republic (2012), European Charter for Regional or Minority Languages, third
periodical report, Bratislava, pp. 117-118.
29. Dráť, P. et al. (2011), Vzdelávanie detí cudzincov na Slovensku (Education of Alien Minors in
Slovakia), CVEK-NMŠ, Bratislava, p. 27.
30. See GA resolution, World Programme for Human Rights Education, A/RES/59/113, adopted on 10
December 2004.
p. 10, available in Slovak at http://www2.ohchr.org/english/issues/education/training/docs/actions-
plans/slovakia.pdf.
32. Ministry of Labour, Social Affairs and Family of the Slovak Republic (2009), Concept of Foreigner
UDRW/images/items/docl_12836_716907456.pdf.
34. The situation is slightly different in relation to asylum seekers and persons with granted asylum or
subsidiary protection. According to the Asylum Act both categories of aliens have the right, or even
the duty in some cases (e.g. in the case of children for which the school attendance is compulsory)
to attend the free courses of the Slovak language. The courses are generally provided by different
NGOs and financed by the Ministry of Interior. It was nevertheless pointed out that such an
instruction of the Slovak language often misses conception and does not consider the personal
situation of the concerned aliens and their linguistic needs. See Bargerová, Z., Fajnorová, K. and
Chudžíková, A. (2011), Stav integrácie cudzincov s doplnkovou ochranou do spoločnosti, Stimul,
Bratislava, p. 41.
35. CCSR, judgment of 6 October 2005, no. PL. ÚS 8/04. The English summary of the judgment is
available at http://www.non-discrimination.net/content/media/LR-3-SK-1.pdf.
36. Ibid., § 24.
37. Ibid.
38. Ibid., § 25.
39. Ibid., § 24.
40. Dissenting opinion of judge Mészáros, §5.
Burgorgue-Larsen L., Levade A. and Picod F. (eds), Traité établissant une Constitution pour
l’Europe, Commentaire article par article, Bruylant, Bruxelles, p. 316.
42. CJEU, Bickel and Franz, judgment of 24 November 1998, no. C-274/96, § 16.
43. Theoretically the SA assumes also a third possibility of education in a foreign or minority language.
Pursuant to Art. 146 § 7 “other schools beside the public schools may be established and paid
education in other languages than the state language may be provided for children of aliens who
have been granted residence permit in the Slovak Republic”. However, no such a school has been
Policy in Slovakia, 2, p. 11.
44. The Slovak Republic (2012), op. cit., p. 89.
45. The J. Selye University, with Hungarian as a teaching language, was established in 2004 in
Komárno and consists actually of three faculties – Faculty of Education, of Economy, and of
Theology.
46. However, the Ministry of Education recently announced the intention to change the actual legal
situation and to introduce special tuition fees for study programmes taught in a foreign language
under the condition that the same programme is also available in Slovak. See SME (newspapers),
‘ Za programy v cudzom jazyku si zrejme studenti zaplatia (Students will probably pay for programs
in a foreign language)’, published on 15 July 2012. accessible at http://www.sme.sk/c/6457930/za-
programy-v-cudzom-jazyku-si-zrejme-studenti-zaplatia.html.
Language Rights in Education in Slovenia

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Language Rights in Education in Slovenia

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1. THE IMPORTANCE OF LANGUAGE IN NATION-BUILDING IN SLOVENIA

The Slovenian language⁴ not only played a crucial role in the historical process of Slovenian nation-building but it is still considered one of the foundations of national identity. Many Slovenians are firmly convinced that ‘it was their distinct language that helped them become a nation and preserve their distinct national identity. Consequently, any threat to their language was, and still is, perceived as a threat to the nation itself.’ (Roter, 2003, p. 236)⁵

Before the establishment of the Slovenian nation-state in 1991, Slovenian nation-building was based mostly upon the Slovenian language, which enabled both the cultural and national homogenization of Slovenians and their ethnic differentiation from neighbouring ethnic groups and nations. At that time, the nation-building took the form of attempting to promote the Slovenian language and institutions in a limited territory within the states in which Slovenians lived. During the Springtime of Nations (1848), language became a fundamental issue of politics in the Habsburg Empire because it was linked to the issue of national emancipation. Slovenians drafted their first political programme which had the goal of a united Slovenia (at that time the Slovenian nation was politically divided in separate regions). In order to achieve this, ‘the programme called for Slovenian to become the language of education and public administration. The language thus became the reference point for the political mobilization of Slovenians, as well as the source of such a mobilization, for it was out of the perceived or actual threats from the nationalism of neighbouring nations to Slovenian national identity (based upon the Slovenian language) that Slovenians entered the process of state-formation’. (Roter, 2003, p. 216)⁶

After the collapse of the Austro-Hungarian Empire at the end of the First World War, Slovenians joined Yugoslavia⁷ because they believed that they could, in this way, better protect their distinct national identity and hence their language and culture. However, although the Slovenian language began to be used at all levels of public communication, it was soon (under a centralist doctrine espousing a single Yugoslav nation) replaced in the military and other state institutions by Serbo-Croatian.

After the Second World War, Slovenian again gained the status of an official language in Slovenia, that is, in one of the republics of the second (federal) Yugoslavia, and it was also one of the state languages of the Yugoslav federation. ‘In practice, however, Serbo-Croatian retained its dominant position and not much effort was made to overcome its disproportional use in federal institutions. Slovenia’s increased dissatisfaction with the use of languages in the Yugoslav federation was one of the important indicators, as well as causes, of Slovenian dissatisfaction with the Federation itself. The fate of the Slovenian language was described (and popularly perceived) as “a metaphor for the fate of the Slovenian nation”, and the only solution for ensuring the existence of the nation and its language was identified in the form of an independent Slovenian nation equal to other European nations’ (Roter, 2003, p. 222).

This widespread conviction that the preservation of the Slovenian language and national identity within the Yugoslav federation was threatened was one of the important arguments in the call for the 1990 plebiscite in which the population opted for the political independence of Slovenia by a conclusive majority.

2. THE FORMAL RECOGNITION OF THE VARIOUS LANGUAGES IN SLOVENIA AND THEIR STATUS

The Republic of Slovenia has adopted the language spoken by the majority.⁸ Therefore Slovenian is the official language, that is, it is the language of government, schools, bureaucracy, and so on, just as many other countries have done (Kymlicka, 2001). Slovenia has also expressed a particular interest towards the Italian and Hungarian national minorities and their languages, because these two minorities have been constitutionally recognized (as ‘autochthonous’ national minorities). Special language and other minority rights are granted to the Roma minority as well, by the Roma Community Act (2007) that regulates the ‘status and special rights of the Roma community’, as required by the Constitution of the Republic of Slovenia (adopted in 1991).⁹ Other languages spoken in Slovenia such as: Croatian, Serbian, Bosnian, Macedonian, Albanian and German do not have the legal status of minority languages. The relevant international instruments ratified by Slovenia¹⁰ are also interpreted as not protecting, at least not directly, such minorities and their languages.¹¹ However, Article 61 of the Constitution of the Republic of Slovenia, acknowledges ‘to everyone the right to freely express his adherence to his nation or national community, to cultivate and to express his culture and to use his language and script’ (2003, p. 56).

This very broad constitutional right (especially in international comparisons) is perhaps a consequence (or a ‘relic’) of a similar right found in the constitution of the former Yugoslavia, guaranteeing to all ‘constitutive nations’ of Yugoslavia their linguistic rights in the whole federal state. But now, in our Constitution, which this article refers to this right is guaranteed to all persons, regardless of their nationality or ethnicity. Unfortunately, it is not taken seriously by the authorities, not even by legislators, nor by legal scholars – especially in relation to the ‘non-recognized new minorities’ (Serbs, Croats, Bosniaks, etc.). They are trying to minimise its meaning in two main ways: firstly by trying to reduce it to a supposed explicitly ‘individual’ right (in comparison to ‘collective’ minority rights – although the right to speak with other people could hardly be reduced to such an extent), and secondly, by declaring it (without any justified reason) as a right limited to the private sphere of life and excluded from the public sphere of life. Just the opposite is true, this right is conceived (and written in the Constitution) as a universal right without any limitation.

This attempt to limit the right, stemming from Article 61, to the private sphere of life is based on the totally wrong understanding of Article 62 which (supposedly) regulates the use of language in the public sphere. In reality, the relation between these two articles is the relation ‘rule – exception’ in Article 61 there is a general rule (the unlimited right to freely use ones own language in all spheres of life) and in Article 62 there is an exception prescribed only for use of the language ‘in the exercise of his rights and duties and in procedures before
state and other bodies performing a public function' (2003, p. 56), i.e. not in all the public sphere of life, but only before public authorities. Only there, is the use of one’s own language is limited – it is allowed only ‘in a manner provided by law’ (2003, p. 56) (i.e. with obligatory translation into the Slovenian language – mostly at his own expense). In all other fields of life, the use of this right should be completely free and unlimited. Naturally, life itself (social relations) imposes its own factual and not legal limitations, for example; you may have the right to speak Chinese on the street or at the market, but if no one understands your words, you will cease to use this right. But, when the use of the Croatian or Serbian language in public life is in question (on the street, at the market, on TV, etc.), this is generally well or sufficiently well understood by Slovenians, then we are confronted with the problem of denial of this constitutional right by people who are not aware that such a right exists. In addition people using these languages, which are similar to the Slovenian language, are sometimes verbally attacked; ‘This is Slovenia – speak Slovenian or go home!’ Here, the absence of political actions, explanations in the media, etc. in favour of this constitutional right can be heavily criticised.

Article 11 of the Constitution of the Republic of Slovenia (2003, p. 38), provides that ‘the official language in Slovenia is Slovenian. In those municipalities where Italian or Hungarian national communities reside, Italian or Hungarian shall also be official languages.’ The protection of minorities’ language rights is therefore largely tied to the ethnically mixed area, that is, to the territory of the settlements in the individual municipality where members of the native Italian and Hungarian ethnic communities live. Within the framework of the special rights of the autochthonous national communities, Article 64 provides that in accordance with the law, the Italian and Hungarian national communities and their members ‘have the right to education and schooling in their own languages, as well as the right to plan and develop such education and schooling’ and that ‘the geographic areas in which bilingual education is compulsory are determined by statute’ (2003, p. 57).

The relation between Articles 11 (2003, p. 38) and 61 (2003, p. 56) of the Constitution is also almost completely ignored. Not only the general public, but also politicians and even jurists misunderstand Article 11 as declaring Slovenian not only as the official language, obligatory for public authorities, but also as the only language allowed to be spoken at all in public. This great misunderstanding was expressed also in a special law in 2004 - the Public Use of the Slovene Language Act.

3. AN OVERVIEW OF CURRENT DEBATES

One of the main topics of the current debates is still related to the integration of Slovenia into the European Union (EU). On the one side there are those who think that the Slovenian language, which is spoken by a relatively small number of people, is now threatened more than it was before entry into the EU. Some of them even believe that the Slovenian language will disappear in the EU. On the other side are those who are convinced that the fate of the Slovenian language does not depend so much on the EU, which guarantees a high level of protection for autochthonous languages, but mainly on Slovenians themselves.

The second topic of the debates is the Public Use of the Slovene Language Act, which was adopted by the Slovenian Parliament in 2004. The main aim of this law is to protect the Slovenian language from the influence of foreign languages. The law states that Slovenian shall be used orally and in writing in public life. The two constitutionally recognized minority languages (Italian and Hungarian) may also be used in bilingual city councils. It stipulates that the names of all state bodies, local administrations, public organizations, public companies, and political parties shall be in Slovenian. Public insignia as well as the names of private companies, premises and shops should be in the Slovenian language, too. All proceedings involving public and private companies should be carried out in the Slovenian language. Slovenian is also prescribed as the language of public notices, conferences, press releases, announcements, and product labelling and instructions. Contracts with Slovenian companies must be written only in Slovenian and only this version may be considered as an original. In addition, all companies and individuals under private law must communicate with their customers in Slovenian and only people with appropriate knowledge of Slovenian can be employed in jobs that require communication skills. In Slovenia, this law has been criticized by representatives of the Italian and Hungarian minority because, in their opinion, it does not promote diversity. It has been criticized also outside Slovenia. Members of the FPÖ (extreme right-wing Austrian party), blame it for restraining free competition by means of language discrimination. One of the authors of this report (M. Krivic) has also written several articles trying to draw attention to the obvious unconstitutionality of several provisions of this law, but with no response so far. He raised this question also at the Round Table organized by the ECRI commission of the Council of Europe in Ljubljana on 14 October 2003, which focused on the problems of the ‘unrecognized new minorities in Slovenia’. This question has not yet been raised before the Constitutional Court by the unrecognized new minorities in Slovenia (perhaps also fearing the possible worsening of relations with the government). One of the motives to write the abovementioned articles were the publicly expressed doubts (in newspapers) about the use of the bilingual name of the ‘Islamic Association of Slovenia’ (in the Slovenian and Bosnian languages) supposedly not being in conformity with the Constitution (as if Bosniaks in Slovenia should speak and write only Slovenian – and that they should not be allowed to name their religious or cultural organisation in their own language!).

4. LANGUAGE RIGHTS IN COMPULSORY EDUCATION

The Constitution of the Republic of Slovenia states that primary education is compulsory (Article 57, 2003, p. 55). In Article 6 of the Elementary School Act (1996) it is stated that the language of instruction in primary schools is Slovenian, and that the language of instruction in primary schools providing instruction in the languages of ethnic minorities is Italian and, in bilingual primary schools, Slovenian and Hungarian. In primary schools in areas defined as ethnically mixed areas populated by Slovenes and members of the Italian minority, pupils in schools which provide instruction in Slovenian must also learn Italian, and vice versa, pupils in schools providing instruction in Italian must also learn Slovenian. According to the 2004 report of the Committee of Experts of the Council of Europe, the Slovenian legal framework offers ‘a high standard of protection’ for Italian and Hungarian (2004, p. 8). Furthermore, Slovenia applied the more specific and legally binding Part III of the European Charter on
Regional and Minority Languages\textsuperscript{20} to the Italian and Hungarian minorities. The second (2007, p. 41) and the third report (2010, p. 37) exposed that Slovenia has maintained and developed those (while there are still gaps in some certain areas) and that it is a ‘must to continue commitment to the protection and the promotion of the Hungarian and Italian languages, as well as the efforts to protect Romani.\textsuperscript{21}

Bilingual primary schools in those municipalities inhabited by the Hungarian national minority were the subject of a constitutional complaint submitted by a few parents. ‘The petitioners challenged the statutory provision … according to which, in the areas in which members of the Slovenian nation live together with members of the Hungarian national community, bilingual kindergartens and schools are established. The petitioners opined that by the thus determined manner of education, Slovenian children were put in an unequal position compared to children living in other parts of Slovenia where for members of the Slovenian nation the teaching language is Slovenian. In particular, the challenged provision allegedly determined, contrary to Article 14 of the Constitution, different types of education for the areas in which members of the Hungarian national community live than for the areas populated by the Italian national community. And as such, also a different extent of knowledge for children to learn was allegedly required, in that Slovenian children living in the bilingual area were allegedly obliged to have a command of the Hungarian language to the same extent as the Slovenian language. According to the petitioners, bilingual education required of children more effort spent on studying, thus causing them to learn much less than children in single-language schools:’ (U-I-94/96 - Decision of the Constitutional Court, 1998).

The Constitutional Court stated that bilingual schooling, as the special right of an indigenous national community to equality before the law, does not by itself encroach on the right of the members of the majority population. The Constitution does not prevent the legislature from determining within the limits of its discretion, criteria according to which it may differentiate between certain similar states of facts and apply them with different legal consequences. Such discretion, by which the legislature pursues constitutionally permissible goals, is a crucial component of legislative power.

‘Besides the thus determined limits of the legislature’s discretion, consideration must be given to the fact that the establishment of bilingual schools is imposed on the State by the Constitution. The selection of the areas in which such schools will be established, and the areas in which the special rights of an indigenous minority concerning the field of education will be guaranteed by establishing minority schools, is left to the legislature. Historical circumstances have dictated the organization of bilingual schools in the areas where the Hungarian national community lives, and not also in the areas populated by the Italian national community. The preservation of the organization or network of bilingual schools also entails respecting the obligations that Slovenia contracted by ratified international agreements, and is not inconsistent with the Constitution (i.e. with Article 14 of the Constitution).

The Constitution in Article 57, paragraph 3 imposes on the State the duty to provide opportunities for all citizens to obtain a proper education. This entails the duty of ensuring equal opportunities for pupils to obtain such a level of compulsory primary education that will enable them, according to their wishes and abilities, to continue with a proper education after they finish primary school. The petitioners in no manner showed that the pupils of bilingual schools had been, concerning the quality of knowledge obtained (considering school grades and their results on the final examination), in a different position, or even discriminated against, in comparison with other pupils (of ‘regular’ or minority schools). According to these circumstances, the differences between pupils do not necessarily, or not at all, depend on the fact that the individual attends a bilingual school. A bilingual school, in so far as the compulsory learning of a minority language is required, also does not entail an encroachment on the right of Slovenian children to use their language and script.’ (U-I-94/96 - Decision of the Constitutional Court, 1998).

Slovenia has also signed Part II of the European Charter on Regional and Minority Languages for the Romany language, but until now, neither primary education nor a substantial part of other education is available in the Romany language.\textsuperscript{22} Moreover, the teaching of Romany as an integral part of the curriculum is still an unachieved aim,\textsuperscript{23} although many Roma children speak only Romany when they start their schooling. There are two main practical obstacles which prevent the teaching of the Romany language. The first one is the lack of standardisation and the dialectal fragmentation of the Romany language. The second is the lack of teachers who can communicate in Romany (Krek, 2001). Statey from 2004 identified Roma assistant as one of the solutions in the field of education: ‘ignorance of the Slovenian language and the failure to involve children can be overcome or alleviated by the introduction of Roma assistants who will help children overcome the emotional and linguistic barriers and represent a bridge between kindergarten or school and the Roma community’ (Strategy for the Education of Roma in the Republic of Slovenia, 2011: 12-13); but still, up to now the Roma assistant is not legislative but project organized; e.g. project founded from European Social Funds and within the ‘public works’. Another issue is whether there have been applications to the European Convention on Human Rights (ECHR)\textsuperscript{24} and what the outcome of these applications have been.

Article 8 of the Constitution of the Republic of Slovenia states: ‘Laws and regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly’ (2003, p. 37). Since Slovenia is a party to the ECHR as well as to its additional Protocol 12, which prohibits discrimination also on the grounds of language, Slovenia must implement them.

The Elementary School Act provides, in accordance with international agreements, the teaching of native languages for the children of Slovenian citizens living in the Republic of Slovenia whose mother tongue is not Slovenian. In addition, the teaching of Slovenian may also be organized for them (1996, Article 8). The children who have foreign citizenship or who are without citizenship and live in Slovenia have the right to obligatory primary school education under the same conditions as Slovenian citizens. For them, lessons of their mother tongue are organised in accordance with international agreements.\textsuperscript{25} Immigrant children have the possibility of learning their mother tongue in accordance with the European Union Council Directive 77/486/EEC (1977)\textsuperscript{26} concerning education of children of migrant workers. This possibility is defined in national legislation and in bilateral agreements and interministerial protocols with countries of origin of members of national communities. Mother tongue classes are organised in cooperation with the country of origin. Slovenia has always
responded to these incentives, therefore language classes are held to teach different languages, according to the interest shown in an individual school year (Eurydice, 2004). In 2004, for example, classes of Macedonian, Croatian and Serbian have been organized in accordance with bilateral agreements. Year before, classes of Macedonian were held, while in past years classes of Croatian and Albanian were organized. Another opportunity for pupils to learn their mother tongue is as an optional subject inelementary school. ‘Legislation does not single out children who reside irregularly in the country. In the case of persons with temporary asylum (war refugees from Bosnia and Herzegovina) as well as asylum seekers from the Asylum Act, the condition of reciprocity does not apply’ (Eurydice, 2004, pp. 4, 6). In 2007 Strategy for the integration of immigrant children and pupils in the education system was adopted, but what is even somewhat surprising, focuses mainly on a narrow question of learning the Slovenian language.

5. LANGUAGE RIGHTS IN NON-COMPULSORY EDUCATION (ESPECIALLY HIGHER EDUCATION)

Language rights in pre-school education are determined by the Kindergartens Act. Article 5 (2005) states that the Slovenian language is the language of instruction (education) in kindergartens. According to a ‘special statute’, if instruction at kindergartens in areas of mixed nationality in which members of the Italian national community live is in the Slovenian language, children must also learn the Italian language. Moreover in kindergartens in which education is in the Italian language, the children must learn the Slovenian language. In the areas of mixed nationality in which members of the Hungarian national community live, education is, ‘according to a special statute’, bilingual, that is to say, in the Slovenian and Hungarian languages.

Legislation on secondary school education has similar provisions on the language of instruction, but an important difference lies in the fact that at secondary school there is the possibility for lessons to be taught in a foreign language. In addition, Article 9 of the Special Rights of the Italian and Hungarian National Communities in the Field of Education Act (2001) also regulates the teaching and learning of the minority language outside the ethnically-mixed area. The pupils and apprentices who complete elementary school education in the minority language or at a bilingual elementary school and enrol in a vocational school, a technical high school or a general secondary school outside the nationally mixed areas, must be provided with the possibility to learn the minority language as an optional school subject by the schools (themselves or together with other schools). The teaching of the minority language is to be organized, if no less than five pupils or apprentices choose to enrol, and it is to be free of charge. This required group of five or more pupils or apprentices can also be formed from the pupils or apprentices that attend different educational programmes or different schools in the same region.

With regard to higher education, Slovenian is prescribed as the teaching language, but there is the possibility of teaching being carried out in a foreign language. Article 8 of the Higher Education Act (2012), which refers to the language of instruction, states that the language of instruction shall be Slovenian. Higher education institutions are also obliged to take responsibility for the development of the Slovenian language as a professional and scientific language and to give foreigners and Slovenians without Slovenian citizenship the opportunity to learn the Slovenian language. Furthermore, a higher education institution may offer study programs or parts thereof in a foreign language. If a higher education institution performs a public service, the following may be conducted in a foreign language: a) foreign language study programs, b) parts of study programs, if carried out in cooperation with visiting scholars from abroad, or if a greater number of foreign students are enrolled in it, c) study programs which the higher education institutions also provide in Slovenian.

Considering that the European Charter for Regional or Minority Languages, which Slovenia is obligated to fulfill, states that (iii) the Parties must if, by reason of the role of the State in relation to higher education institutions, sub-paragraphs (i) and (ii) cannot be applied, encourage and/or allow the provision of university or other forms of higher education in regional or minority languages or of facilities for the study of these languages as university or higher education subjects. Students who belong to the Hungarian and Italian ethnic minorities have the opportunity to study the Hungarian language and culture or the Italian language and literature at universities in Slovenia. But if they want to use Italian or Hungarian as the language of instruction in other, non-linguistic fields, they have to study at universities in Italy or Hungary, since the demographic situation does not afford the organisation of higher education study in the Hungarian or Italian language (Komac, 2002).

The Agreement on Mutual Recognition of Degree Certificates which Slovenia and Italy concluded in 1995 is the legal framework which facilitates the study of members of the Italian ethnic community at Italian universities, and analogously also the study of members of the Slovenian minority in Italy (Komac, 2002). There is also a similar possibility which allows for members of the Hungarian ethnic community to study in Hungary, as well as for members of the Slovenian ethnic community in Slovenia, provided by the Convention on Providing the Special Rights of the Slovenian Ethnic Minority in the Republic of Hungary and the Hungarian Ethnic Community in the Republic of Slovenia (1993). The same is also offered by the Agreement on Cooperation in the Field of Culture, Education and Science between the Republic of Slovenia and the Republic of Hungary Ratification Act, which the two countries concluded in 1992 and ratified in 1993.

The European Charter for Regional or Minority Languages also concerns adult and continuing education. Slovenia chose to comply with the provision which states that (iii) if the public authorities have no direct competence in the field of adult education, to favour and/or encourage the offering of such languages as subjects of adult and continuing education (Article 8, 1st paragraph, f (iii)).

6. CONCLUSION

The Slovenian language has played a crucial role in binding together the Slovenian nation and developing its sense of self-awareness not only in the absence of an independent state, but also since Slovenia became an independent state. Many Slovenians view the preservation of the Slovenian language as crucial to their very survival as a nation. The
impact of this view is also discernible in the formulation of one of the main objectives of Slovenia’s cultural policy as laid out in the Resolution on National Cultural Programme 2004-2007, also later documents maintain this orientation (e.g. Resolution on National Cultural Programme 2008-2011, Resolution on National Programme for Language Policy 2007-2011). This objective is the preservation and development of the Slovenian language as ‘a treasury of culture and one of the main national and state symbols.’ The protection of the Slovenian language as the primary language of education, commerce and political expression is a priority of all the State Ministries and the main aim of the Public Use of the Slovene Language Act (2004). This cultural policy is accompanied by recognition that bilingualism or multilingualism is important, especially in the context of Slovenia’s accession to the EU, and is in line with the EU’s policy of promoting European linguistic diversity.

Regarding the language rights of national minorities, Slovenia offers high legal protection to its constitutionally recognized Hungarian and Italian minorities. For them, education in their mother tongue is available. The Slovenian government is trying to improve the situation for the Roma community, but until now, its attempts have been neither enough successful nor enough sufficient. The language rights of these three minorities are protected also by the European Charter for Regional and Minority Languages. Since Slovenia has not recognized other language groups living in Slovenia as national minorities, their languages can be taught in schools in accordance with bilateral agreements.

The third evaluation cycle of the Committee of Experts on the European Charter for Regional or Minority Languages in the report from 2010 exposed that ‘there is a need to increase awareness of Slovenia’s regional and minority languages in the Slovenian population at large and to promote mutual understanding and further contacts between the different language groups. Co-ordinated measures should notably be taken regarding the media and education, including teaching materials and teacher training as well as journalist education’ (2010, p. 38), therefore the language rights in education in Slovenia should be also in forefront.

7. REFERENCES

Act on Changes and Supplementations of Elementary School, Official Gazette of the Republic of Slovenia, No. 107/2010 (29 December 2010);

Act on Changes and Supplementations of Elementary School, Official Gazette of the Republic of Slovenia, No. 87/2011 (2.11.2011);

Act on Changes and Supplementations of Public Use of the Slovenian Language Act, Official Gazette of the Republic of Slovenia, No. 8/2010 (5 February 2010);

Act on designating areas and naming and marking settlements, streets and buildings Official Gazette of the Republic of Slovenia, No. 25/2008 (14 March 2008);


Agreement on Cooperation in the Field of Culture, Education and Science between the Republic of Slovenia and the Republic of Hungary Ratification Act, Official Gazette of the Republic of Slovenia, No. 23/1993 (7 May 1993);

Aliens Act, Official Gazette of the Republic of Slovenia, No. 50/2011 (27 June 2011);


Constitution of Republic of Slovenia (Ustava Republike Slovenije) (2003), Uradni list RS, Ljubljana;


Court rules, Official Gazette of the Republic of Slovenia, No. 17/95 (18 March 1995);


Elementary School Act, Official Gazette of the Republic of Slovenia, No. 12/1996 (29 February 1996);


European Charter for Regional or Minority Languages Application of the Charter in Slovenia (2004), Report of the Committee of Experts on the Charter and recommendation of the Committee of Ministers of the Council of Europe on the application of the Charter by Slovenia, ECMRL, Council of Europe, Strasbourg;


European Charter for Regional or Minority Languages Application of the Charter in Slovenia: Report of the Committee of Experts on the Charter and recommendation of the Committee of
Ministers of the Council of Europe on the application of the Charter by Slovenia, 3rd monitoring cycle ECMRL (2010), Council of Europe, Strasbourg;


Eurydice (2004), Integrating Immigrant Children into Schools in Europe, Eurydice, Brussels;

Eurydice (2009), Integrating Immigrant Children into Schools in Europe, Education, Audiovisual and Culture Executive Agency, Brussels;


Gymnasium Act, Official Gazette of the Republic of Slovenia, No. 1/2007 (5 January 2007);

Higher Education Act, Official Gazette of the Republic of Slovenia, No. 32/2012 (4 May 2012);

Identity Card Act, Official Gazette of the Republic of Slovenia, No. 71/2008 (14 July 2008);

International Protection Act, Official Gazette of the Republic of Slovenia, No. 11/2011 (21 February 2011);

Kindergartens Act, Official Gazette of the Republic of Slovenia, No. 100/2005 (10 November 2005);


Media Act, Official Gazette of the Republic of Slovenia, No. 35/2001 (11 May 2001);

National Assembly Elections Act, Official Gazette of the Republic of Slovenia, No. 44/1992 (12 September 1992);

Organization and Financing of Education Act, Official Gazette of the Republic of Slovenia, No. 12/1996 (29 February 1996);

Organization and Financing of Education Act, Official Gazette of the Republic of Slovenia, No. 16/2007 (23 February 2007);

Passports of the Citizens of the Republic of Slovenia Act, Official Gazette of the Republic of Slovenia, No. 29/2011 (18 April 2011);

Personal Data Protection Act, Official Gazette of the Republic of Slovenia, No. 94/2007 (16 December 2007);

Public Finance Balance Act, Official Gazette of the Republic of Slovenia, No. 40/2012 (30 May 2012);

Public Use of the Slovene Language Act, Official Gazette of the Republic of Slovenia, No. 86/2004 (5 August 2004);

Public Administration Act, Official Gazette of the Republic of Slovenia, No. 52/2002 (14 June 2002);


Resolution on National Programme for Culture 2008-2011 (Resolucija o Nacionalnem programu za kulturo 2008-2011), Official Gazette of the Republic of Slovenia, No. 35/2008 (9 April 2008);

Resolution on National Programme for Language Policy 2007-2011 (Resolucija o nacionalnem programu za jezikovno politiko), Official Gazette of the Republic of Slovenia, No. 43/2007 (18 May 2007);


Special Rights of the Members of the Italian and Hungarian Communities in the Field of Education Act, Official Gazette of the Republic of Slovenia, No. 35/2001 (11 May 2001);

2006).

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Vocational Education Act, Official Gazette of the Republic of Slovenia, No. 77/98 (13 November 1998);
U-I-94/96 (Decision of the Constitutional Court (1998), Official Gazette of the Republic of Slovenia, No. 33/2007 (13 April 2007);
The Roma Community Act (Zakon o Romski skupnosti v Sloveniji), Official Gazette of the Republic of Slovenia, No. 33/2007 (13 April 2007);
The National Assembly of Slovenia Rules of Procedure, Official Gazette of the Republic of Slovenia, No. 92/2007 (10 October 2007);
The Roma Community Act (Zakon o Romski skupnosti v Sloveniji), Official Gazette of the Republic of Slovenia, No. 33/2007 (13 April 2007);

Endnotes
1. Dr. Ždenko Kodelja is a senior researcher at the Educational Research Institute and the head of Centre for Philosophy of Education.
2. Dr. Matevz Krivic is a former judge of Constitutional Court of Republic of Slovenia.
3. Dr. Eva Klemencic is a researcher and director deputy at the Educational Research Institute.
4. Slovenian is an Indo-European language and belongs to the Western subgroup of the South Slavic branch of Slavic languages. The earliest known examples of a written Slovenian dialect are from the Freising manuscripts, which have been dated to somewhere between 972 and 1093. Slovenian emerged as a literary language in the middle of the 16th century thanks to the works of the Slovenian Protestants who wrote and published the first Slovenian books (including a translation of the Bible). Today, Slovenian is the official and state language of the Republic of Slovenia and the native language of approximately 2.46 million people: about 1.85 million of them live in the Republic of Slovenia which has a population of 1,964,036, of which 83.06% are Slovenes (Census, 2002). The official data available from census of population 2002. The next census in 2012 was register-based and does not contain information on nationality and Slovenian as a mother tongue.
5. According to this conviction, for more than one thousand years the Slovenian language was threatened by German political hegemony and its accompanying linguistic expansion. After the collapse of the Austro-Hungarian Empire at the end of the First World War and the voluntary entrance of Slovenians firstly into the newly established Yugoslav state and after the Second World War into the Socialist Federal Republic of Yugoslavia, it was threatened by Serbo-Croatian, and especially, in one third of the national territory, which was occupied and annexed by fascist Italy, by Italian (the use of the Slovenian language was forbidden and severely punished, even personal and family names Italianized, etc.). Today, some believe that in the independent nation-state Slovenian is threatened by English.
6. Although the aim of this political program was not achieved, the consequence of the 1848 Revolution was a ‘greater emphasis on the equality of nations within the Habsburg state. This also brought about certain linguistic rights for Slovenians: for example, the 1849 reform concerning secondary education made Slovenian an obligatory subject for Slovenian pupils and the official national gazette was to be published, alongside nine other languages, also in Slovenian. These measures were of great importance since the Habsburg state thereby effectively adopted Slovenian as the name of both the language and the nation’ (Roter, ibid., p. 216).
7. Since approximately one-third of Slovenian speakers remained outside the borders of the new Yugoslav state (in Italy, Austria and Hungary), they continued to be threatened with linguistic assimilation.
8. In Slovenia, almost 88 percent of the inhabitants speak the official language, Slovenian, as their mother tongue (Census, 2002).
10. In 2004 Strategy for the Education of Roma in the Republic of Slovenia was adopted and in 2011 supplemented. Strategy 2011 retains all the positions, principles and objectives as reflected in the Strategy from the 2004, but adds new goals as well (e.g. the importance of education in the earliest period of the system and equal opportunities for all preschool children, the gradual integration of all children in education before starting school, children who were not included in the institutional preschool education should be mandatory included in the free program for 5 - year-olds with the aim of socialization and building positive self-image and learning the Slovene language as a first foreign language (2011: 7). Revised version was prepared with a view to the review and assessment of implementation of Strategy 2004 to propose solutions and actions that should enable more successful integration of children of the Roma minority in the education system. Furthermore it was necessary to supplement the Strategy because in the period 2004 – 2010 many documents relating to regulations of the Roma minority in Slovenia were adopted (e.g. The Roma Community Act, The national action program for the Roma for the period 2010 - 2015), provision of education for the Roma has already been introduced in some laws in the field of education and in some other strategic documents in this field (e. g. Lifelong-learning Strategy in the Republic of Slovenia) (2011: 3 – 4). The Strategy (2011) exposes particular attention to the issue of language (both Slovenian and Romany) – e.g. introduced Roma assistant, which would alleviate the poor knowledge of the Slovenian language (Objective No. 2), the introduction of Romany language as an optional subject in elementary school, learning the Slovenian language (Objective No. 3) etc.
12. By signing the European Charter for Regional and Minority Languages, the Republic of Slovenia declared that the Italian and Hungarian languages are considered regional or minority languages in the territory of the Republic of Slovenia and, in accordance with Art. 2; para. 2 of the Charter, the Republic of Slovenia applies the provisions of Part III of the Charter to these two languages. In accordance with Art. 7, para. 5, of the Charter, the Republic of Slovenia should also apply the provisions of Art. 7, para. 1 - 4, also to the Roma language.
13. This is the opinion of M. Krivic, who was a member of a small group of experts which prepared the first draft of the new constitution (in fall 1990).
14. In Art. 5 of the Constitution, Slovenia is obligated to ‘protect and guarantee the rights of the autochthonous Italian and Hungarian national communities’ (2003, p. 36). In Art. 65 it is also stated that ‘the status and special rights of the Romany community living in Slovenia shall be regulated by law’ (2003, p. 58).
15. Art. 3 of the Organization and Financing of Education Act (2007) regulates the teaching language in kindergartens and schools. Para. 1 provides that instruction and education in kindergartens or schools be carried out in the Slovenian language. In para. 2 it provides that in the areas of mixed nationality in which members of the Italian national community live, kindergartens and schools are to be established in which education is carried out in the Italian language (kindergartens and schools with the language of a national community). Para. 3 provides that in those areas of mixed nationality in which members of the Hungarian national community live, bilingual kindergartens and schools are to be established in which education is carried out in the Slovenian and Hungarian language (bilingual kindergartens and schools) (Art. 3). Provisions on language and the special rights of minorities are included in all statutes which regulate education. In addition to these rights to education and schooling in their own languages, the Educational Act (2007) also provides for the use of Hungarian and Italian along with Slovenian in Government administration (in municipalities where autochthonous ethnic minorities live). Italian and Hungarian ethnic minorities in the National Assembly elect one deputy each (National Assembly Elections Act, 1992).

16. According to the Court rules (1995) court proceedings must be conducted bilingually if one of the parties uses the Hungarian or Italian language.

17. In accordance with The National Assembly of Slovenia Rules of Procedure (2007), the two deputies of the ethnic minorities have the right to use their language in oral and written form. These deputies’ debates shall be translated into Slovenian.

18. The Media Act (2001) allows the creation and dissemination of information about minorities in their own languages.

19. Act on designating areas and naming and marking settlements, streets and buildings (2008) provides that those municipalities which in addition have as well the official languages Italian or Hungarian, the names of settlements, streets are established in the Slovenian and the Italian and Hungarian languages - as well as in the municipal regulations (Statutes of the Municipalities). The following personal identity cards and passports are bilingual: in Slovenian, English (passports also in French), and in Italian or Hungarian in the areas where autochthonous national minorities live (Identity Card Act, 2008; Passports of the Citizens of the Republic of Slovenia Act, 2011).

20. In 2010 the Art. 2 was supplemented by a para. that the law does not apply to language and religious rites performed, and the exceptions to this law, the language of literary texts (Art. 1, Act on Changes and Supplementations of).

21. Primary education in Slovenia lasts nine years (in the text we are using the notion of elementary school).

22. For children who reside in the Republic of Slovenia, whose mother tongue is not Slovenian language and they join the primary school, the teaching of Slovenian language and culture through cooperation with countries of origin as well as teaching their native language and culture is organized (Art. 8, Act on Changes and Supplementations of Elementary School Act, Art. 1, Para. 2).

23. The following is also amongst the goals to be achieved by primary education: to foster literacy and the competency to understand, communicate and express oneself in the Slovenian language and, in the area defined as ethnic minorities, also in the Italian and Hungarian language, respectively (Art. 2). Developing language proficiency and skills as well as promoting the awareness of the position of the Slovenian language as the language of the Slovenian state, and, in ethnically mixed areas, fostering and developing the Italian and Hungarian languages in addition to Slovenian is also the aim stated in Art. 2 of the Organisation and Financing of Education Act (1996 and 2007). The protection of the special rights of the Italian and Hungarian national communities in the area of primary education is also regulated by the Special Rights of the Members of the Italian and Hungarian Communities in the Field of Education Act (2001).

24. Slovenia chose from the European Charter on Regional or Minority Languages (1992) the provisions stating that the Parties will (i) make available primary education in the relevant regional or minority languages; or (ii) make available a substantial part of primary education in the relevant regional or minority languages; or (iii) provide, within primary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum (European Charter for Regional or Minority Languages, Art. 8, 1st para., b (i), (iii)).

25. ‘One positive development in the field of education is the ratification by Slovenia of undertakings in the field of primary education: The monitoring and development of minority language education has become part of a existing activities of the National Institute for Education’ (with publishing an annual report covering the situation of monitoring language education) (2010, p. 37).

26. In Slovenia, only languages with official status (Hungarian and Italian) are also languages of instruction.

27. The public approval of the adoption of Strategy for the Education of Roma in the Republic of Slovenia from 2004 in 2007 optional subject “Roma culture” was prepared and adopted. The course is conducted at a Primary school Janko Padežnik in Maribor. The course gains pupils’ knowledge about the history of the Roma, the Roma culture as a way of life and the Roma cultural creativity in the past and today, pupils also develop the ability of understanding of the lifestyles of different ethnic groups that coexist in the same space. The strategy also highlights that only the introduction of an optional subject can not resolve the key issues, usually described as “ignored curriculum”. It therefore remains a task of school policy to take a stronger integration of the Roma culture, both within a prescribed curriculum at all levels of education (Strategy 2011, p. 14).

28. Formally - the Convention for the Protection of Human Rights and Fundamental Freedoms - was drafted in 1950 by the Council of Europe and entered into force in 1953. The Convention has several protocols.

29. Nowadays Slovenia combines the methods of two principal methods of organizing mother tongue tuition for immigrant pupils: bilateral agreements and provision of tuition funded by the national educational system. Also financing by the diplomatic missions of certain countries is possible to organize classes of their country’s language and history. The Act on Changes and Supplementations of 2007 provides that those municipalities which in addition have as well the official languages Italian or Hungarian (Identity Card Act, 2008; Passports of the Citizens of the Republic of Slovenia Act, 2011).

30. Although regarding the Personal Data Protection Act (2007) data collection of pupils/students, including mother tongue is not permitted. The implementation of this Act otherwise complicates the collection of other data as well, resulting in a number of unoffical records (e. g. number of drop-outs or early school leavers is only an estimation etc.)

31. What is interesting is that the Directive was implemented in our Elementary School Act scarcely in 2007 with Act on Changes and Supplementations of Elementary School (Art. 1), before only the Art. 10 of Elementary School Act (1996) dealt with foreigners and some particular bilateral agreements were regulating this field. After that implementation of other legislation deals with that as well.

32. Children of EU citizens may attend school in any EU country under the same conditions as citizens of that country. They have the right to be enrolled in a class that corresponds to their age and is equivalent in complexity to the class in the country of origin, regardless of their language skills. Children of EU citizens, who move to another EU country for work, are under EU law entitled to a free course to learn the language of the country in order to better adapt to the new school system (Education and Youth, 2012). The Act on Changes and Supplementations of 2007 provides that integration of foreigners in the education system of the Republic of Slovenia is carried out in accordance with the laws governing education (Article 105, Paragraph 5). Art. 106 is valid for non EU citizens and states: To participate in the Slovenian language learning program are not eligible to foreigners who have completed schooling at any level in the Republic of Slovenia or were included in the regular education program in the Republic of Slovenia or have already obtained a certificate of successful completion of the examination of Slovenian language at least a basic level (para. 3). To free participation in the Slovenian language learning programs and knowledge of Slovenian society are eligible foreigners who are not EU nationals and who: (i) Residing in the Republic of Slovenia on the basis of permanent residence, and family members who are in the Republic of Slovenia a temporary
residence permit for family reunification, irrespective of length of residence in Slovenia and its validity; (ii) Residing in the Republic of Slovenia on the basis of temporary residence permits issued with a validity of at least one year; (iii) The family members of Slovenian nationals or EU citizens who reside in the Republic of Slovenia on the basis of residence permits for family members, regardless of the length of stay and validity (para. 2, Art. 106). 
International Protection Act (2011) regulates applicants' right to education (Art. 78, Para. 1 (viii)), what is also valid for applicants whose right to international protection is recognized. In accordance with the regulations providing for compulsory primary education, the applicant provides the right to primary education (Art. 86, Para. 1) and for secondary level and higher education applicant has also access to education, but under the rules that apply to citizens of Slovenia (Para. 2 and 3). Persons granted international protection in the areas of early childhood education, primary, secondary, higher and university education are treated as citizens of the Republic of Slovenia (Art. 97).

28. In Slovenia, for the last three years of compulsory education, foreign or stateless pupils may choose their mother tongue as their foreign language option provided regarding the sufficient number of interested pupils. In school year 2007/08, the foreign language tuition organised for this level of education, i.e. lessons in German, Spanish, French, Italian, English, Croatian, the language of the former Yugoslav Republic of Macedonia, Russian and Serbian, reflected the languages spoken by immigrant pupils (Eurydice, 2009: 28).

29. The introduction of compulsory second language, which gives schools the option of two different other languages were already underway. In school year 2013/2014 a second foreign language instruction from 7th grade pupils of all elementary schools in Slovenia should start (Elementary School Act, (Art. 1, 2010)). But recent laws; Act on Changes and Supplementations of Elementary School (2011) stated that schools for children of 7, 8 and 9th grade conduct a foreign language as an optional elective subject and the Public Finance Balance Act (2012) changed also that and prescribed to school for pupils from 4th up to 9th grade conduct a foreign language (Art. 63). Regarding the Act, which will have implications for the composition of the public finances, could be inferred that this change is just a financial one. But public debate has existed for some time on conceptual matters of the introduction of a second foreign language in our elementary schools. The same law introduced in the school year 2015/2016 the first foreign language as a compulsory subject in the curriculum for all students who are enrolled in the first class (Art. 72).

30. From 4. 1. 2008 Asylum Act is no longer valid. This area is regulated by the International Protection Act (2007).

31. But also points to broader contexts and exposes the key problems - e. g. elaborated strategies for integrating migrant children in the Slovenian cultural environment while respecting and preserving their language and culture of origin etc.

32. Slovenian (as a signatory state to the European Charter for Regional or Minority Languages) is also obligated to honour the provisions stating that it must (i) make available pre-school education in the relevant regional or minority languages; or (ii) to make available a substantial part of pre-school education in the relevant regional or minority languages (Art. 8, 1st para., a (i)).

33. The European Charter for Regional or Minority Languages (1992) obliges the state of Slovenia to: (i) make available secondary education (including technical and vocational education) in the relevant regional or minority languages; or (ii) to make available a substantial part of secondary education in the relevant regional or minority languages; or (iii) to provide, within secondary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum (Art. 8, 1st Para., c, d).

34. The language of instruction in secondary schools is Slovenian. The language of instruction in secondary schools (and gymnasiums) for the Italian minority is Italian, in bilingual secondary schools (and gymnasiums) it is Slovenian and Hungarian. In areas defined as mixed ethnicity areas with mixed populations of Slovenian and Italian nationalities, in secondary schools (and gymnasiums) where the language of instruction in Slovenian, students must learn Italian, in those schools which conduct instruction in Italian, they must learn Slovenian. In accordance with the minister of education, a part of the curriculum may be carried out in a foreign language if an acknowledged foreign expert takes an active part in it (Vocational Education Act, Art. 6; Gymnasium Act, Art. 8). Programme of preparations for the International Baccalaureate can be performed in a foreign language. Educational program for gymnasiums for foreign students can be conducted in a foreign language – then the school must also provide a choice of Slovene as a subject (Gymnasium Act, Art. 8, 6th para.).

35. Art. 8, 1st para., e (iii).

36. There are also courses for teachers in bilingual (Slovenian and Hungarian) kindergartens and primary schools as well as for teachers in kindergartens and the first four years of primary schools with Italian as a language of instruction.


38. The agreement served as a foundation for the preparation of the agreement between the Government of Slovenia and the Government of Hungary on the Mutual Recognition of Diplomas and Certificates, which the States signed in 1999 and was published in the Official Gazette of the Republic of Slovenia in 2000.

39. National Programme, which is in process of formation, changed its character from the national program in the resolution, which facilitated the procedural process (not three-phase as in the law, the resolution adopted a single-phase process) (Likar, 2012).

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Language Rights in the Spanish State

Iñaki Lasagabaster
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1. BACKGROUND

1.1. The importance of language in nation-building

The analysis of the socio-political organization of different societies brings to the relationship between language and right to the fore, a relationship that can be either implicit or explicit. If there is cultural homogeneity in a given society, language will not be provided legal treatment, as every person is expected to have knowledge of the language concerned. However, if there is linguistic pluralism, the result can be twofold: on the one hand, plurilingualism may lead to the respect of such pluralism and consequently different languages may become official (this is the case of Switzerland); on the other hand, a language may be imposed as official, the remaining languages being limited to interpersonal communication without any official status, and their use may even be prevented or prohibited (the case of Spain in the past). In the first case the existing social pluralism would be respected, whereas the second is a very good case in point of the so-called internal colonialism or imperialism.

Imposition can accentuate linguistic strains if the political organization is not democratic. This has been the case in Spain, where during the 19th and especially the 20th centuries long dictatorships had the upper hand. The Franco dictatorship and its inherent Spanish nationalism acted harshly against the Basque and Catalan cultures above all. The Franco dictatorship would rather have a red Spain (represented by communism) than a broken one (represented by autonomy). To put it bluntly, the system could be described as French Jacobinism exacerbated by its dictatorial nature (Irujo and Urrutia, 2009).

During the Franco dictatorship signs, advertisements, or the names of people could not be written in Basque. The use of the Basque language was restricted to the family environment. The language policy of this period led to a context in which the use of other languages different from Spanish became a synonym of democracy, of opposition to the Franco regime. In this context Basque and Catalan became languages of freedom and symbols of belonging to minority groups whose existence was in jeopardy. Not only were public freedoms denied during the Franco dictatorship, but cultural persecution was also suffered by those cultures different from the dominant with a view to making Spanish the only language spoken in the Spanish State.

The dictatorship started in 1939 and lasted until the demise of Franco in 1975. In this long period, and in spite of severe difficulties, an important movement emerged in an attempt to protect the forbidden cultures and their languages. During the 1960s a change of elites took place in Spain, which allowed the appearance of cultural activities and events that had previously been banned. For example, in the 1960s some schools that had Basque as the medium of instruction were first established, originally as clandestine institutions but afterwards under the protective umbrella of the Church. The Catholic Church was strongly committed to the Franco regime, but still some small sectors stood up for democracy. Some members of the Catholic Church in the Basque Country were among the latter. The movement supporting the teaching of and in Basque was becoming increasingly important and Basque-medium schools were known as Ikastolas.

The persecution endured by the Basque and Catalan languages had a clear-cut effect that the fascist authorities had not considered: language started to play a major role in the Basque and Catalan nation-building process. This was the result of the repression of their own languages and the imposition of the Spanish language and culture as key elements of the nation-building of the Spanish State. With the advent of democracy after the demise of the dictator, the passing of a constitution which had to acknowledge the existing linguistic diversity became an indispensable condition for the new political system.

It is worth remembering that both Basque and Catalan are spoken in France. In France French has been the only official language established by the 1993 constitution, as a result of the entry into force of the Maastricht treaty. The French constitutional system is characterized by linguistic Jacobinism, as pointed out in the following expression: “In a free country, the language must be the same for one and all”. Nowadays the linguistic ideology remains the same and the French Constitutional Council decided that French is the only official language in France, which entails the impossibility of ratifying the European Charter for Regional or Minority Languages. In the 2012 presidential elections, the elected candidate included the ratification of the aforementioned Charter in his political programme, which will probably require a change in the French constitution.

1.2. Official recognition of the different languages

Article three of the 1978 Spanish constitution stipulates that Spanish is the official language of the Spanish State. Spanish is mentioned in two different ways (castellano or español) and both can be used interchangeably. The constitution also establishes that all Spaniards have the duty to know Spanish and the right to use it. However, it could be argued that there is no need to stipulate this, since it is a truism to say that if a language is official, there is the right to use it. Similarly, the duty to know Spanish does not add any value to its official status, as the sociolinguistic situation after the dictatorship left Spanish as the main language of the Spanish educational system, since it had been the only language of instruction during the Franco dictatorship and, consequently, every citizen could speak it. Nevertheless, this might not always be the case. In fact, and to set an example, an individual may have a low command of Spanish that does not allow him or her to face a judicial process, because (s)he cannot understand or is unable to defend himself or herself. In such a situation the right to effective legal protection must be guaranteed by the presence of a translator who will help in the process of defense. It is worth considering that the Spanish naturalization process does not oblige to have a high level of proficiency in Spanish, which is why in court the right to effective legal protection would prevail over the purported knowledge of the official language. When a language is established as official, public authorities acknowledge that it has to be the regular means of communication when addressing private parties or individuals. The communication in the official language has full validity and legal effects, which is not the case if the communication takes place in another language, unless there is a specific right or rule that allows its use. Spanish is therefore the habitual means of communication among public authorities and private individuals in the whole of Spain3. It should be noted that Spanish is the official language for all public authorities and institutions, not only for the central State institutions.
The second paragraph of article three of the Spanish constitution points out that the other languages spoken in Spain will also be official in their respective Autonomous Communities according to what is established in the Statutes of Autonomy. Unlike in the case of the legal and administrative structure of a federal State, in the Spanish Autonomous Communities the Statute of Autonomy becomes the rule according to the State organization established by the 1978 constitution. The Statute of Autonomy has to be passed by the Spanish Parliament, the Upper (Senate) and the Lower (Congress) Chambers, and in the case of the latter by a majority of votes. Once the Statute of Autonomy is passed, any modification requires the organic law issued by the State and, in addition, the Autonomous Community should also take part in the process.

The Statute of Autonomy is the basic institutional rule of each Autonomous Community and the determination of the official language or languages is part of its contents. In this way the official status of other languages “in” the Autonomous Community and not “of” the Autonomous Community is established. In other words, the official status of the other language obliges the Autonomous Community administration, the municipal administration and the State administration to carry out their activities both in Basque and Spanish.

In the third paragraph of article three it is granted that the richness of the linguistic modalities of Spain constitutes a cultural heritage that will be the object of special respect and protection. This article is similar to article 75.3 of the French constitution, in the sense that it was also designed as a way to protect languages other than French, but without providing them with an official status. The Statutes can establish a legal system in which more than one language can be labelled official. In the Aran Valley, located in the Pyrenees, the Catalan Statute of Autonomy designates Aranese or Occitan as official language. This is the only case in Spain in which a Statute considers two languages (Aranese and Catalan) apart from Spanish as official languages. In other Statutes the existence of language modalities is recorded and regarded as being worthy of protection.

Another constitutional rule that makes reference to the plurilingual reality of the Spanish State is represented by the Preamble of the constitution, wherein it is stated that the State should protect the exercise of everybody’s human rights, customs and cultures, and of the existing languages and institutions. As far as mass media are concerned, it is established that the law will guarantee the organization and the control by the Parliament of social mass media dependent upon public authorities, while the respect for social pluralism and the diverse languages of the State should be ensured. Despite this precept having been passed in 1978, it has been systematically violated. Moreover, mass media have undergone a previously unimaginable development and this requires an in-depth reconsideration of the role of languages in mass media, including the Internet.

If we focus on the Basque Statute of Autonomy of the Autonomous Community of the Basque Country (ACBC henceforth), article six indicates that the Basque people have their own language, Basque or euskara, which will be co-official with Spanish. Basque is official “in” the Autonomous Community, that is, this article pertains to all public institutions located in the territory, whether they be local, state or autonomous institutions. It further states that all the citizens have the right to know and use both Basque and Spanish, thus putting both languages on an equal footing from a legal perspective. This does not mean that this equality is guaranteed, especially if we consider the persecution and the difficulties the Basque language has had to overcome in order to survive. It has to be underscored that, apart from being official, the Basque language is defined as Basques’ own language, as is the case with their own languages in other Statutes of Autonomy. The reference to the own language has no legal consequence and does not provide Basque with a different status from that of Spanish; in particular, the adjective “own” makes reference to the importance of the language for the Basque community and the bonds between Basque and this particular Autonomous Community.

Next, the Statute of Autonomy states that the institutions of the ACBC must regulate the legal regime of the language, ensuring the use of Spanish and Basque and furnishing the necessary means to ensure their common knowledge. Therefore, the Parliament and the Basque Government should have jurisdiction to dictate the norm that will regulate the official status of Basque, while the remaining administrations should comply with the content of such norm. The Basque Parliament passed the Basic Law on the Normalization of Basque (10/1982) on 24 November 1982. The Statute of Autonomy came into force in 1979 and during the first legislature the 10/1982 Law was passed, which allows the co-official status of Basque. Besides the regulations concerning the co-official status, it is stated that language discrimination is forbidden, whereas the possibility of using Basque as means of communication between public authorities and other public institutions is guaranteed. This is similar to what is stated in the Catalan and Galician Statutes of Autonomy. It must be said that Basque is spoken also in the Autonomous Community of Navarre, where Basque is co-official in part of the community, and in the south of France, where Basque is protected only as cultural heritage.

1.3. An overview of current debates

The most outstanding current debates have to do with the use of the co-official languages in court, in the mass media (especially in the public ones), their role on the Internet from a legal perspective, the politically motivated stumbling blocks to the normalization of the co-official languages, and the attempts to give preference to the co-official languages over Spanish. An outstanding example is that of Basque in the Autonomous Community of Navarre. The Committee of Experts on the European Chart of regional and minority languages have taken part in this debate and, in fact, the Chart explicitly expresses that the Government of Navarre is not complying with the obligations derived from this Chart. In this Autonomous Community, the ruling party (a right wing and Spanish-centric political party) is implementing a language policy that is aimed to hinder the normal development of Basque. The reason behind this anti-Basque attitude is that they link Basque with a Basque ideology that fights for the political union of the Autonomous Community of Navarre and the ACBC (the two Spanish communities in which Basque has co-official status). Their efforts to prevent the Basque language from developing further are due to their vested political interests. From a historical point of view, it has to be remembered that the Kingdom of Navarre was the political expression of the Basque speaking territories both in the Spanish and the French States.

The use of Basque in the mass media is also a highly topical issue. In spite of the fact that its use is required by law, the mass media dependent from the central State recurrently fail to meet their linguistic obligations.

2. LANGUAGE RIGHTS IN COMPULSORY EDUCATION
The right to education is regulated by the constitution, which states the right and duty to have education. The duty is established by making education compulsory till the age of 16, although the ruling party (Partido Popular in 2012) seems to have the intention to lower the age to 15. The language-teaching equation generates problems of interpretation irrespective of the languages used at school. It is a truism to say that a foreign child who wants to join the education system may have comprehension impairments. In such a situation it would not be admissible to affirm that this child has the right to education only in the official language and, if he or she does not understand the official language, it is not the public authorities’ responsibility to provide the necessary knowledge, but rather his or her parents’.

Consequently, the right to education cannot be interpreted as the right to education in an official language, but rather as the right to education in a comprehensible language. Public authorities are thus obliged to provide the child with comprehensible teaching, which may demand the support of the public authorities with a view to achieving such comprehensibility. However, we will focus on the relationship between the right to education and the official languages. Although the legal systems may be diverse, especially if the language rules are based on the territoriality of the official languages, in Spain the official languages have to be taught, that is, there is teaching “of” the languages, but there is no obligation to teach “in” the languages. The educational system must guarantee that the official languages are taught in their particular territories, but there is no duty to use the official languages as means of instruction or vehicular languages.

This first jurisprudence of the Constitutional Court, which is based on international jurisprudence in these matters (Lasagabaster and Urrutia, 2009), underwent an initial change when 10 years later the same Court indicated that the existence of official languages entails that teaching must be carried out “in” these official languages. The issue to be determined is which content, and how much of it, must be taught in each of the languages. In Catalonia, for example, decisions should be made on what is taught in Catalan and what in Spanish. Originally this duty to teach “in” Catalan and Spanish only referred to primary education, while Catalan was supposed to play a pivotal role due to its importance as a key language. Currently this duty to teach “in” Catalan and Spanish only referred to primary education, while Catalan was supposed to play a pivotal role due to its importance as a key language. Originally this duty to teach “in” Catalan and Spanish only referred to primary education, while Catalan was supposed to play a pivotal role due to its importance as a key language. Originally this duty to teach “in” Catalan and Spanish only referred to primary education, while Catalan was supposed to play a pivotal role due to its importance as a key language. Originally this duty to teach “in” Catalan and Spanish only referred to primary education, while Catalan was supposed to play a pivotal role due to its importance as a key language.
The right to education is entitled to everybody irrespective of their legal status\textsuperscript{11}. In conclusion, the right to education for all immigrants from other countries is recognized, whether they are refugees, asylum seekers or displaced persons.

3. LANGUAGE RIGHTS IN NON-COMPULSORY EDUCATION (ESPECIALLY IN HIGHER EDUCATION)

The rule grants that foreigners also have the right to post-compulsory education, to obtain a university degree and to be eligible for any public scholarship or grant aimed at non-compulsory education on an equal footing with Spaniards. Unnecessarily, the rule goes on to specify that those foreign residents aged 18 and over have the right to have access to post-compulsory education. Here it is highlighted that the rule refers to “foreign residents”. The recognition of the rights of foreign residents does not imply that foreigners without residence permit do not have the same rights, as the ruling previously states that all foreigners share this right irrespective of their status. The education legislation cannot distinguish between legal residents and non-residents, because this would go against the Constitutional Court’s jurisprudence. Moreover, the Constitutional Court stipulates that the right to education applies to both basic and higher education, although this does not mean that education must be free or compulsory (as pointed out above, according to the Spanish constitution only compulsory education must be free). The European Court of Human Rights has recalled its member States that they have to guarantee all those under their jurisdiction access to the educational system and the possibility of having an official recognition of the degrees obtained\textsuperscript{12}. The statement that any person under the jurisdiction of a State has this right implies that non-nationals in an illegal or irregular situation also have it\textsuperscript{13}. To sum up, the right to education is guaranteed by the constitution and it is read together with the international treaties ratified by the State: this includes compulsory and non-compulsory education (comprising higher education) and should be applied to foreigners, even if they are illegal residents\textsuperscript{14}. The ruling also grants that foreign residents with children of compulsory age school under their care must prove that those minors are in school when the former apply for the renewal of their residence permit. The certification stating that the children are in school must be issued by the relevant authorities of the Autonomous Community.

4. CONCLUSIONS

The Spanish constitution and the Statutes of Autonomy jointly establish the co-official status of languages. The co-official languages other than Spanish have undergone a long and complicated process before they were legally recognized. Still today the State central authorities do not meet their obligations concerning language use, the State-owned mass media being a very good case in point. In the same vein, State central authorities oppose in court that co-official languages other than Spanish should be given preferential treatment in the autonomous administration, despite the fact that the preferential treatment is an attempt to reduce the diglossic situation caused by the persecution endured during the Franco dictatorship.

The right to education in the co-official languages offers different models. One of them is the linguistic separation, in which parents and/or students choose their model in which they prefer to be taught. All these models must guarantee linguistic competence in both co-official languages. This is the system available in both in the ACBC and Navarre, although the linguistic models differ (as pointed out in section 2.1.). However, it has to be remembered that in Navarre the autonomous government hinders the learning and teaching of the Basque language, as reported by the Committee of Experts of the European Charter for Regional or Minority Languages (see Iñaki Lasagabaster, 2012).

Everybody’s right to education in the co-official languages is guaranteed by law, irrespective of the individual’s age and including foreign legal residents and non-residents, refugees, asylum seekers or displaced persons. The right to education was unambiguously recognized by means of a Constitutional Court’s ruling that established that the right to education is inalienably linked to human dignity, and therefore every individual is entitled irrespective of their legal situation. Nationals and non-nationals must have the same guarantees when it comes to access to non-compulsory education. However, the reality is that the university entrance exam (known as Selectividad) becomes, more often than not, an insurmountable stumbling block for many non-nationals because they need to demonstrate a very good command of Spanish and an in-depth knowledge of the different subjects that make up this exam. The negative impact of this exam is confirmed by the meager number of immigrant students in tertiary level\textsuperscript{15} in Spain.

5. REFERENCES

Fortune, T. W. and Tedick, D. J. (2008), Pathways to Multilingualism: Evolving Perspectives on Immersion Education, Multilingual Matters, Bristol/Buffalo/Toronto;
Irujo, X. and Urrutia, I. (2009), A Legal History of the Basque Language (1789-2009), Eusko Ikaskuntza, Donostia;

**Endnotes**

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4. In the Autonomous Community of Asturias the use of Asturian (also known as Bable) is regulated by Law 1/1998 of 23 March 1998. See order of the Constitutional Court 27/2010 on this linguistic issue.


6. Art. 75.3 of the French constitution.


8. Constitutional Court’s ruling 31/2010, Legal Basis 14a and Legal Basis 24. See also the Constitutional Court’s rulings of 10 and 19 May 2011.

9. There is no Model C because the letter C is not part of the modern Basque alphabet.


12. The case of Kjeldsen of 7 April 1976, 52.


**Linguistic Rights in Education in Spain**

José Luis Martínez López-Muñiz*

1. **THE LANGUAGE AS PART OF THE RIGHT TO EDUCATION**

Language is the vehicle of knowledge and culture, and it is in itself highly meaningful expression of both in their collective dimensions. We do not need therefore go into details to underline precisely its especially important role in education. Its transmission, learning and perfection are accepted among the main educational aims, because of its condition of decisive tool for the knowledge and communication. Even the languages in plural are today increasingly included among the educational targets in one society highly interconnected, in which it is increasingly convenient to master other ones different of the maternal language or of the principal language of the country where each one receive the basic education. But above all, every knowledge which has to be transmitted or acquired in education is expressed and received necessarily in some linguistic way which will be more or less conforming and conditioning it, as much in itself as in respect of the capacities for its communication, exchange, implementation and enrichment in society.

Although language does not have exactly room among the religious, philosophical and even pedagogical convictions, specifically guaranteed by the International agreements in the field of the right to education –as, like we will see, it was explicitly stated by the European Court of Human Rights in its 1968’s decision on the use of languages in education in Belgium in respect with ECHR-, there is no reason to initially deny a right to choose the language of education as a part of the content of liberty of the fundamental right to education.

However that right to choice can be submitted to reasonable conditions and restrictions, particularly in order to concretise and to give effectiveness to the right to education as social right, especially at the level of compulsory education. It seems obviously necessary, first of all, to recognize that the political commonwealths are fairly interested their citizens to have guaranteed a good mastery of the official language, because its relevance for social life and collaboration, essential for social stability and progress. The Article 13.1 of the International Covenant on Economic, Social and Cultural Rights said that the States Parties agree that education shall enable all persons to participate effectively in a free society, what mainly requires, of course, mastering the common language. Another thing is that the mandatory requirement of a particular language as medium of teaching, which, not infrequently in history, has been used as a way of imposing a particular unifying hegemony in shaping nations, should not have in its turn its limits, actually like everything what imply restrictions or conditions for the freedom.

2. **CRITERIA OF THE EUROPEAN COURT OF HUMAN RIGHTS**

The European Court of Human Rights, interpreting the Article 2 of First Protocol of the ECHR in its well known decision on the Belgium linguistic regime of 23 July 1968, held that «the right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be» (The Law, I.B.3). But at the same time it said that the second sentence of this Article «does not require of States that they should, in the sphere of education or teaching, respect parents’ linguistic preferences, but only their religious and philosophical convictions. To interpret the terms “religious” and “philosophical” as covering linguistic preferences would amount to a distortion of their ordinary and usual meaning and to read into the Convention something which is not there» (ibid., I.B.6). In its connection with the Article 8 of the Convention (the right to respect for the private and family life), the Court said also –regarding already nevertheless more to a social dimension of the right to education- that «this provision in no way guarantees the right to be educated in the language of one's parents by the public authorities or with their aid» (ibid. II.A.7).

The Court held in short the legitimacy for the competent Public Powers to impose in education, at least for the public or publicly funded schools, the language of the land (ibid. II.A.7 and B.13), taking always nevertheless in account the possibility to accept that private schools without any public funds support might have the liberty to educate in other language.

3. **THE SPANISH PLURALITY OF OFFICIAL LANGUAGES IN SOME PARTS OF ITS TERRITORY**

The issue is more complicated, obviously, in societies which are, in one or another way, multilingual in an enough relevant measure, further more if they have a plurality of official languages. We are going to focus on this problem. We will not dwell therefore on the question of the linguistic rights of the emigrants, who belong today to very different languages, neither on those of some more traditional minorities in the Spanish society like gypsies.

In the case of Spain nowadays, the Article 3.1 of its Constitution of 1978, establish that the Castilian is the official language of the State, and therefore that every Spaniard had the duty to know it and the right to use it. But there are also –as we read at Article 3.2- others Spanish languages (…), also official in the respective Autonomous Communities in conformity with their own Autonomy Statutes.

They have indeed co-official languages six among the seventeen Spanish Autonomous Communities: Catalonia (Articles 3 of its Statute of 1979, and 6 and other ones of its current Statute of 2006 concerning the Catalan; and Articles 36 and other ones about the Aranese language for the Pyrenean area of Aran as well), the Balearic Islands (Articles 3 of its Statute of 1983, and 4 of its Statute after the Ley Orgánica 1/2007, concerning also the Catalan), Valencia (Article 7 of its Statute, before and after its reform through the Ley Orgánica 1/2006, about the Valencian), the Basque Country (Article 6 of its Statute of 1979, about the Euskera), Navarre (only in Basque or Euskeras speaking areas determined by foral statute9, according with the Article 9 of the Ley Orgánica 13/1982, de Reintegración y Amejoramiento del Régimen Foral de Navarra, the special Statute of this region), and Galicia (Article 5 of its
4. ACCORDINGLY WITH THE CONSTITUTIONAL COURT CASE LAW, IN «A FULL BILINGUAL MODEL», THE RIGHT TO CHOOSE THE EDUCATION’S LANGUAGE CAN BE GENERALLY EXCLUDED BY LAW UNDER SOME CONDITIONS FOR JUSTIFIED REASONS.

In this context the Spanish Constitutional Court held, in its decision 337/1994, December 23, judging the 1983 Catalan Statute to linguistic normalisation in Catalonia -inspired, as said the Court, in «a full bilingual model or a model of linguistic conjunction» (LR 7) whose achievement should require «to correct and to get overcome the current unbalances between the two official languages» (LR 8), that

“(…) a right to choose the education in only one of the co-official languages of the Autonomous Community does not come out from the content of the constitutional right to education, recognized in the mentioned rule [Article 27 of the Spanish Constitution] or more particularly from their paragraphs 2, 5 and 7. The right of every body to education -cannot be forgotten- is satisfied in the framework of a education system in which the Public Powers –that is [in Spain] the State through the basic legislation, and the Autonomous Communities with their competences on this matter – establish the curricula of the different levels, stages, cycles and grades of instruction, the minimal teachings and the particular areas or matters for learning, organizing as well their implementation in the different schools; constituting therefore education a regulated activity. (…) On these grounds Public Powers -the State and the Autonomous Community- are empowered to determine the use of the two co-official languages in a Autonomous Community as communications languages in education, accordingly with the distribution of the competences in education’s field» (LR 9).  

These statements, which have made possible to talk about the «non-existence of a fundamental right to receive the education in a particular official language» in the territories with more of one official language, might be, however, partially questioned.

No problem, of course, in to accept that the establishment of one or several languages as a compulsory object of learning and even as the only vehicle for the publicly recognized education into the political communities or some parts of them, is one of the elements of the minimal legal rules which may legitimately put limits and conditions to freedom in education by reasons of proportionate importance, like those which may be found in this matter of the language.

However that does not mean the freedom of choosing the language or languages in education does not belong in itself to the content of freedom of the right to education. Like other manifestations of freedom in education, the free choice of the language can be legitimately restricted, regulated or even suppressed by law for just proportionate reasons and up to where these come, if it does not belong to the hard core or essential content of that freedom, which is certainly under the protection of the Constitution, at least in Spain (Article 53.1 of its Constitution). The regulation of education has to take in account all the dimensions of the right to education, and therefore it can involve in fact a strong restriction to the right to choose the education language, appearing then that this choice is not even potentially or virtually a part of the content of freedom of the right to education. But it is very important to maintain the fullest coherence with the principle pro libertate and this other one according with which the personal freedom is only negatively subjected to legal norms: the negative Bindung of the German legal theory or the old saying quae non prohibita permissa intelliguntur.

Maybe for that reason the Constitutional Court was warning in the same decision, with any more than sufficient clarity, that:

«Though a right to a free choice of a language as the vehicle of teaching does not exist, it does not imply that the citizens lack any right opposite the Public Powers from the perspective of the right to education guaranteed by the Article 27 for every one. Especially if the actions of linguistic normalization affect upon such an essential condition to this fundamental right as the language in which the education has to be imparted» (LR 11).

«Particularly from the perspective of the Article 27 of de Spanish Constitution, but also from this one of its Article 14, it becomes essential that the incorporation to a instruction in a non usual language be performed under the condition that the citizens have got to master it, at least in such a sufficient measure to obtain a educative result not substantially lower than they could have acquire receiving the instruction in their usual language» (LR 11).

What is said presumably into context of the doctrine already held by the same Court in other opportunities regarding the education in Spain and now again repeated: that
«(...) both the State and the Autonomous Communities have the duty to ensure the knowledge of both the Castillian and the own languages in the case of the Communities with an co-official language, a duty which, as we have said, does derive from the Constitution and not only from the Statute of each Community (CCDD 87/1983, LR 5, and 88/1983, LR 4)» (LR 17).

In short, in our opinion, the higher court has not denied that any person—neither his or her parents while he or she is minor—have a right to choose the education’s language and just as a part of the own content of freedom of the right to education; it simply held the constitutional legitimacy of this important limit meant by the obligation to be subject, in publicly recognized education, to legal and justified rules on languages use as education’s vehicle.

Given the social relevance of education, actually it is affirmed that the freedom to choose the education’s language or languages as fundamental right can be reasonably reduced or conditioned. In addition the issue judged by the Constitutional Court in the quoted decision obviously regarded concretely the conflict between the two official languages in all such an Autonomous Community as this of Catalonia, and undoubtedly the social dimension of the right to education, included furthermore its compulsory character in its basic levels.

5. THE CONSTITUTIONAL COURT HAS DECLARED UNCONSTITUTIONAL THE IMPOSITION OF A CO-OFFICIAL LANGUAGE AS UNIQUE TEACHING’S LANGUAGE IN THE TERRITORY OF AN AUTONOMOUS COMMUNITY.

Time is past since the mentioned decision 337/1994 and the intensification of some regional policies, excessively authoritarian—under the label of linguistic normalization—, has finally provoked some new major decisions of the Constitutional Court, what later the judicial courts—resolutely the Supreme Court—are trying to assure their respect and fulfilment.

It is to stand out the Constitutional Court decision 31/2010, about the Statute of Catalonia of 2006, which held unconstitutional any purpose to proclaim a co-official language own of an Autonomous Community such as Catalan, as unique and compulsory linguistic vehicle in education, excluding the Castilian, official language in all Spain.

The Court, however, after stating flatly this opinion, saved the constitutionality of Articles 6 and 35 of that Statute, because of the literality of their expressions which he has understood compatible with his opinion, given the used terms and the principle of interpretation most favourable to the consistency with the Constitution.

It is now plain anyway that, in Autonomous Communities having more than one official language, the constitutional order does not admit to impose that the whole institutionalized education will be exclusively given in only one of them, not even if it is assured a sufficient teaching of the others. What, together with the denial of a right to free choice—the very first teaching excepted—which, as we said, had already been accepted before—if the legitimate legislation on education states it so—, will lead to consider as compulsory the teaching in the two official languages in a way well-balanced, without preferences of one or other, distributing their use adequately among the matters and activities, in the case of an option, like that one adopted in Catalonia, in favour to a full bilingual or a linguistic conjunction model. It is nevertheless more than doubtful that the text of Article 11 of Catalonia’s Education Act of 10 July 2009, is consistent with this constitutional requirement.

Apart from that, the prohibition of schools or classrooms separated on the ground of the teaching’s language, established by the Catalan Statute but not yet judged by the Constitutional Court, seems coherent with that model—which, accordingly with the same Catalan law, is not enforceable however to the pre-primary education—, even understood as the Constitutional Court has said it must be understood. Nevertheless it will not be superfluous to remember that 1960 UNESCO’s Convention on the fight against discriminations in education’s sphere, excluded in its Article 2, b), under specific conditions guaranteeing effective freedom and equality, that such a separation or classification constitutes discrimination.

6. SUPREME COURT CASE LAW SINCE DECEMBER 2010 IS REQUIRING REPEATEDLY THE RESPECT AND FULFILMENT OF CONSTITUTIONAL DOCTRINE OF CONSTITUTIONAL COURT

Supreme Court in Spain is requiring what Constitutional Court has flatly clarified in its decision 31/2010, through a succession of decisions held since December 2010, which enforce the requirement for institutionalized compulsory education in Catalonia to use both official languages in a balanced way, so that it is not allowed to impose the use of only one excluding the other, even if this one is used, of course, in its teaching as a specific compulsory matter.

In pre-primary education, however, as we have said before, the right to choose like its vehicle only one of the official languages is plainly recognized, certainly at least in the way the 1/98 Catalonia Act about the linguistic policy has been understood it was admitting for what it is named in it as first teaching.

Same doctrine has been already applied also by the corresponding Upper Court of Justice in respect to Balearic Islands.

7. LACK OF ATTENTION OF THE SPANISH HIGHER COURTS TO THE 1992' EUROPEAN CHARTER OF REGIONAL OR MINORITIES LANGUAGES.

It is anyway amazing the lack of attention of both Constitutional Court and Supreme Court to the European Charter of Regional for Regional and Minority Languages, adopted in Strasbour, inside of the Council of Europe, with the signature of Spain, the 5 November 1992, and ratified by this country the 2 February 2001 (BOE of September, 15th): an European international treaty which, though not able to be included among those mentioned in the Article 10.2 of the Constitution—since its object does not enter in fact in any constitutional norm about fundamental rights or liberties of Title I of the Constitution—, has to
occupy the prevalent position recognized in Spanish law to every international agreement duly ratified and published in the State’s Official Journal (BOE), in conformity with what derives from Article 96 of the same Constitution.

With this Charter—which Preamble refers to the United Nations International Covenant on Civil and Politic Rights, probably thinking at the last sentence of its Article 27, and to the spirit of the 1950 ECHR, what is, however, a reference less clearly justified—the States Parties assume a series of general duties expressed in its Part II concerning the different regional or minority languages of each State Party—it is say those «traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State’s population», and «different from the official language(s) of that State», excluded «either dialects of the official language(s) of the State or the languages of migrants» (Article 1)—and some specific obligations chosen among those contemplated in the Part III to «promote the use of» mentioned languages «in public life» and more particularly in education (Article 8) and justice (Article 9), by the Administrative authorities and public services (Article 10) or in media (Article 11) and in the cultural activities and facilities (Article 12) or even more generally in the economic and social life (Article 13).

Each State must concrete these obligations at the moment of its signature and ratification of the Charter, and so Spain has done it opting actually, in the sphere of education, for the obligations which seem more strict concerning languages «recognized like official in Statutes of Autonomy of Autonomous Communities of Basque Country, Catalonia, Balearic Islands, Galicia, Valencia and Navarre», while for the other ones—those which Statutes of Autonomy protect in the territories where traditionally are being spoken—only «they will be applied all these dispositions of part III of the Charter which may reasonably be applied in keeping with the aims and principles established in the Article 7»

Anyway «the provisions of this Charter shall not affect any more favourable provisions concerning the status of regional or minority languages, or the legal regime of persons belonging to minorities which may exist in a Party or are provided for by relevant bilateral or multilateral international agreements» (Article 4.2).

This Spanish option in the Charter’s ratification, however, just because it foresees an education guaranteed in every level—so much the pre-primary or pre-scholar as the primary, the secondary or the technical and vocational ones—in the regional or minority (co-official) languages, does not seem free of doubts about its consistency with the case law doctrine we have seen concerning the linguistic conjunction system of Catalonia and some others Communities, specially since we take in account that such option appears in every section of Article 8 of the Charter like something different of this another which implies the application of similar measures only «to those pupils whose families so request and whose number is considered sufficient».

Nevertheless, the Charter Preamble wanted to clarify in any case that «the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them», and there is no doubt, in the case of Spain, the only official language in this sense is only that of the State, since those regional and minority ones, in the exposed sense, are just opposed here to the official language, and it is evident that Spanish State has mainly included among them the co-official languages of these Autonomous Communities which have them recognized in one or another measure.

8. THE USE OF ENGLISH AS TEACHING’S LANGUAGE.

On the other hand, may be noted that, when the regulation power of Autonomous Communities has been exercised in this field of education’s language, not for the issue of the social linguistic pluralism in some parts of the territory, but to promote the possibility of receiving good part of the school education in a no official language, particularly in someone of internationally recognized importance—specifically English—, with the aim to generalize certain bilingualism, considered a relevant factor of training in the current society, the Upper Court of Justice of Madrid has found the regulation consistent with the law.

9. CONCLUSION.

It should be said anyway, to close these comments, that, although the Spanish Constitutional Court and Supreme Court, in their jurisprudence, have deduced from the Constitution, in no few conflicts, some basic requirements, we may miss however a statute of the State which, accordingly with the provision of Article 149.1.10 of the Constitution, guarantee some basic conditions for the equality of every body in respect of education language or languages, though taking obviously in account the specific linguistic regime of each part of national territory, whose general determination is in part the competence of the Autonomy’s Statutes of each Autonomous Community.

10. QUOTED BIBLIOGRAPHY


Endnotes

1. The *Ley Orgánica de Educación* (LOE), the basic State’s Act on education includes some general dispositions compelling the Educative Administration to enforce appropriate measures to make possible and more easy the scholar integration under the official language or languages of those which do not know it or them sufficiently (Art. 79).

2. See Ley foral del vasconcejo of 15 December 1986. On ground of historic reasons the Navarre own law is known as foral law, rooted in own old laws or Fueros.

3. See the majority of these statutory references, with additional information about the regional acts and regulations which enforce and develop the provisions of the Autonomy’s Statutes, in FERNÁNDEZ FARRERES, Germán (2008), ‘La lengua de la enseñanza’, in REQUERO IBÁÑEZ, J.L. & MARTÍNEZ LÓPEZ-MUNIZ, J.L., Los derechos fundamentales en la educación, Cuadernos de Derecho Judicial, Consejo General del Poder Judicial, Madrid, pp. 307-316.

4. Commented by Carlos FAJARDO CASAJÚS (2008), ‘La Comunidad de Castilla y León’, chapter 3 of SÁEZ HIDALGO, Ignacio (dir.), *Derecho público de Castilla y León*, Lex Nova, Valladolid, pp. 139-141, and, more widely, by Mercedes IGLESIAS BÁREZ (2011), ‘Artículo 5. La lengua castellana y el resto del patrimonio lingüístico de la Comunidad’, in: SÁEZ HIDALGO, Ignacio & REY MARTÍNEZ, Fernando (dirs.), *Comentarios al Estatuto de Autonomía de Castilla y León* (LO 14/2007), November 30th, Civitas-Thomson-Reuters, Cizur Menor (Navarra), pp. 91 a 97. The last one remembers that also the text of former Statute of Castle and Leon, after its 1999’s reform, already guaranteed protection in its Art. 4 to the Galician language when was explicitly protecting, though without specific mentions, the linguistic modalities in places where usually they are being used (p. 91).


6. Art. 50 of the Spanish 2nd Republic Constitution (1931), though admitting expressly that Autonomous Regions will may organize the education in their respective languages, accordingly with the faculties given them in their Statutes, said that it is compulsory the study of Castilian language, and this will be as well used in every primary and secondary schools of the Autonomous Regions.


9. Catalan is the language normally used as vehicle and for learning in education (Parágrafo 1º).

10. Every person has the right to receive the education in Catalan, in conformity with what is established by the present Statute. Catalan must be normally used like vehicle language and for learning in all levels of education. 2. Pupils have the right to receive the education in Catalan in non-university education. They have also the right and the duty to know with oral and written sufficiency the Catalan and the Castilian when they finish the compulsory education whatever their usual language may be when they were incorporated to education. The teaching of both Catalan and Castilian must have an adequate presence in study programmes. 3. Pupils have the right to be no separated in schools or in groups by their usual language. It is important to say that this relevant paragraph 3 remained out of any debate about its constitutionality: this was limited to paragraphs 1 and 2 of this article and to Art. 6.1 (see LR 24).

11. See the same LR 24. The inclusion of paragraph 3 of Art. 35 in the reasoning of this decision might have obliged to change the perspective and to recognize the impossibility of an interpretation in favour of constitutional consistency.

12. Germán FERNÁNDEZ FARRERES (2008) talks about the distinction of several models or systems adopted by the Autonomous Communities with co-official own languages: basically one of linguistic separation by choice, followed in Basque Country and Navarre, where it is possible to distinguish in addition three or four modalities respectively, but always on the ground of a right to linguistic choice with ones or others peculiarities, among the Castilian and Basque languages; and another different of full bilingualism or linguistic conjunction, which would be the specific of Catalonia, the Balearics and Galicia. There are mixed systems as well, like this of the Community of Valencia (see ‘La lengua de la enseñanza’, cit., pp. 328-342).

13. See. SCDD of 9, 13 and 16 December 2010, 10 and 19 May 2011, and, specially overwhelming, 12 June 2012, from LR 5 to 8, nullifying the Art. 4.1 of the Catalan Decree 181/2008. Its LR 10 underlines that the compulsory linguistic immersion in only one of the co-official languages is not consistent with law.

14. SCDD of 16 December 2010, LR 6. Reasons founding this decision were implicitly raising doubts about the Art. 11.4 of the Catalan Education Act of 2009. SCD 12 June 2012 has anyway expressly said that «the regulations for the enforcement of the Catalan Education Act 12/2009, which abolished the too Catalan Linguistic Policy Act 1/1998, must be submitted to the constitutional doctrine derived from the CCD 31/2010», and it has also remembered that the exercise of the right to choose one or another language has to be possible do it in equal conditions.


17. The official language – Castilian - would remain as vehicle language in primary education only for mathematics, Castilian language and literature, becoming English the preferential vehicle language, what the plaintiffs were considering inconsistent with the legal principles and purposes for this educative level established by the LOE (Education Organic Act) and the respective Royal Decree 1519/2006 on minimal teachings (MUCJD 687/2011, of 29 July, LR 1 to 3).

Linguistic Rights in Education - Country Report on Sweden

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1. BACKGROUND

1.1. The importance of language in nation-building

Sweden has often been characterised as a country lacking a conscious conception of language policy and language in general. It is a fact that the Swedish language has never been threatened or questioned politically, and Swedish was never part of a national liberation process as, for example, the standard languages of Norway and Finland were. The situation in Sweden in the 20th century also differs from that of its neighbouring countries in that Sweden was not involved in World War Two, whereas Denmark, Finland and Norway had to fight for their independence during the war.1 These differences have resulted, it would seem, in language being a non-issue in Swedish discourse and thinking; that is, the linguistic situation of the country has been taken as a given.2 or has been looked upon with indifference.3

If we take a step back and consider the historic role of language in Swedish nation-building, we can note that the Swedish standard language evolved in a continuous, dynamic process over a long period of time from the 16th century. The first translation of the Bible into Swedish in 1541, in the wake of the Reformation, manifested an important event early in this process. Various standardisation efforts, in particular during the 18th century, resulted in a relatively stable standard language by the early 19th century. In the process, the establishment of the Swedish Academy in 1786 was a milestone. The sole objective of the Academy was to “improve” the Swedish language. Concrete goals included the production of a complete Swedish dictionary and a grammar of the language.4

The indifference to language issues and the Swedish language during much of the 20th century mentioned above contrasts sharply with earlier attitudes. Sweden was not at all unaffected by the ideological climate of nationalistic romanticism prevalent during the 18th and 19th centuries. A typical reflection of this, again, was the Swedish Academy, whose task it was to maintain the “purity, strength and highness” of the Swedish language (note the influence of the French Academy with respect to French). An example that reflects the ideological atmosphere at the time is a poem, published in 1817 by the Romantic poet Essaisa Tegnér (1782 – 1846), that worships the Swedish language and starts with the following lines:

Årars och hjältarnas språk! Hur ädelt och manligt du rör dig! Ren är som malmens din klang, säker som solens din gång.

‘The language of honour and heroes! How noble and manly you move! Pure as the clang of ore, unfailling as the route of the sun.’ (Our [non-literary] translation)

This poem was part of the Swedish literary canon for at least 150 years5 – if not to this day – and was integrated in the curriculum of early 20th century schools. What has survived as a set phrase in the linguistic repertoire of most Swedes is the phrase “language of honour and heroes” as a metaphor for Swedish, although most people today would have no idea of its origins or, indeed, any concept of its nationalistic connotations. Nevertheless, it reflects how language did actually play some role as a component of nation-building in Sweden during the nationalistic era, although it may be correct, as it has been claimed, that Swedish nationalism was less the romantic nationalism experienced in Denmark and Norway during the same time and more an “enlightened patriotism”.6 It is notable that

formal language planning since the 1880s has had a clear functional approach aimed at purposefulness.7 Over much of the later 20th century, an explicit downplaying of the Swedish language and Swedish ethnicity has characterised the public discourse – or lack of discourse – about Swedish national identity.8 9 10 Simultaneously, below the surface, both language and ethnicity have clearly played a significant role in the conceptualisation of Swedishness.11 Widespread attitudes and ideologically based conceptions of the mainstream Swede as opposed to the Other reflect an obvious hierarchisation of Swedish as the top-ranked language (together with English) on a scale in which both national minority languages and migrant minority languages are subordinated. The manner in which this is spelled out comprise, among other things, the devaluing of languages other than Swedish and English in the school system,12 implementation problems for mother tongue and bilingual programs in Swedish schools,13 14 the widespread use of ethnic boundary marking linguistic concepts such as semilingualism and Rinkeby Swedish,15 16 and the creation of particular institutional orders and identifications in the We vs. the Other context.17 18

1.2. The formal recognition and status of different languages

The Swedish language has not enjoyed a formal official status in Sweden until recently. After a considerable period of debate and governmental investigation, the Swedish Language Act was confirmed on July 1st, 2009.19 According to the law, Swedish was given the status of principal language in Sweden. In the international context, for example, in the EU, Swedish was designated as the official language of Sweden. The term ‘principal language’ reflects the view of the Language Act that the status of Swedish should be regarded in relation to all other languages used in Sweden, i.e. together with the national minority languages, Swedish Sign Language, and other languages spoken as mother tongues in Sweden principally by immigrants and their descendants. The Act, in a single formulation, regulates the formal status of these categories of languages, their use in the public sector and the access of individuals to them (see below). In this way the Language Act incorporates or builds on earlier laws and regulations (concerning national minority languages in 2000, Swedish Sign Language from 1981 to 1983 and the right to mother-tongue instruction in 1977.20

Five languages, Sami, Finnish, Meänkieli, Romani Chib and Yiddish, obtained a status of national minority languages through a parliamentary decision in 1999, which was interpreted as preparation for Sweden’s ratification of the European Charter for Regional and Minority Languages.21 Laws were formulated for the public use of the territorial languages, Sami on the one hand22 and Finnish/Meänkieli on the other,23 in specified administrative regions in the north of Sweden. Meänkieli, formerly called Torne Valley Finnish, is spoken on the Swedish side of the border with Finland. This variety has developed its own form in contact with Swedish over a period of 200 years, after the Finnish-speaking region was divided in 1809 between the two nation-states Sweden and Finland, which up to that point had been one country. These laws, as well as the regulations for speakers’ access to and use of the non-territorial minority languages Romani Chib and Yiddish, came into force in Sweden’s ratification of the European Charter for Regional and Minority Languages in 2008.24

Swedish Sign Language does not nominally enjoy a status as a national minority language, but it has an official position that in all respects is parallel to that of the national minority languages.25 In 1981, Swedish Sign Language was given official recognition as the mother tongue of the deaf community. This had important consequences for education of the deaf. In 1983, the Swedish general curriculum for the so-called “special school”, stated that the medium of instruction should be sign language and Swedish (i.e. primarily written Swedish). The use of sign language as a means of instruction in deaf education, making radical difference to deaf schoolchildren’s academic success26 27, was adopted earlier in Sweden than in any other country in the world. The right to interpreting services for (higher) education and other community negotiations is equal to or more advanced than for other mother tongues (see below).
English has a special status as a compulsory school subject for all children starting in grade 3. However, individual school districts can start English training from grade 1. Other foreign languages (especially French, German, and Spanish) can be opted for starting in grades 6 or 7.

1.3. An overview of current debates

The present framework does not allow for any detailed discussion of current language-related debates in Sweden. Nevertheless, a brief mentioning of the issues that are currently the object of public discussion will be mentioned.27

**Mother-tongue instruction and the use of languages other than Swedish as means of instruction.** Although since the late 1970s there has been strong and consistent legal support for the right of all children with mother tongues other than Swedish to receive mother-tongue instruction and study support in their mother tongue, the implementation problems have been considerable. This is reflected in an ongoing media debate with arguments for and against, in particular at the level of “letters to the editor”.30 The employment of minority languages as a means of instruction, for example, the use of Arabic in the teaching of mathematics in several schools, in spite of positive results, has met with fierce opposition both politically at the municipality level and in the “letters to the editor”.36 At the political level, only the right populist party, the Sweden Democrats, is openly opposed to public support for mother-tongue instruction.

**Swedish as a Second Language.** The school subject Swedish as a second language has been vividly debated in both the public media and in the educational sphere. As in the case of mother-tongue instruction, implementation problems have been severe for decades, including, for example, employment of untrained teachers, lack of professional assessment of pupils, and non-professional leadership in schools. In particular, in the wake of less professional activity in many schools – although the variation in quality varies immensely – the debate has concerned both the justification of the school subject par se and the fact that many participating pupils and their parents feel they are stigmatised for taking part in a segregationist, low-status activity.31

**Swedish for immigrants.** Ever since extensive instruction in Swedish for immigrants (SFI) was made available on a large scale in the 1960s as a response to a rapid increase in immigration, this educational sector has been the topic of much debate. Courses, free of charge for participants, have been administered both within the municipality school system and by external organisers at different periods but have consistently been criticised for low quality and for not resulting in sufficiently high levels of proficiency rapidly enough – a critique that is not always justified from a theoretical perspective, neither in educational nor language acquisition terms.32 The objectives of the courses have varied according to the different ideological perspectives reflected in the central steering documents from time to time, and the lack of clarity in this respect has created a continuous, often to a certain extent confused, debate.33 34

**Rinkeby Swedish and semilingualism.** Rinkeby Swedish is a term for the type of Swedish used, especially by young people, in multilingual urban settings in Sweden. It has its name from one of the suburbs of Stockholm but has been used emblematically since the 1980s, together with other designations, for similar situations in other cities. Semilingualism was introduced in the Swedish debate in the early 1970s for a situation in which children growing up with more than one language were perceived to have acquired none of the languages “properly”. It has been observed how these concepts, in addition to serving as attempts to describe linguistic variation, have been employed as metaphorical markers for the we-they-distinction and have in this sense appeared continuously in the media along with negative stereotypes of a growing fear or concern about the young generation of people with ethnic heredity from other countries.35 In the middle of the first decade of the 2000s, a fierce debate was raging in the leading newspapers on schooling, multilingual children and the Swedish language, in which Rinkeby Swedish played a central role in a discussion of identity and a debate about the ideological perspectives that guided the different combatants.36

**Language testing and citizenship.** In the context of the three parliamentary elections in Sweden in 2002, 2006 and 2010, the Swedish Liberal Party (Folkpartiet) repeatedly proposed a language requirement as part of the conditions for obtaining Swedish citizenship. In spite of considerable critique in the media and by a broad political spectrum in the parliament – and indifference from the other parties in the government coalition – but probably encouraged by increasing numbers of voters, especially after the first language-test campaign in 2002, the proposal has recently been presented again. The party’s youth organization has also proposed a citizenship test that would include a language section. The debate has been animated on all these occasions, yet there does not seem to be any political support for the present proposal.37

**Swedish as an official language.** The status of the Swedish language became an issue in the context of Swedish language policy in the 1980s, partly as a result of the increasing awareness of English influence and, particularly, and importantly, due to a concern about Swedish in the context of Sweden’s negotiations about access to the European Union.38 39 After the publication of articles by linguists concerned with language planning and accompanying echoes in the daily press, the government established a parliamentary committee in 2000, which presented its policy report with a draft action programme for the Swedish language in 2002. 40 As mentioned above, it was suggested, among many other details, that Swedish had acquired the status of principal language in Sweden. The proposal was debated in both the formal consultation process by several public bodies and by individual researchers and politicians. One concern was whether legislation regarding Swedish as the principal language would not signal a lack of recognition of the linguistic diversity in Sweden, which would be undesirable in a country that had already adopted a general policy of pluralism.41 The government countered the critique with the Swedish Language Act42, which, instead of treating only Swedish, as touched upon above, became a law for all languages used in Sweden.

# 2. LANGUAGE RIGHTS IN COMPELLARY EDUCATION

## 2.1. General legal principles

According to the Swedish Education Act, all children with a registered residence in the Swedish population register have the right to education free of cost.43 For them, school attendance is compulsory for nine years (or 10 years if the pupil is in a special needs school). The obligation to attend school can be met in compulsory school, compulsory school for pupils with learning disabilities, special needs school or in the Sami school.

Children and young people seeking asylum in Sweden, as well as displaced children and young people who have been granted temporary residence in Sweden, have the right to education in the public school system, pre-school activities and school-age childcare on the same terms as permanent residents, with the exception that their school attendance is non-compulsory. 44 45 They also have the right to attend upper secondary school, provided that they begin before age 18.46

As mentioned above, the Swedish Language Act stipulates Swedish residents’ rights to learn, develop, and use both Swedish and their other mother tongues.

All residents of Sweden are to be given the opportunity to learn, develop and use Swedish. In addition persons belonging to a national minority are to be given the opportunity to learn, develop and use the minority language, and

Persons whose mother tongue is not one of the languages specified in the first paragraph are to be given the opportunity to develop and use their mother tongue.47
The right to mother tongue instruction in compulsory school is also regulated in the Swedish Education Act, which states that

A pupil with a legal guardian who has a mother tongue other than Swedish should be offered mother-tongue instruction in this language if

1. the language is used for daily communication in the pupil's home, and
2. the pupil has basic knowledge of the language in question. 48

Restriction 1 does not apply to speakers of the five national minority languages – Sami, Finnish, Meänkieli, Romani Chib and Yiddish – who have the right to mother-tongue instruction in compulsory school irrespective of the frequency with which they use the minority language. 49 Restriction 1 also does not apply to adopted children with a mother tongue other than Swedish. 50 The second restriction has been criticised by the Council of Europe, the Equality Ombudsman, and by several national bodies for the rights of minorities, since it excludes many children from being able to learn the minority language and participate in mother-tongue instruction. 51 52 53 It also appears to be counteractive to the intent of the new Language Act, especially for the national minority languages, since the Language Act stipulates that persons belonging to a national minority should be given the opportunity to learn the language, not only develop and use it (see also above). 54

The Ordinance for compulsory school further specifies that mother-tongue instruction may not be offered in more than one language to one and the same pupil, with the exception of Roma students who have grown up in a country other than Sweden, who may receive mother-tongue instruction in two languages "if there are particular reasons for this". 55

The schools are also obligated to offer mother-tongue support and instruction in Swedish as a second language to pupils "who need it". 56

Mother-tongue support is to be offered as a supplement to content lessons if the pupil is considered unable to follow the standard curriculum in Swedish. A pupil who has been schooled in a language other than his/her mother tongue prior to coming to Sweden (for example, an Armenian student from Iraq whose mother tongue is Armenian but who has been schooled in Arabic) may be entitled to mother-tongue support in the earlier language of schooling rather than in his/her mother tongue, "if there is a need for this". 57 58 The final decision about whether or not a pupil is in need of mother-tongue support for content learning, for how long the support should be offered, and how the support should be organised lies with the director of the individual school. The lack of more general directives for mother-tongue support in the schools has been one point of criticism expressed by the Swedish Schools Inspectorate (see further below).

In several recent reports on education in Sweden, the term "newly arrived pupils" (Sw. nyanlända elever) is used as a general term to refer to children or young people within the school system who do not have Swedish as their mother tongue and who have arrived in Sweden close to the beginning of compulsory school or during compulsory school. 60 61 62 The term thus covers children with a wide range of different backgrounds and children with different legal statuses, from those who have received permanent or temporary residence permit, children who are seeking asylum in Sweden and also undocumented children or children who are "in hiding" from the authorities. The Swedish Schools Inspectorate is a government authority responsible for the supervision of all municipal and independent schools in Sweden, from pre-school to adult education. In 2008, they conducted an inspection of the education offered to "newly arrived pupils" in 14 different municipalities in Sweden, with special focus on pupils in grade 8-9 and in upper secondary school. 63 The Swedish Schools Inspectorate estimated that there were approximately 8,800 "newly arrived pupils" in Sweden in the year 2008. 64 In the final report, the Inspectorate criticised several weak points in the education offered to newly arrived pupils in Sweden. One point of criticism was the lack of common directives for the organization of education for newly arrived pupils, which has led to great variation between different schools. Whereas in some schools newly arrived pupils are placed together in so-called preparatory classes (Sw förberedelseklasser), with little or no contact with students within the standard curriculum, in others they are enrolled in the standard curriculum immediately, with little support specifically aimed at their individual needs. The Swedish Schools Inspectorate found significant variation between the different schools in terms of how long newly arrived pupils were kept in preparatory classes, how much time teachers dedicated to Swedish language classes versus content learning, and the extent to which newly arrived pupils were offered mother-tongue instruction and mother-tongue support for content learning. They also concluded that many newly arrived pupils did not receive mother-tongue instruction or mother-tongue support to the extent necessary for them to be able to continue their development of the mother tongue and/or to be able to proceed with their content-learning development. Many of the teachers interviewed by the Inspectorate expressed that they were unsure about the purpose of mother-tongue support and/or how it should be organised and evaluated in order to enhance pupils' content learning. The amount and organization of mother-tongue support offered to newly arrived pupils also varied noticeably between the different schools. The Inspectorate also criticised the lack of time for collaboration and joint planning for content teachers and teachers of mother-tongue support. 65

Some of the newly arrived pupils that were interviewed by the Swedish Schools Inspectorate reported lengthy delays, in some cases several months after their arrival in Sweden, before they could begin their schooling. 66 The Swedish Schools Inspectorate found this to be a reason for concern considering that it is not in line with the ordinance on education, pre-school and school-age childcare for children seeking asylum, etc., which states that children seeking asylum in Sweden and children who have been granted temporary residence should be accepted into school no longer than one month after their arrival in Sweden. 67

Another point of criticism from the Inspectorate was the municipalities’ lack of information in diverse languages directed at newly arrivals about the Swedish educational system and how to enroll in compulsory school. 68

Finally, the Swedish Schools Inspectorate expressed concern about many schools’ restricted knowledge of the newly arrived pupils’ background, earlier knowledge and earlier school experiences, thus making it difficult or impossible for them to adapt the education to the individual needs of the pupils. 69

A common observation made in research on school practices in multilingual settings in Sweden is that the teaching is often predominantly rooted in Swedish cultural norms and that students with diverse linguistic and cultural backgrounds are all too often positioned as "others". 70 71 72 73

The governing parties have taken some of the criticism expressed by the Swedish Schools Inspectorate to heart. In the budget proposal for 2013, they propose that 409 million SEK in the years 2013-2016 should be directed at achievements to enhance the education offered to pupils with migrant backgrounds. For example, they propose that 65 million SEK be allocated to develop guidance materials that teachers can use to survey newly arrived students’ earlier knowledge. 74

2.2. Special categories

2.2.1. Non-citizens

2.2.1.1. Non-national EU-citizens (EU migrants)

The European Parliament and Council Directive regulates EU-citizens’ and their family members’ right to move and reside freely within and between the EU-member states. 75 Following this directive, any EU-citizen has the right to stay and reside in Sweden up to three months without a special visa requirement. After three months, an EU-citizen is required to meet certain conditions in order to have continued right of residence. EU-citizens or children of EU-citizens have the right to schooling in Sweden free of cost on the same terms as Swedish citizens. 76 This ensures them the right to mother-tongue instruction, mother-tongue support and instruction in Swedish as a second language if needed.
2.2.1.2. Non-national non-EU-citizens (third country migrants)

with a valid residence permit

Non-national non-EU-citizens with a valid residence permit in Sweden enjoy the same rights to schooling in Sweden as citizens.77 Their school attendance is also compulsory. The right to schooling ensures them a right to mother-tongue instruction, mother-tongue support and instruction in Swedish as a second language if needed. However, as discussed earlier, some schools are unable to meet with the obligation to offer their pupils mother-tongue instruction, mother-tongue support and/or instruction in Swedish as a second language. The pupils’ possibility to continue their development and use of the mother tongue in compulsory school may, therefore, vary considerably between different schools.

without a valid residence permit

According to rough estimates, there are approximately between 2,000 and 3,000 children staying in Sweden without a valid residence permit.78 These are, for example, children or young people whose asylum applications have been rejected and who have not complied with decisions to leave the country (i.e. children “in hiding”), or children who for different reasons have never turned to official authorities to report their stay in Sweden (i.e. undocumented children). At present, the right to education for these children is not protected by the Swedish Education Act.79 Nevertheless, the law does not forbid the schools from accepting children without a valid residence permit into their institution.

The head of school may accept a child who is not legally a resident in Sweden. It is not forbidden to offer schooling to children in hiding, but there is also no obligation to offer a place. At the moment, the decision lies with the individual school.80

The UN Committee on the Rights of the Child (CRC) has criticised Sweden for depriving children without a valid residence permit of the right to education.81 Sweden ratified the Convention on the Rights of the Child in 1990, but unlike in most other countries, the Convention does not have the status of a law in Sweden.82 In legal terms, the Swedish Education Act, therefore, takes precedence over the Convention. As a consequence of the CRC critique, the Swedish government initiated two different commissions to research how the rights to education could be extended; the commission ‘Schooling for Children who are to be Refused Entry or Expelled’83 and the commission ‘Schooling for All Children’.84 The commission ‘Schooling for All Children’ has proposed that the right to education be extended to all children who are staying in Sweden, irrespective of their legal status.85 The right to education should, according to the proposal, include the right to attend mother-tongue instruction, and to receive mother-tongue support and instruction in Swedish as a second language. The commission proposes that an exemption from the right to education is justified only for children and young people whose stay in Sweden is expected to be entirely temporary (less than three to four months).86 According to the proposal, schooling for undocumented children and children in hiding should be non-mandatory, considering that authorities would be unable to take measures against children not attending school.87

As a result of the proposal made by the commission ‘Schooling for All Children’, an agreement was reached between the governing parties and the Swedish Green Party to enact an extension of the right to education to include children staying in Sweden without a valid residence permit. The costs for the change of law were estimated in the draft budget for 2012,88 and according to the news agency TT (2011-03-03), the Deputy Prime Minister and Minister of Education Jan Björklund said that the new rights would be enacted by Fall 2012. However, as of September 2012 the change of law had still not come into effect.

2.2.1.3. Displaced people

The Swedish Alien Act89 acknowledges The Council of Europe’s ‘Temporary Protection Directive’, which regulates the members balanced efforts in offering immediate temporary protection in the event of a mass influx of displaced persons.90 Accordingly, an alien who is encompassed by the directive should be granted temporary protection and temporary residence in Sweden for one year, with the possibility for prolongation of the permit up to a maximum of three years.91

Children and young people under age 18 who enjoy temporary protection should be granted access to education in the public school system, pre-school activities and school-age childcare under the same conditions as citizens, with the exception that their school attendance is non-mandatory.92 If they enroll in compulsory school, they should be granted the right to mother-tongue instruction, mother-tongue support and instruction in Swedish as a second language on the same basis as other pupils.93

The commission ‘Schooling for All Children’ has proposed to the government that the right to schooling for children under temporary protection be extended to include also independent schools and privately run pre-school activities and school-age childcare.94

2.2.1.4. Asylum seekers

The ordinance on education, pre-school and school-age childcare for children seeking asylum, etc., specifies the rights to education for children and young people who are seeking asylum in Sweden.95

Basically, these children have the same right to education in the public school system, pre-school activities and school-age childcare as citizens. They have the right to attend compulsory school, or compulsory school for pupils with learning disabilities, special needs school or the Sami school. If they enroll in compulsory school, they should be granted the same rights to mother-tongue instruction, mother-tongue support and instruction in Swedish as a second language as other pupils.96

Asylum seeking children’s school attendance is, however, non-mandatory, something which has been criticised by the United Nations’ association of Sweden97 since some estimates indicate that only about 60% of the children seeking asylum in Sweden use their right to education.98 The Swedish Schools Inspectorate has criticised the municipalities for not taking strong enough measures to ensure that children and young people seeking asylum in Sweden are informed about their right to schooling and the procedures to be taken to enroll.99

Despite the criticism from the United Nations’ Association of Sweden, the commission ‘Schooling for All Children’ suggests that schooling for children seeking asylum in Sweden should remain non-mandatory also in the future.100 The argument is that schooling cannot be imposed on families and children whose future in the country is still uncertain. Nevertheless, the commission emphasises that the municipalities should encourage asylum-seeking parents to enroll their children in school.

The ordinance on education, pre-school and school-age childcare for children seeking asylum, etc., states that asylum-seeking children should be granted access to school as soon as it is convenient with regard to their personal circumstances, but no later than a month after their arrival in Sweden.101

As mentioned earlier, some reports indicate that children sometimes have to wait much longer than this before they can begin their schooling in Sweden (see above).

The current ordinance on education for children seeking asylum is a clear improvement from earlier ordinances, which gave asylum-seeking children the right to education in compulsory school but not in other school forms. In earlier ordinances, the municipalities were not obliged to offer children seeking asylum a place in pre-school, school-age childcare, nor access to upper secondary school.

The commission ‘Schooling for All Children’102 has proposed to the government that the right to schooling for children seeking asylum in Sweden be extended to include not only public schools, but also independent schools and privately run pre-school activities and school-age childcare.
Children who have been granted refugee status have the right to receive a residence permit in Sweden, and their residence is also registered in the Swedish population register. As registered residents, refugee children have the same right to education as citizens. This ensures them the right to mother-tongue instruction, mother-tongue support and instruction in Swedish as a second language. Likewise, their school attendance is compulsory.

3. LANGUAGE RIGHTS IN NON-COMPULSORY EDUCATION

At the upper secondary level, students who use a language other than Swedish for daily communication in their homes have the right to mother tongue instruction, given that they have a grade in the subject from lower secondary level, i.e. from the compulsory education level. They are also entitled to instruction in Swedish as a second language if needed. A mark from the school subject Swedish as a second language at the completion of upper secondary level qualifies the student for higher education in parallel with a mark in the school subject of Swedish (as a mother tongue). All municipalities in Sweden are obliged to arrange courses of Swedish as a second language for all residents above the age of 16 who lack basic skills in the Swedish language within the framework of Swedish for Immigrants. Courses are given in a certain progression at levels A-D, free of charge for the participant. Participants have the right to stay in the system until they have completed level D.

A recent addition to the system is that participants who complete and pass the courses within 12 months are entitled to a bonus of SEK 6000, 8000, or 12000, depending on course level. For access to higher education, there is a formal language requirement in Swedish and English. Foreign students are given the opportunity to study Swedish to a level sufficient for academic studies in the language. A specific qualifying language test is developed for the assessment of their level in Swedish.

Finally, deaf students registered at courses in higher education have the right to receive sign language interpreting during classes. Interpreting service is also given in public encounters generally for deaf persons.

4. CONCLUSION

A general characterisation is that Sweden, over the last 40 years, has developed a complex and, in many ways, highly accommodating set of regulations in order to meet the increasing linguistic and cultural diversity in the country. This reflects a definite willingness and intention at the policy level to provide all residents in the country, citizens as well as non-citizens, with equal rights, obligations and opportunities in the society, specifically in the educational sector. This does not mean, however, that all aspects of the policy are based on a sound knowledgebase. It can, just to give one example, be questioned to what extent the law of a bonus system in the `Swedish for immigrants’ program referred to above is in keeping with either theoretical knowledge about motivation at a general level or with any firm knowledge about attitudes among immigrants acquiring Swedish generally. In addition, and importantly, there are huge implementation problems attached to all sectors of specific provisions for language and education in the linguistically and culturally diverse Swedish society of today, problems that have been singled out in many of the reports that we have referred to in this report. On the brighter side is the fact that several decisions have been made for improvements, as we have commented upon above. A general strengthening of the quality of educational provisions for immigrants and multilingual pupils at school has been decided just recently in the national budget with an additional 409 Million SEK, and work is underway at the level of central authorities concerning improved accommodation of recently arrived pupils, better quality in using languages other than Swedish in the educational process, and new approaches to the teaching of Swedish as a second language in the compulsory school system.

5. REFERENCES


Viker, L. (2001), The Nordic Languages. Their Status and Interrelations, Novus Forlag, Oslo.


Endnotes

1. See, for example, Josephson, O. (in press), Den nordiska språkgemenskapen. Några jämförelser mellan svensk och nordisk språkpolitik. [The Nordic Language Co-Operation. Some Comparisons between Swedish and Nordic Language Politics].


Language Rights in Education in Sweden (2005)
Sara Gustafsson

1. BACKGROUND

1.1. The importance of language in nation building

Sweden, as most nations in Europe, has since its creation had peoples speaking different languages. The indigenous Samis have been living in the territories of what is Sweden today before the nation state of Sweden was a fact. What is Finland today was before 1809 part of Sweden for many hundred years and Finnish has been spoken in Sweden for a very long time. There existed a Finnish congregation in Stockholm already in 1533 and Romani, as well as Finnish, has been spoken in Sweden since the 16th century.

Through time borders have altered and in the wake of war and territorial adjustments the education system has been used as a means to build the nation. One early example is when the southern counties of what is Sweden today, for example Scania, through the peace of Roskilde in 1658 were incorporated with Sweden. It became important for Sweden to make the newly acquired territories Swedish. Two of the most effective measures were to establish a Swedish university in Lund in Scania so the students did not have to go to Copenhagen in Denmark to study, and the arrangement of education in Swedish. Thousands of Swedish schoolbooks and psalm books were printed and the parish clerks and organists were ordered to teach the children to read and write in Swedish.

Finnish and Sami were used in elementary school in the north of Sweden until the end of the 19th century. Over the last hundred years the nationalistic approach has led to denial of cultural and linguistic pluralism. Linguistic assimilation of both Samis in northern Sweden and Finnish speakers in Torneåland (north-eastern part of Sweden on the border to Finland) was an important political goal in Sweden. Through immigration in the 1950's and onwards a large number of languages came to be spoken in Sweden. In the end of the 1960's and in the beginning of the 1970's alternative ideologies of pluralism grew stronger and Swedish politics changed course. Home-language instruction was introduced for immigrants as well as interpretation services and support to cultural activities in other languages than Swedish.

In the area of education it meant language support to students with another mother tongue than Swedish. These decisions were taken with the immigrants in mind but were also beneficial for the traditional minorities in Sweden.

1.2. The formal recognition of languages

Swedish is by far the most spoken language in Sweden. However, there is no law in Sweden stating that Swedish is the official language of the country.

In 1999 the Swedish Parliament recognised five national minorities: the Sami, the Swedish Finns, the Tornealers, the Roma and the Jews and their languages. By ratifying the

European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities Sweden has undertaken a national commitment to protect the national minorities and to support the cultures and languages of these minorities.

The Sami language consists of several varieties and in Sweden three varieties are spoken, North Sami, Lule Sami and South Sami. Upon ratification of the Language Charter the three varieties were ratified as one minority language. The Sami population amounts to approximately 15 000 – 20 000 people and there are about 9 000 speakers of Sami in Sweden. Sami is spoken mainly in the northern parts. The Swedish Finnish population amounts to approximately 450 000 people and it has been estimated that half of the population use the Finnish language to some degree. Finnish is spoken all over Sweden with some concentrations in the most northern part of Sweden and in the region around Lake Mälaren in central Sweden. Meänkieli or Torneåläändska is spoken by people in the region of Torneåland and is the language mentioned is that roughly 40 000 have some knowledge of Meänkieli. As in the case of the Sami, the different varieties of Romani spoken in Sweden are ratified as one minority language. The number of Roma living in Sweden is approximately 40 000 – 50 000 people. How many persons that have a command of any variety of Romani is uncertain. The Jewish community in Sweden amounts to 20 000 - 25 000 people and it is estimated that about 3 000 of these have command of Yiddish.

2. LANGUAGE RIGHTS IN EDUCATION – LEGAL PRINCIPLES

In the Education Act it is stated that all children and young persons shall irrespective of gender, geographic residence and social and financial circumstances have equal access to education in the national school system. The education shall be of equal standard within each type of school, wherever in the country it is provided. Language is not mentioned in the article and the law is not the same as regards all languages when it comes to education.

Pre-school is governed by the curriculum for the pre-school, an ordinance with binding provisions issued by the Government. The curriculum sets out a number of goals. One of the goals is that the pre-school should strive to ensure that children with a mother tongue other than Swedish develop their cultural identity and their capacity to communicate in Swedish as well as in their mother tongue.

Sami, Finnish and Meänkieli and their use in pre-school is regulated separately as a result of the ratification of the Language Charter. In April 2000 Swedish law entered into force ensuring right to use Sami, Finnish and Meänkieli in administrative authorities and courts of law in some parts of Sweden (in so called administrative areas). The law also requires municipalities in these administrative areas to offer parents or guardians of a child the option of placing their children in pre-schools where parts or all of the activities are conducted in Sami, Finnish or Meänkieli.

Children and young people whose first language is not Swedish are entitled to first language/mother tongue instruction in compulsory and upper secondary school under certain conditions. In addition to mother tongue instruction, if necessary, students may also receive

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help in their mother tongue for other subjects. Participation is not compulsory but municipalities are basically required to provide mother tongue instruction. However, certain restrictions apply depending on the language in question and the status of the minority group. The rights of the recognized national minorities are more comprehensive than the rights of other groups.

For pupils who have another language than Swedish as their language of ordinary intercourse (colloquial language) with one or both of their parents or guardians, the municipality may organise parts of the education in first to sixth grade in the colloquial language (bilingual education). For pupils with Finnish as their colloquial language such education may be organised also in seventh to ninth grade. At least half of the instruction must be in Swedish and the education shall be planned so that the instruction in Swedish gradually increases.

In 2003 the Government decided to create a four-year pilot scheme with education on mother tongue (bilingual education) for pupils in the compulsory school. The pilot scheme means enlarged possibilities to teach on the mother tongue in grades seven to nine for students with other languages than Finnish as their colloquial language.

Pupils in compulsory school have a right to mother tongue instruction (i.e. instruction of the language as a separate subject) if at least one parent or guardian have a different mother tongue than Swedish and this language is the colloquial language of the pupil. A precondition is that the pupil has basic knowledge of the language. A Sami, Tornedal or Roma pupil have the right to mother tongue instruction even if the language is not the colloquial language of the pupil. Same rules apply to adopted children with a different mother tongue than Swedish. The municipality does not have to arrange mother tongue instruction for more than seven years. This seven year limitation does not apply to mother tongue instruction for Sami, Finnish, Roma or Tornedal pupils. However, a municipality has to organise mother tongue instruction in a language only if there is a suitable teacher and if at least five pupils wish to have instruction in the language. This last restriction does not apply to Sami, Tornedal or Roma pupils. For Sami, Tornedal or Roma pupils, the municipalities have to organise mother tongue instruction even if the number of pupils is less than five. Corresponding regulations on mother tongue instruction apply to pupils in upper secondary school.

Independent schools are bound by the same regulations as public schools as regards bilingual education and mother tongue instruction, i.e. the regulations for compulsory school apply to compulsory schools whether they are public or independent and the regulations for upper secondary school apply to both public and independent upper secondary schools.

In addition to the rights on bilingual education and mother tongue instruction above, there are Sami schools. Sami schools carry out instruction from first to sixth grade. There are at present six Sami schools. The curriculum for the compulsory school applies also to the Sami school but for the Sami school a curriculum is added for the subject Sami. Instruction shall be given in Swedish and Sami and the subject Sami shall be taught in all grades. After sixth grade pupils of the Sami school enter the ordinary compulsory school where they can continue to learn Sami as their mother tongue.

Basically the same regulations apply regarding language in compulsory and upper secondary education for asylum seeking children as to children who are resident in Sweden. If an application for residence permit has been denied, expired or has been recalled, the person will be expelled. The right to education applies until the expulsion order has been enforced. However, a person who is hiding so that the decision on expulsion cannot be enforced does not have the right to education.

If a pupil needs it, i.e. does not know enough Swedish to manage in school, the pupil has the right to get help in their mother tongue, for example the instruction explained to them in their mother tongue.

3. WHAT ABOUT IMPLEMENTATION?

There are more than 120 mother tongues in the Swedish school. The biggest are Arabic, Bosnian/Croatian/Serbian, Spanish and Finnish. Instruction in mother tongue is organised differently in the municipalities. In general, instruction in mother tongue and help in mother tongue have decreased over the last decades. There is no earmarked funding for the teaching of minority languages, in contrast to the period from the 1970's until the 1990's when there was in fact a special budget for this.

Most of the help in mother tongue and mother tongue instruction is given by ambulating teachers who are working at several pre-schools and schools. There are very few bilingual classes or groups and few groups who receive instruction on the mother tongue. Mother tongue instruction is often given in the late afternoons after the regular school hours for one or two hours per week.

In the beginning of the 1990's support was given to about 60 % of children in pre-school with a different mother tongue than Swedish. For the last few years the share has been about 14 %.

In compulsory school the number of students entitled to mother tongue instruction (including help in mother tongue) was stable during the 1990's at about 12 % of all students. In 2004/05 it had gone up to 14 %. In 1990/91 65 % of all students entitled to mother tongue instruction in compulsory school took part. In 2000/01 the number had gone down to 52 %. Since then the negative trend has turned and in 2004/05 the number had gone up to 55 %.

Several reasons have been given for the former negative trend: economic constraints in the municipalities, the subject mother tongue instruction became more narrowly defined in the law and the municipalities' obligations were restricted – at least five students were needed for the municipality to have an obligation to organise instruction in that particular language.

Only in every eighth municipality instruction in different subjects in other mother tongues than Swedish is arranged, for example mathematics in Spanish or English in Persian. Usually it is whole classes or groups of pupils with the same language who get instruction in certain subjects in their mother tongue. This is also the way education is arranged in many
independent schools with a linguistic or ethnic profile or in classes for students from national minorities. Despite the rule that municipalities are not obliged to organise mother tongue instruction for more than seven years, it is common that municipalities organise mother tongue instruction during the whole time of compulsory school (grade 1-9). For pupils who recently came to Sweden, for example asylum seekers, many municipalities offer special preparatory classes with instruction in Swedish as a second language and extra support in the form of tutoring in the mother tongue.27

The role of independent schools was limited in Sweden for a long time but since the beginning of the 1990’s independent schools receive funding from the municipalities. The numbers of independent schools have been increasing since. The independent schools offer specific profiles and some of them have adopted ethnic/linguistic profiles. In independent schools about 19 % of students were entitled to mother tongue instruction during the 1990s. In 2004/05 67 % of entitled students took part in mother tongue instruction.28 Many independent schools arrange instruction in specific subjects in other languages than Swedish and have a larger share bilingual teachers than municipal schools.29 In 2003/04 there were 506 independent compulsory schools of which 29 had a linguistic/ethnic profile.30

4. IMPLEMENTATION OF THE EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

The Council of Europe has criticized Sweden for inadequate implementation of the commitments in the Language Charter. Individuals have not been able to satisfactorily exercise the rights of the current minority language legislation.

The Committee of Experts has encouraged the Swedish authorities to improve the teaching of and in the Romani languages and especially to develop teaching materials as well as teacher-training as there is a serious lack of teachers and teaching materials. Even though the situation has improved over the last years, there is still a need for financial and technical support.31

Swedish Finnish pupils’ participation in education in Finnish and the teaching of Finnish has decreased dramatically. At the beginning of the 1990’s over 300 bilingual classes were organised compared to a handful in the beginning of the 21st century. In the school year 2002/2003 eight independent Sweden Finnish schools conducted bilingual education.32 Regarding Finnish the Committee of Experts stated that “there appears to be little effort directed towards promoting bilingual education outside the independent sector” and that there “is a danger that this will leave a vacuum, as there is no bilingual education in the municipal school system. If it is not feasible to support independent schools providing bilingual education, then provisions need to be made for the possibility of bilingual education in the municipal school system.”33 Even though the Committee of Experts concluded that Sweden fulfilled the undertakings formally regarding Finnish, there was a lack of implementation.34

As to Meänkieli the Committee of Experts concluded that Sweden only partly fulfilled the undertakings in the Language Charter: The pattern is very similar to that of all mother tongue instruction in Sweden. During the 1990’s the number of pupils participating in the instruction diminished drastically. There is no overall policy and the state has allocated the responsibility for the implementation to the county and the municipalities. The municipalities should have a more pro-active approach. There are often practical obstacles to receiving education in Meänkieli.35

Regarding Sami the Committee of Experts found a lack of adequate teaching materials and that availability of mother tongue teaching of Sami in secondary education depends on the will of the municipality, which decides if this teaching is made available on the basis of the number of students and resources available. For Sami students living outside the territories where Sami is traditionaly used there is a shortage of teachers.36

Generally the Committee stated that Sweden has a structural problem in that practical implementation of the Language Charter is dependent on measures taken by regional and local authorities and that in some instances this has led to non-fulfilment of undertakings even though the legal basis has been established. There is also a need for specific measures to make teaching in or of the minority languages more available. In addition there is room for improvement as regards teacher training and production of teaching materials.37

5. DEVELOPMENTS FOR THE FUTURE

In a recent Official Report it is suggested that a new Act on National Minorities and National Minority Languages that encompasses all of the national minorities is needed. It is further suggested that the national minorities, their languages and cultures should be specified in the Constitution as the current regulation does not fulfil Sweden’s commitments in accordance with the Framework Convention. The Official Report states that active measures on a national regional and local level are needed in order to promote the preservation of the national minority languages.38

The same Official Report furthermore suggests that the regulations on the right to teaching of minority languages need to be altered so that all national minorities are given the same rights. Pupils belonging to the Finnish or the Jewish minorities should also have the right to the teaching of Finnish and Yiddish, even if there is only one pupil in the municipality who wishes such education. In addition it is suggested that the National Agency for Education’s supervision on the national minorities’ access to teaching of minority languages should be strengthened.39

6. CONCLUSION

Almost the same rules apply for children regardless of what mother tongue they speak when it comes to language rights in education. However, the rights of some of the recognized
national minorities are more extensive than what applies in general as some restrictions as to the municipalities obligations to provide mother tongue instruction do not apply them.

It can be concluded that despite good intentions as regards mother tongue instruction there is a difference between intention and implementation. The number of children receiving some kind of mother tongue instruction is less today than it was 15 years ago. However, the negative trend has stalled and the number of students having some kind of mother tongue instruction has increased over the last couple of years.

Endnotes

4. In a recent Official Report it has been suggested that there should be a new language law and that Swedish should be the official language in Sweden. Government Official Report Series, SOU 2002:27, p. 465. A government bill on the Swedish language is to be presented 29 September 2005. As of the day of writing it is not known what will be proposed in the bill. Government Official Reports (SOU) can be found at www.regeringen.se
8. Education Act (SFS 1985:1100), § 2. Laws can be found at www.riksdagen.se
17. Förfarande om fristående skolor (Ordinance on Independent Schools) (SFS 1996:1206), ch 5, 7, 10 and 12 §§.
19. Förordning om utbildning, förskoleverksamhet och skolbarnomsorg för asylsökande barn m.fl. (Ordinance on education, pre-school and day care for asylum seeking children etc.), (SFS 2001:976), §§ 2, 3, 6 and 9. There is an ongoing discussion on giving asylum seeking children who are in hiding from expulsion the right to education.
34. Application of the Charter in Sweden, pp. 31-34.
38. SOU 2005:40, p. 22. The report is now circulated for consideration by concerned parties. A final Official Report is expected in the beginning of 2006. A government bill will be ready by the earliest in 2007 according to the Ministry of Justice.
Linguistic Rights in Albania (2005)

Nikoleta Mita
Aurela Anastasi
Marita Flagler
Linguistic Rights in Albania (2005)
Nikoleta Mita, Aurelia Anastasi, Marita Flager

1. BACKGROUND

1.1. The Importance of Language in Nation-Building in Albania

Linguistic rights in Albania have a long history. This history began with the fight to recognize and use Albanian as an official language during the period of the formation of the Albanian state and it continues today with the treatment of the issues of the linguistic rights of the national and linguistic minorities. The development of the national language and the advancement of linguistic rights have occurred contemporaneously and have always been part of the major national agenda of the Albanian State.

The official language in the Republic of Albania is Albanian. Albanian is also the official language of Kosovo, FYR of Macedonia, Serbia and Montenegro. Albanian is currently spoken by over six million people in the Republic of Albania, in Kosovo, by the Albanians of the FYR of Macedonia, Serbia and Montenegro (Preshevë, Bujanovc. Medvegjë, Krajë, Ulqin, spoken by over six million people in the Republic of Albania, in Kosovo, by the Albanians of

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1.2. Formal Recognition of the Various Languages and Their Status in Albania

Besides Albanian, other languages are also used for informal daily communication within the territory of the Republic of Albania. The three national minorities, Greek, Macedonian and Montenegrin use their respective languages (Greek, Macedonian and Serbo-Croatian) and so do the two linguistic minorities of Roma and Aromanians. In addition, temporary foreign residents or those that have received asylum use their native languages (Chinese, English, etc.). People with hearing impairments use the newly created Albanian Sign Language and the blind use Braille as their written version of Albanian.

Additionally, many Albanians speak foreign languages (English, French, Italian, Greek, Russian, German, and so on). All students in Albania study at least one foreign language as part of the school curriculum, starting at the primary school (generally third grade) and up to the university level. Some private kindergartens and elementary schools start the teaching of a foreign language even earlier. In the secondary and higher education students may learn two or more foreign languages. During the communist regime, the foreign languages taught in Albanian schools were Russian, English, French, German and Latin (the last one at university level only). At university level, German, Serbo-Croatian, Romanian, Turkish, Greek and Spanish were taught for a short time. Since the fall of communism, there has been an obvious change in the preferences of Albanians regarding foreign languages, and other European languages. Currently, in the primary schools, students learn one or more of the following: English, French, Italian, Russian, Greek and Turkish. In the secondary school they may choose to learn between English, French, Italian, Russian, German, Spanish, Greek, and Turkish. English, French, Italian, Russian, German, Macedonian, Turkish, Bulgarian, Serbo-Croatian, and Latin are taught at the university (undergraduate) level. The foreign language curricula offer the students also insights into the history, literature, society and culture of the respective countries.

1.3. An Overview of Current Debates

The current language–related debates cover the following issues:

a. There is a widespread difference of opinions on the use of the “Tosk” dialect as the basis of the modern normative literary Albanian. The supporters of “Gheg” have presented many arguments in favour of using “Gheg” as the basis of the normative literary language.

b. Some members of the Roma and Vlach/Aromanian minorities would like to be considered national rather than linguistic minorities. In addition, Egyptians (gypsies) have not been yet recognized as either a national or linguistic minority, and some members of this group, which faces poverty and marginalization, would like to be recognized as a national minority. They have asked for the creation of opportunities for their children to take classes in their mother tongue.

c. People with hearing impairments have asked for more opportunities for the use of sign language on TV and blind people have asked for increased possibilities of Braille prints.

d. Many Albanian children, whose families return from temporary emigration, are immersed in Albanian public schools with very little knowledge of Albanian and with no language instruction support. This creates problems in their education. Parents have asked from the Ministry of Education and the Regional Departments of Education to provide this support.

2. LANGUAGE RIGHTS IN COMPELLSORY EDUCATION

2.1. General Legal Principles

The Albanian state first recognized linguistic rights upon its admission to the League of Nations in 1920. In October 1921, Albania made a declaration in which it pledged its commitment to respect the rights of the minorities in compliance with the peace treaties Reference. Currently, the linguistic right, as an important human right in the Republic of Albania, has been legislated in these main documents:

- The Constitution of the Republic of Albania approved by the Popular Assembly on 21.10.1998 and decreed by the President of the Republic on 28.11.1998.9
- Law No. 7952, for “Pre-university Education System” approved on 21.06.1995 and changed on 30.07.1998 by the Law No 8387, “For Some Amendments and Changes in the Law No. 7952 on Pre-university Educational System”.10
- Law No. 88 72, for “Vocational Education and Training in the Republic of Albania”, approved on 29.03.2002.
- Provisions of the Acts for the Pre-university Education approved by the Ministry of Education and Science in 2002.8

The Republic of Albania has ratified the following international documents that contain rules on education right, on linguistic right, and on the rights of minorities:

- International Covenant on Economic, Social and Cultural Rights;
- Convention against Discrimination in Education;
- Convention on the Rights of the Child;
- European Convention on Human Rights;
- Convention for the Protection of Human Rights and Fundamental Freedoms;
- Statute of the Council of Europe;

All of these documents are directly applicable in the domestic legal order and they have been invoked in the domestic courts. The Constitution of the Republic of Albania gives a special status to the international instruments Albania is party to. According to the Constitution, every ratified act becomes part of the domestic law and is implemented directly
with the exception of the acts that are not self-implemented and require the approval of special legislation. The Constitution recognizes that the conventions have a dependant status but super juridical power. The status of the international conventions constitutes another warranty that secures their implementation even in regard to linguistic rights.

The Albanian Constitution contains articles which directly or indirectly sanction rules and regulations that guarantee, protect and assist the exercise of the linguistic rights. The principles that are at the foundation of the legislation that guarantees linguistic rights are non-discrimination, equality, and promotion of conditions that favour the protection of language, freedom of the use of the language, education in the mother tongue and freedom of the creation of the educational institutions in the mother tongue.

The Constitution of Albania proclaims that the rights and freedoms of the individual, national identity, coexistence and mutual understanding of the Albanians with the minorities are part of the foundations of the state. According to the Constitution, Albanian citizens, foreigners and people without a citizenship living in the territory of the Republic of Albania are entitled to the same fundamental freedoms and rights as well as obligations. This document guarantees that no one may be unjustly discriminated against for reasons such as language. The Constitution also grants equal rights in front of the law to all the national minorities. Persons who belong to national minorities have the right to exercise in full equality before the law their human rights and freedoms. They have the right to freely express, preserve and develop their ethnic, cultural, religious and linguistic identity, to study and to be taught in their mother tongue, to develop their ethnic, cultural, religious and linguistic identity, to study and to be taught in their mother tongue, and freedom of the creation of the educational institutions in the mother tongue.

The following are the fundamental criteria that regulate education in the mother tongue for national minorities: First, education in the mother tongue is non-obligatory. The decision does not foresee or guarantee the mandatory bilingual education. However, it defines as a general criterion a minimum number of 20 students necessary to start a class in the mother tongue. Second, opening a bilingual class or school depends on the will of the community of the minorities and it is initiated as a response to its request. The request is written by the students’ parents or wards and it is addressed to the respective Regional Education Department. The request must include the students’ enrollment list. Upon verification of the list and the satisfaction of all regulations of the request, the Director of the Regional Education Department submits the latter to the Prefect, attaching his opinion reference?

Although the acts of the Council of Ministers charge the Ministry of Education and Science with the responsibility of overseeing the education of bilingual students and the curricula of their educational units, the bylaws do not clarify the procedures for starting or terminating these educational units. Including the institution, or the Prefect in the decision-making, and charging it with the coordination of the local and central government only complicates matters unnecessarily. The local government should be given the right to make the decision in regards to opening bilingual educational units, based on Law No 8652, date 31.7.2000 “On the Organization and Functioning of Local Governance”.

We are of the opinion that the legal framework that guarantees the education of the minorities in their mother tongue requires improvements and additional legislation. For example, Decision No. 502, of 5.8.1996, which is an addendum to the Decision of the Council of Ministers, No. 396, of 22.8.1994 “On the Elementary Education in the Mother Tongue of the Students of Minorities” defines the exclusionary practice of opening bilingual education in Greek only in the cities of Sarandë, Delvinë e Gjirokastër. An act that regulates the opening of all bilingual schools nationally, irrespective of the languages involved, would be more functional.

### 2.2. Domestic Legislation on the Linguistic Rights in Education of the Minorities

Giving priority to the political orientation of the protection of human rights and fundamental freedoms of the individual, including linguistic rights and the protection of the rights of minorities, the Albanian parliament and government have prepared a juridical packet which provides support for action. The need for rapid, qualitative change for the recognition and protection of all educational rights as well as the demand to meet the accepted international standards has dictated the improvement of the Albanian legislation in regard to linguistic rights.

Three laws approved by the Albanian Parliament that regulate pre-college, college and vocational education, followed by a series of amendments and improvements, constitutes the bases of educational legislation in Albania. The issue of the linguistic rights is part of this legislation. In addition, linguistic rights have been the subject of special bylaws (like Decisions of the Council of Ministers or Guidelines by the Ministry of Education and Science).

All laws that regulate the pre-university educational system secure equal rights for all and guarantee the right of the individuals belonging to national minorities to have the opportunity for instruction in their mother tongue, and study their history and culture in the curriculum. The state also creates all conditions for the minorities to learn Albanian, and study the Albanian history and culture. The curricula as well as the proportion of the use of the mother tongue, in regards to the official language in instruction, are determined by special acts of the Ministry of Education and Science. Education for members of minorities is conducted in special educational units and institutions. Their opening as well as their functioning is regulated by the procedures determined by the Council of Ministers.

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### 2.3. Domestic Legislation on the Linguistic Rights in the Education of Foreigners.

As an implementation Act of the Constitution of Albania, the Law “On the Integration and Family Reunification of Individuals Who Have Been Granted Asylum in the Republic of Albania” regulates all the procedures that guarantee the right to education of foreigners that have acquired asylum or have applied for it. In addition to recognizing the right to education of this population, this law guarantees its implementation through positive actions of the
Albanian state. The Refugee Office organizes courses for Albanian, Civic Education and vocational education. It also covers the expenses of college education for the foreigners that have been admitted to public universities and have met all the respective requirements.

2.4. Special Categories

Ethnic Minorities

Historical tradition in Albania has followed the way of recognising, as national minorities, those minorities which have their own motherlands with which they have common characteristics such as the spiritual constitution, the language, culture, customs and traditions, religious belief, etc. Such conditions are met by the Greek, Macedonian and Montenegrin national minorities.

Albania has a population of 3,135,000, with a density of 109.1 persons per square kilometre. From the ethnic point of view, 98% of the population is Albanian and 2 percent consist of national minorities. According to the census of 1989, the total number of the minority population was 64,816. The number of the Greek population was 58,758 inhabitants, the Macedonian population was 4,878 inhabitants, whereas statistical data on the size of Montenegrin minority were not specifically and accurately defined.

There is reason to believe that during the nineties of the last century the number of people belonging to the ethnic minorities in Albania has decreased due to migratory movements. For example, according to a survey of the Albanian Helsinki Committee that was conducted in 2000, the number of the Montenegrin population was 2000 people, of whom only 600 people lived in Albania. However, the publication of a new demographic atlas, greatly disputed by the scholars of the field, claims that the actual number of the minority population is higher than the official one.

The Greek and Macedonian minorities have their schools. The students study in their mother tongue in these schools with the curricula approved by the Ministry of Education and Science. The proportions between the subjects in the lower cycle of elementary school (grades 1-4) is 90 percent in the mother tongue and 10 percent in the Albanian language whereas in the higher cycle (grades 5-9) 60 percent in the national minority native language and 40 percent in the Albanian language. The students also study the History of the Greek and Macedonian People, respectively. The textbooks for the subject are published in Greek and FYR of Macedonia.

In Albania there are no private schools for minorities. There is only one non-public school named “Arsakeio”, opened in 1998 in Tirana, which is attended by students of the Greek minority and Albanian students interested in learning Greek.

Linguistic Minorities

The Roma and Aromanians are recognised and respected as linguistic minorities. There is no official data on Roma population, they have never been registered as a separate population. According to a report of a survey published by the Albanian Helsinki Committee in September 2000, it is estimated that about 30,000 Roma live in Albania. The data for the number of the Aromanian minority in Albania appeared for the first time in the 1950 census. In this census, the Aromanian population counted 2381 inhabitants. While in the 1955 census, the number of the Aromanian population was put at 4249. In the later censuses no data was produced regarding the number of the Aromanians in Albania. The Roma and the Aromanians maintain their mother tongue as a means of communication in their social environment, but they rarely write it. There are no special schools where the Roma and Aromanian children can learn in their mother tongue.

People with Special Needs

Sign Language as the main oral form of communication for hearing–impaired people and Braille as the main form of written communication for blind people have been recognized the status of minority languages in recent international documents and the granting of opportunities for instruction in these languages for students of respective populations has been considered a human rights issue.

According to the most recent statistics there are 8929 blind people of all ages in Albania (0.29% of the population of the country). There are no accurate statistics on the number of people with differing degrees of hearing impairments. However, extrapolated statistics from international organizations estimate the number to be 286,712 individuals (8% of the population of the country). A pilot study of people who receive disability benefit in Tirana regional office gave a much lower statistic. According to the report, the number of people with recognized hearing impairment was 100 times lower than that of the blind people (respectively 27 and 2703).

Special education for students with hearing impairments was first introduced in 1965, with the opening of a special school in Tirana. Until recently, students were taught the lip-reading technique and efforts to develop an Albanian sign language were discouraged. However, with support from international experts, Albanian Sign Language has been created and it has been included in the curriculum of the Institute for Students with Visual Impairments. In the school year 2004-2005, this 9-year institute was attended by 139 students (34% females reference),. It will be difficult, however, for graduating students to continue to use the sign language as a language of instruction in the high school and university as there are no support services for the integration of students with special needs in any of the Regional Education Departments or in any of the universities in the country. The Mid-Term National Strategy of People with Disabilities (2005) has not provided any measures to be taken in this regard, although it encourages the use of sign language in the visual media and support with interpreters during communication with employees of public administration.

Blind students study for 9-years at the Institute for the Blind Students in Tirana which opened as a school in 1965. The institute is attended annually by 66-75 students (there were 69 students in the school year 2004-2005, 31% of whom were females). Braille is the main form of written code used in instruction and all the schools books are prepared in Braille for the students of the Institute. However, because of the inadequacy of printing resources in...
Braille, the students who continue to high school and university are not supported. They use recorded tapes as their main form of instruction. The Mid-Term National Strategy of People with Disabilities has a special provision in the increase of printing resources for Braille.

The solution for the education of students with hearing and visual impairments through special education boarding school has created two issues in regards to the human rights of these students. First, many parents choose not to send their young children away from home. Consequently, some of the latter may not receive any education at all because many schools are unwelcoming of students who communicate differently as special support for them does not exist. Others, especially students with hearing impairments, experience many difficulties as they struggle to learn through the written medium only. Females seem to be affected more than males as they are underrepresented in both institutions. Secondly, all students attending the special institutions are educated in segregated social and educational environments, which is a violation of their human right for inclusive education.

In conclusion, although the newly created Albanian Sign Language, and Braille are recognized as means of communication for the education of students with hearing and visual impairments respectively, more needs to be done to ensure that they achieve the status of minority languages. Additionally, the inclusive educational needs of the students with these special needs require more attention by the Ministry of Education and Science and Regional Education.

3. CONCLUSION

The Republic of Albania has demonstrated positive policies for linguistic rights and conscious efforts have been made to ensure coexistence, tolerance, collaboration and understanding among people of diverse linguistic backgrounds. The democratic changes have brought new dimensions to the linguistic rights of Albanians and the members of the minorities living in the country. This has been reflected in the adherence of Albania to international bodies and the ratification of international documents as well as in the creation of special institutional capacities to meet the obligations which the Albanian state and its government have undertaken in regards to minority rights in general and minority educational rights in particular.

However more needs to be done. There is a need for the updated statistical data on the minority population in Albania. Special populations like the Roma and the Aromanians need to be granted the right to learn in their mother tongue through public schools, and the Egyptians need to be recognized as linguistic minority. Additionally, the students with visual and hearing impairments need the necessary educational communicative support to enjoy their human right for inclusive education and the linguistic right for a broader use of their respective systems of communication to be created.
The Curriculum for the Minority Students Grades 1-9 for the school year 2005-2006

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<tr>
<th>Nr.</th>
<th>Subject</th>
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<tr>
<td>1</td>
<td>Mother Tongue (Greek/Macedonian)</td>
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<td>Albanian Language and Reading</td>
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<tr>
<td>3</td>
<td>Foreign Language</td>
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<td>Math</td>
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<td>8</td>
<td>Biology and Health Education</td>
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<tr>
<td>9</td>
<td>History*</td>
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<td>10</td>
<td>Geography*</td>
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<td>11</td>
<td>Native History (Greek/ Macedonian)</td>
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<td>12</td>
<td>Native Geography (Greek/ Macedonian)</td>
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<td>15</td>
<td>Music Education*</td>
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<td>16</td>
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<td>17</td>
<td>Physical Education</td>
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<td>18</td>
<td>Extracurricular Activities and Electives</td>
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<td>Total (hours per week)</td>
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1. The weekly hours expressed as 8/7 and 0/2, the first number belongs to th first semester, while the second number to the second semester.
2. Elementary education graduation exams:
   - Albanian Language (written and oral)
   - Native language written and oral)
   - Mathematics (written)
3. Bold font indicates the use of mother tongue
4. Some of the subjects with an asterisk may also be conducted in Albanian.
5. This curriculum will be first implemented in the school year 2005-2006 for the first and sixth grade.

Endnotes

1. Prof. Nikola Mita, Ph.D., College of Social Sciences, University of Tirana, Albania, Prof. Aurela Anastasi, Ph.D., College of Law, University of Tirana, Albania, Manita Nika Flagler, Ph.D., University of New York in Tirana, Albania.
5. See: http://www.parlament.al/english/dis-kus/dis-kus.html#PART
7. See: http://www.mash.gov.al/struktura/Larte.html
9. The Council of Europe Framework Convention for the Protection of National Minorities was signed by the Republic of Albania on 29 June 1995. It was ratified by the Assembly of the Republic of Albania with the Law 8496, dated 03 June 1999 and, after the instruments of ratification were deposited on 28 September 2000, it came into effect on 01 January 2000.
10. Albanian Constitution, 1998, Art. 16
15. INSTAT; 2005. see: http://www.stat.edu.al The last census was realized in 2001. This census did not include the declaration of nationality and religion.
16. The cause of the debate is the different data on minority population published by the same authors in the interval of two years (below 2 % in the school textbook and 8% in the atlas).
Linguistic Rights in Education in Azerbaijan (2005)

Jala Garibova
2.1. Language and Identity

2. PROMOTING THE NATIONAL LANGUAGE

2.1. Language and Identity

It is very normal to see language programs to become a first and foremost agenda for emerging nations in their state-building endeavors. The importance (or the perceived importance) of language in the state-building process has proven itself through the experience of many nations in the post-colonial state. The issue has attracted a significant attention in the political and sociological research (Jan Blommaert in Ricento: p.241; William Safran “Nationalism”: in “Handbook of Language and Ethnic Identity Edited by Joshua Fishman, Oxford University Press, 1999, p. 77-78; Smith). But what causes concern here is that research generated elsewhere on post-colonial language agendas usually tends to have at least a small degree of “academic arrogance” while the research generated inside the area is emotionally tinted and in many cases far from being rational. So we hardly get an unbiased, unprejudiced and “unpoliticized” view of the issue. “Academic arrogance” is partially caused by the reality that much of the critics and analysis emerges from Western countries, in many of which language has long completed its “cohesive” and “integrating” mission, and where it is viewed mostly from the functional point of view. On the other hand, “politicized research” in the developing nations is partly caused by the fact that language planning and policy in general, and in developing nations in particular, is a politically tinted matter. What is more, language planning, especially in developing countries, does not always get sufficient hold of academic research. As Alexander states in a reference to Lo Bianco, “it is rare that language planning is undertaken by experts”, i.e., it is usually politicians or other opinion formers who are the inspiration and government bureaucrats who are the practitioners if language planning projects”. (Alexander 114).

Both are understandable. For the past several decades researchers from developed countries have been manifesting a growing anxiety for the destiny of minority languages, situation with the linguistic diversity and the status of language rights provision for everyone not only within their states but also elsewhere in the world. Hence concern about the superiority of one language over others in new nations, which may be brought about by over-emphasis on the significance of the national language. On the other hand, deep anxiety on the part of the new nations for the promotion of their national languages is called forth by pre-existing linguistic inferiority doubled with the fear of losing the statue of the new, still fragile, national language to a new dominance.

Objectively, the official languages of developed nations (except for specific countries, where language has become a hotly-debated issue in political agendas) are more secured and better supported. The position of “selected-as-national” languages in emerging states, though, can be considered fragile for several years before these languages acquire full power to operate in all the societal, and even individual, domains. The national language promotion movement, following the status recognition (or nationalization), in developing countries therefore stems from two motives: de-facto officialization and cultivation (sociolinguistic motive); and reforms and functional development (linguistic motive).

Why has language been able to become such a handy tool in identity construction or reconstruction process? How did it acquire a role in symbolizing identity? The life-long theories of what language is could probably be summarized in three perspectives on language articulated by Robert J. Stainton: “1. Language as a set of symbols; 2. Language...
as something we know; 3. Language as something we use (Robert J. Stainton. Philosophical Perspectives on Language. Broadview Press, 1996. p.1 – 239 s.). Without intending to produce any prejudice against the elevated attitude to the language (partly because “we take it all for granted” (See: Pooja Kumar: The landscape of Language Some Introductory Word http://www.duke.edu/~pk10/language/intro.htm), one existing in my native country, I am nevertheless inclined to note that when we think more realistically, at least out of scholarly curiosity, language renders itself more as an instrument for accommodating human communication needs. Being a set of symbols and something that we know, we eventually use it not for its own purposes but for the purposes of something else. This is why, probably, language does not even fall into the binary paradigm of basic qualities (unless used metonymically) such as good-bad or new (young)-old. Qualities ascribed to the language are relative and contextual.

We usually talk about good/bad literatures, writers, actors or great orators, but still do not talk about good or bad languages (again, unless metonymically).

Languages can be neither old nor new (or young). Any language perceived as “new” is in fact a well forgotten old one. From today’s perspective, French can be said to be a new language in comparison with Latin and Gaulish from which it actually descended. However, how can we define the starting point of the discrete new form?

Even the capacity of the language is a relative parameter: the strength of a language should be evaluated in the context of the functions it serves.

The question of modernity is also disputable. Languages are always modern for their carriers. If existing pigeons were not able to serve their users, they would not exist. The Uzbek language, for example, which did not have many terms to accommodate finance terms alien to the Soviet lifestyle was not less modern 40 years ago than today when it has developed a rich financial vocabulary.

Languages can of course be distinguished by being literary or vernacular, standard or non-standard, functional or non-functional. But these are not innate qualities – in fact, what is innate is our “knowledge/faculty of language” (Noam Chomsky. New Horizons in the Study of Language and Mind” (Cambridge University Press, 2000, p.3 – 230 s.).

It is also true that the relation of language-identity is debatable because it is not always language that represents identity, including ethnic identity. As Catherine Walter, former President of IATEFL states, “Language does not always imply identity. People also use language to achieve intelligibility in a wider community than their own ethnic, regional or national one. For an individual who identifies strongly with an ethnic or regional language community, a national language may be more a means of intelligibility than a feature of identity.”(Walter, C. “The Universal Declaration of Linguistic Rights: Global Issues in Language Education. Issue 30, March 1998, p.16. http://jalt.org/global/30UDLR.htm).

In fact, it most cases, linguistically, our identity is manifested not by the knowledge of our language but certain modes of implementations of this knowledge: simply using a language does not show linguistic affiliation. Imagine a Russian-speaking Azerbaijani official, who identifies himself basically with Russian thinking and culture (one of direct products of the Soviet “identity-cleansing”), making a short speech in broken Azerbaijani at an official ceremony. Does his speech show his Azerbaijani identity? No. His usage of the Azerbaijani language is his compliance with official requirements. Therefore, it is a specific usage of the language (supported by the cultural knowledge (relating to stories, anecdotes, literary sources), adequate attitude and behavior (voluntary using), and linguistic emotions (desire to use, or pride of the language) that stands behind our identity feeling rather than the language itself.

This perceived language-identity relationship however rests at the core of the nation-building aspirations of post-colonial nations.

The history of many such nations carries one common feature: identity trauma. “Identity cleansing” policy of colonists was carried out differently: in some colonies this policy did not necessarily exhibit itself on the surface. But in almost all cases the direct target was national languages.

The role of language in identity consciousness was non-deliberately exaggerated by the fact of the removal of national languages from the high-status repertoire of their native carriers. In fact, making national languages victims of totalitarianism, colonies have also made them “heroes of the post-colonial days”. The process can be characterized as post-repression rehabilitation for languages.

As suggested by Pennycock, language as viewed in post-modern studies is not to be isolated from other social behaviors or semiotic systems such as dance, music, clothes etc. Such a broad approach to language limits our desire to single it out from other modes of representations as the main symbol of identity. However, it is the language that mainly suffers from colonial regime, and not other semiotic systems. Folk dances, songs, folk tales, cuisine etc. usually survive. National languages, however, undergo degradation and change: alphabets change, language functions diminish, language domains are cut, and the life of languages eventually become threatened.

The diminished function of national languages naturally serves the decrease in the level of native-language intellectual potential. So the language deprivation brings to “identity and intellectual cleansing” among the non-dominant language speakers in colonial states.

From this point of view, high-profile perception of the role of national languages in nation-building becomes evident when we approach the language-identity relationship from the other end: even though language does not directly reflect identity, language deprivation reminds us of our identity. Language deprivation reflects identity deprivation in a straightforward manner. In other word, while loss of an identity does not always occur through the loss of the national language (some Iranian Azerbaijanis, although fluent in their mother language, have a very weak Azerbaijani identity, and often affiliate themselves with the common Iranian origin), loss of a national language almost always occurs through the
loss of the identity (as in the Soviet Union, people lost their national affiliation after having lost the sense of significance of their national languages).

Subsequently, we can also infer that language usually becomes a symbol of identity only if the identity is threatened or in crisis. In normal situations when no one tries to entrench on our identity, language serves our routine agendas. In our endeavors to build or restore our national identity, language satisfies our political and self-promotion agendas. In any case, it is in the good service of humanity!

2.2. Status of Azerbaijani - Historical Review

In Smith (50), we read: “…. Azerbaijanis have no real past polity to celebrate before the establishment of the Azerbaijani SSR” and “… the consolidation of the Azerbaijani as a coherent ethnic group took place only after the 1920s”. Just for the sake of clarification, we would like to refer the readers to the following information.

Historically, the first unification of Azerbaijani lands, as well as Azerbaijanis as a nation, took place in the 16th c. under the rule of Sefevids, the dynasty founding the first Azerbaijani state. It was in fact during that period when Azerbaijan was first conferred with the status of an official language - probably kind of a credit to the Turkic tribe of Qizilbash, who had helped the dynasty to seize power in Azerbaijan. Later, when the state was gradually being taken over by dynasties of other origins (mainly of Iranian), the Turkic dominance went to decay. The State of Sefevids, within whose boundaries already lay a huge territory comprising Iran, Iraq, Azerbaijan, Georgia, Armenia, Turkmenistan, Uzbekistan, Afghanistan and Pakistan, came to be known as Iranian with Azerbaijan as one of its provinces. (Qdty Efsndiyev Azerbaycan Sefeviler Dovleti, Baku, Azemeshr, 1993 – 304 ps).

Iranian-Russian wars of 1804-1828 resulted in the gradual annexation of the Northern part of Azerbaijan by Russia between 1813 and 1828. After the defeat of the Tsarist Russia by communists, in 1918 Azerbaijan proclaimed its first independence from Russian Empire its first post-Empire state (and the second after the state of Sefevids). In 1920 it was overtaken again by the Soviet Empire. It took the country more than 70 years before it eventually obtained its full freedom from Russia in 1991.

Thus Azerbaijan had lived through 2 independent polities before 1920’s.

The official status of Azerbaijani as the national language of Azerbaijan was in fact recognized during the Soviet period. Except for the version of 1937, all other 2 versions of constitution (1956 and 1978) of Azerbaijan Soviet Socialist Republic had a provision stipulating Azerbaijani as the official language of Azerbaijan. The Constitutional Law “On the Sovereignty of Azerbaijan Soviet Socialist Republic” adopted in 1989 also states that “the Azerbaijani language is the official language of Azerbaijan SSR”.

The status elevation efforts of Azerbaijani officials during the Soviet period can be observed with each revised version of the Constitution of Azerbaijan SSR: the 1937 Constitution does not provide an official status to Azerbaijan at all; the 1956 version mentions the official status but does not make any provision as for cultivation and development; and 1978 version (as well as the Constitutional Law of 1989) elaborates on the measures ensuring the implementation of the Azerbaijani language at the official level and its development. The provision of the State support to the Azerbaijani language was added since the previous Constitution did not provide any support by the Government for the maintenance and development of the Azerbaijani language.

Nevertheless, the official recognition did not mean any de-facto official status for Azerbaijani during the Soviet times, especially during earlier years.

National languages, including Azerbaijani had “to be aware” of their limits. Russian was required to claim job promotion, to attain higher academic degrees and to expect better education.

In his reflections over the changing status of Azerbaijani, Deputy Minister of Education of Azerbaijan, I. Isgandarov states: “I remember that when I had to give speeches at Party meetings, I used to prepare my reports in Azeri. But I was never allowed to make any speech in Azeri, so someone was assigned to translate for me. Even though I spoke Russian with a heavy accent and wasn’t nearly as fluent in Russian as in Azeri, I was required to use Russian. I’m sure that if Russian had prevailed after we gained our independence and the emphasis had not shifted to Azeri, I would never have been appointed as Deputy Minister of Education” (8.1).

Government officials frankly recognize in their post-Soviet analysis of the pre-existing situation that the education in Russian schools was superior to that in Azerbaijan schools and the Russian schools had more textbooks, better-trained instructors and more outside experience (AI). This urged parents, even those who did not speak Russian themselves, to send their children to Russian schools (AI).

The Institute of Foreign Languages (now Azerbaijan University of Languages), which offered the programs in English, French and German, arranged to invite foreign instructors who were the native speakers of the above languages. It was only the students from the Russian track who got a chance to be taught by these instructors. Moreover, prospective employers, in their recruitment for internship, would not even consider students from the Azerbaijani tracks because the perception was that Russian-track students had better knowledge, skills, self-presentation and more “elite” behavior.

Being under the domination of the Russian language, Azerbaijani failed to play an important role in the political and social life of its natives. Its current acquisition of a high emphasis as an identity restoration factor is one kind of a response to the pre-existing linguistic inferiority. What is also remarkable, the language issue in Azerbaijan as in other post-Soviet countries has become central not only for the majority nation but also for the minority groups in their identity revival aspirations.
It is therefore difficult, or too soon, to expect “unpoliticization of the language policy and approach to the language simply from the practical viewpoint – from the sole perspective of accommodating human communication needs.

2.3. Restoring the Status of Azerbaijani

The language policy in Azerbaijan significantly contributes to the nation-building and integration process in Azerbaijan through dynamic symbolic representations, active immersion of the people into the unifying language, encouraged public and social interaction through this language and subsequent new patterns of language attitude and linguistic behavior.

First, it has been the most evident symbolic representation of Azerbaijan’s independence from Russia. The Presidential Decrees of 1993 on the “Adoption of the Latin-Based Alphabet of the Azerbaijani Language” as well as of 2001 “On the Official Use of Azerbaijani”, Article 27 of Azerbaijan’s 1995 Constitution declaring Azerbaijani as the official language of the country and the Law on the State Language of 2003 have contributed to the status elevation of the Azerbaijani Language, while making Azerbaijani officially superior to the pre-dominant Russian.

Secondly, domain increase has promoted functional enrichment: although still much needs to be done in the area of corpus building* (this concern is also expressed by linguistics, language-planners, and even in relevant language-related statutory documents (see: Jafarov, Ferman)), Azerbaijani is becoming more capable to accommodate new concepts and ideas: emerging from modern and previously non-existent spheres of science and social activities.

Thirdly, due to its expanded use, the national language has been able to step beyond mere communicative function limits to act also as a mobilizing tool fostering interaction at the level of shared world-view, knowledge, and moral and spiritual values. The very facts that Azerbaijani is being employed by high-echelon officials and is required as the main language for official purposes set a cohesive tone and make its usage stable; on the other hand, communication of moral and spiritual issues in Azerbaijani via high-profile media, art and social events creates a higher degree of social integration.

Fourthly, the promotion of Azerbaijani has been able to attract people with diverse social and national background. This can be acknowledged as a good ground for the emergence of high level Azerbaijani-speaking professional resources. It is not an easy and stable process since traditionally Russian schools were superior in quality and infrastructure, which has produced, in the minds of certain social groups, a firm judgment with a long-lasting effect about education in Azerbaijani. But this is not only the matter of attitude since many Azerbaijani schools, due to several reasons which will be discussed in more detail below, are still caught up in a heavy competition against Russian schools in Baku.

It is interesting to note the active role of media in the language planning process in the country. Although the status planning is mostly being ascribed to, and undertaken by, the government and government-authorized committees (such as the Language Committee under the auspices of the President’s Office), some actions have been emerging from independent media, including opposition newspapers and commercial TV channels. Thus, when the Law on the adoption of Latin had not been yet ruled, and infrastructure was not in place to issue newspapers in the Latin script, many opposition newspapers published their titles in Latin (the bulk still being in Cyrillic), thus expressing their assertion that the Latin script should be used for all official and business purposes. Many commercial TV channels have been spending huge resources on translation of foreign movies and other entertainment programs although the Law on the State Language does not pose restriction on the language of such entertainment programs.

2.4. Status Follow-up: A Point in Debate

One of the central topics in official debates about the national language planning is the need to enhance the corpus planning. This concern is expressed in the Presidential Decree “On the Improvement of the Implementation of the State Language” June 18, 2001, as well as in the statements of linguists and politicians engaged in the language-planning activities.

The official opinion deems necessary the corpus development in two directions: development of the language to the point where it is capable of reflecting global and analytical thinking (Nizami Cafarov. “Dilimiz Ideoloji Mudaxilede qorumlayiq. “Bizim Esr” #76(496): http://bizimasr.media-az.com/arxiv_2002/aprel/76/xeber.html), and development of infrastructure for the sustainability of the language usage. The above mentioned Presidential Decree, for example, brings forward concern about the level of contemporary linguistics in Azerbaijan, unsatisfactory regulation of oral speech norms, insufficient development of the scientific and official styles, delay in the issue of standardized norms (orthography, terminology etc.) and shortage of the sources in the Latin-based Azerbaijani alphabet.

Certain anxiety is also expressed about the violation of norms of ethics by media and intrusion into the media domains of the elements alien to certain moral and cultural values (“Bizim Esr” #170(886): http://bizimasr.media-az.com/arxiv_2002/aprel/76/xeber.html

3. LINGUISTIC RIGHTS OF MINORITIES – BEYOND NON-DISCRIMINATION?

3.1. Reasons for Post-Soviet Uncertainty

The issue of equality between national and ethnic languages was more balanced during the Soviet period, and has gained a higher degree of sensitivity in the post-Soviet time. The existing role of Russian as a “Lingua Franca” throughout the entire Soviet country on one hand, and Russia’s intended policy towards favoring minority groups as its potential weapon against the sovereignty of the nations on the other, was an important factor to preserve this balance in a natural way. Interestingly, the Soviet Union had a reputation for using this “weapon” even outside the country in order to attain a degree of control over its neighborhood. As described on behalf of one of the heroes from O. Pamuk’s famous novel “Snow”, “the Turkmen, the Posif Laz, the Germans who had been exiled here by the czar –
With a strong emphasis on the role of national languages, the language policy in the post-Soviet land, although not allowing discrimination against any minority language, has not yet reached a point where solid strategy has been developed for actively promoting minority languages beyond their non-discrimination. This is a natural process to observe since “having secured sovereign spaces following the collapse of the world’s largest multietnic federation, the borderland states are now embarking upon nation-building” (Smith 1), which so heavily relies on the promotion of the national language.

In general, the promotion of minority languages in developing nations will depend on the structure of the polity, the number and the size of minorities, the level of development of minority languages as well as the degree of minorities’ active participation in the new nation-building process. For example, in Ethiopia, the Dreg’s post-Empire launching of a mass-literacy campaign in minority languages was partly a reflection of the pre-coup revolutionary initiatives stemming from the minority groups (Cooper 21-28).

However, since developing nations are usually democracies or “attempting democracies”, they ensure that their language policy at least declares non-discrimination against minorities.

In the post-Soviet area, the degree of tolerance and the willingness to promote minority languages much depends on the political will of the ruling elites. While the Baltic Republics are being criticized for depriving their Russian minorities of some of their rights (See: Uldis Ozolins: Between Russian and European Hegemony: Current Language Policy in the Baltic States: Current Issues in Language and Society. 1999, Vol.6. #1. 1999. p.6-43), Central Asian Republics are being condemned for their post-Soviet autocracy and disregard of the minority rights. For example, in his analysis of the situation in Uzbekistan, Smiths explains such disregard as part of the negligence of basic human rights: “Despite constitutional guarantees, Uzbekistan citizens are in fact unable to exercise a number of basic civil rights, such as freedom of speech, association, assembly and political participation. As a consequence, Russians and other minorities who may harbor a sense of deprivation are unable to express it, much less mobilize in order to achieve collective rights.” (p. 205).

The (hopefully temporary) lack of such emphasis on real promotion can be explained by a variety of factors.

One factor is the perception of the previous colony as a potential post-imperialistic force, and their representatives – as post-imperialistic advocates and not simply minorities. We do not argue the fairness of this perception given possible varying behavioral patterns of previous colony representatives in different post-colonial states, economic and security problems in these countries and the degree of Russia’s interest in them. This perception is very well represented by the language policy of the post-Soviet Baltic countries, which reveals a higher degree of sensitivity over the assumed danger to the existence of the national languages (see; 2 papers).

The second factor is connected with concern for territorial integrity and national security which can be undermined by false minority claims. There is no doubt that language planning should first and foremost rely on the principles of equal linguistic rights, as declared in the Universal Declaration of Linguistic Rights of 1996, to which many post-Soviet countries have become signatories. (In any case, such equality will be relative in any polity integrating a number of nations with their distinct languages. As Blommaert states: “It is an unfortunate situation for social scientists, but the world is not neatly divided into monolingual states. P.238). However, lack of active initiatives to promote minority languages beyond discrimination in post-Soviet countries may also stem from the fear that this can bring to separatist movements. The so-called “linguistic claims” of minorities often conceal real political motives, which are harmful for the territorial integrity and national security of new polities. These motives are unfortunately not always taken into account by international minority advocates in their condemnation of language policies of nation-states. And many politicians, government officials, academics and lay people in these nations often have to reflect over the question whether universal declarations protecting minority rights would some time consider protection of majority rights against false minority claims. Many post-Soviet countries have been facing such false minority claims, in many cases interpreted as genuine aspirations. Russia is still very active in causing ethnic conflicts in the area. The examples of Azerbaijan, Georgia and Moldova with endless problems concerning their territorial integrity can prove this policy.

This nevertheless does not mean that they have the new post-Soviet nations have always given adequate thinking to the protection or promotion of minority rights, or that the above reasons should justify their negligence of these rights. This is certainly a mistaken position, but this a reality produced by the feeling of “unprotectedness” of some new nations against unpredictability of the policy of Big States and existing double standards in the international environment.

The third factor is excessive self-occupation in the national language issues. This is a core approach, for example, in the language policy of Central Asian Republics. A certain degree of concern emerges from the political and academic analysis of the situation that such an overemphasis can bear a threat to the security of the region caused by ethnic and territorial conflicts. However, the likelihood of such conflicts in the Central Asia is quite low unless these conflicts are externally provoked. The region has always been known for possessing a great degree of linguistic tolerance, and the lengthy dominance of the Russian language, which marginalized not only minority but also majority languages, has not allowed formation of distinct patterns of language consciousness or linguistic sentiments. As far as ethnic conflicts are concerned, the experience of many post-Soviet nations shows that emergence of such conflicts is not always bound up with the degree of tolerance to that ethnicity or their language.
None of these factors however justify the overlook of minority language promotion in language policies of emerging nations. Even when security is a matter of concern, wisdom should be exercised to create better opportunities for the minorities in order to make them feel happy and equal citizens of the state. With the exception of specifically prepared political games against the territorial integrity of nation-states, which cannot be helped anyway, promotion of minority languages would not be able to jeopardize the state’s security.

3.2. Minority Languages in Azerbaijan

3.2.1. Pre-Independence Status

As early as in 1956, Article 151 of the Constitution of Azerbaijan Soviet Socialist Republic stated: “The official language of Azerbaijan SSR is the Azerbaijani language. Ethnic minorities living on the territory of Azerbaijan Republic shall be guaranteed the right to develop independently and use their languages in their cultural as well as state organizations”. (Axundov)

It is interesting to note that no State guarantee is provided as far as the state language is concerned. The inclusion of Azerbaijani language in the Constitution of Azerbaijan SSR required an incredible courage on the side of the Azerbaijani Government (in fact there were only three Republics in the entire Soviet Union who enjoyed this privilege; Azerbaijan, Georgia and Armenia). But the two latter had strong and long-lasting protection in the Central Government, in the persons of Joseph Stalin and Anastas Mikoyan). It was made possible due to unbelievable efforts by Mirza Ibrahimov, People’s Writer, who served as Chairman of the Supreme Soviet of Azerbaijan SSR and who later was removed from his position being labeled as “nationalist”. He had been able to persuade Moscow to include Azerbaijani language as the official language in the Republic’s Constitution, but it would have been too much of him to expect a provision about the Government support for language implementation.

The provision of minorities using their native languages in state organizations provokes some curiosity. 1950’s were the hardest years of post-repression period in the entire Soviet land, when national languages encountered immense difficulties presenting themselves at the official level, let alone languages of minorities. “At the time, not everyone in Azerbaijan knew Azeri which resulted in a lot of confusion, delay and miscommunication. Often telegrams written in Azeri wouldn’t reach their intended recipients, mail from villages would be returned, and government applications would be processed incorrectly, or not at all”. (AI).

Vagif Arzumanli provides an interesting account of the fate of the Soviet-time minority languages: “Throughout the Soviet Union, including in Azerbaijan, national schools began to close, and the sphere of language use became restricted. The situation progressed to the point where census takers were given ready-made lists of ethnic groups to be included in the All-Union Census……… this was the general tendency of that time. The tendency had a negative effect on all ethnic groups, but especially on the numerically smaller groups. Many of these groups began to assimilate with the numerically larger groups in the Republics and Autonomous Areas.” (Arzumanli, Vagif, 2002. National Policy and Ethnic Minorities in the Republic of Azerbaijan: Studies in Languages of Azerbaijan. Vol.1. Ed. by John Clifton. Institute of International Relations of Academy of Sciences of Azerbaijan & North Eurasia Group of SIL International. Baku; St. Petersburg. P.3).

Although the provision concerning minorities may seem the Soviet’s encouragement of minority languages and cultures, in reality the most important reason behind that was to use the potential minority issue as a tool against the sovereignty of the Republics: it would be easier for Russia to handle minorities with “awakened identity feelings” if there was a necessity to put the integrity of nations under Russian dependence. Analyzing the unique status of the Abkhazian language among other Soviet-time minority languages, Teymuraz Gvantseladze writes: “…. there was not a special article in the constitutions of any of the autonomous republics and regions of the Soviet Union about the language status…………. In this respect, the constitution of the Abkhazian Autonomous Republic, a constituent part of Georgia, was an exception, for it contained an article dealing with the status of languages. According to this article, the Russian, Georgian and Abkhazian languages had the status of Abkhazia’s state languages. What caused this exception was the fact that Abkhazia, situated on the open Black Sea Coast is a most important region from the point of view of geo-strategy. Besides, by the fictitious increase of the rights of the Abkhazian language the Soviet Government (as a maneuver) made the relations of people in this polyethnic region tense (the Georgians represented 45% of the Abkhazian population, i.e. the majority, and the Abkhazians made up only 17%) and disposed the Abkhazian and the Russian-speaking population loyalty towards itself. The latter were to oppose their Georgian neighbors, if they expressed a wish of leaving the Union. This scenario was successfully realized by Moscow first in 1989 when the national-liberation movement gained strength in Georgia, and later in 1992 when the legitimate power was overthrown with the help of the same Moscow and the so-called civil war began. It was Moscow’s financial, military and propagandistic participation that has determined the situation existing in Abkhazia today. Georgian jurisdiction has not been exercised in Abkhazia for the last ten years. (Teymuraz Gvantseladze. The Main Sociolinguistic Tendencies in Post-Soviet Caucasus”, http://www-inst.at/berge/kaukasus/gvantseladze.html) The same holds true, with profound exactness and with the equivalence of the causal-effect relations, about the Nagorno-Karabakh region, where Azerbaijani jurisdiction has not been exercised for more than 13 years.

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shall ensure the implementation of the Azerbaijani language in state and public organizations, educational institutions and other entities, and shall provide state support for its development."

The 1978 Constitution provides for maintenance of minority languages but does not specify the usage of the minority languages at the official level: “Azerbaijan SSR shall ensure independent use and development of the Russian language as well as other minority languages spoken by the population.”

The provision supporting the use of minority languages in official instances must have been eliminated with a view to confronting possible language conflict in the areas densely populated by minorities. Legislative encouragement to use minority languages in official instances sometimes resulted in total denial by minority representatives to use any other language but their own under any circumstances. Thus minority language representatives were put in an disadvantageous position while receiving public or social services. This often brought to ethnic clashes between minority and disabled majority representatives (which is still continuing in some regions of Azerbaijan), and since the knowledge of Russian was so poor in the rural areas the majority representatives could not even resort to this language. This had its impact also on vital social spheres such as education, in particular in Nagorno-Karabakh: “Non-Azerbaijanis supervising the education sphere either in the center or in Nagorno-Karabakh Autonomous Region (Nagorno-Karabakh had the status of an autonomous region within the borders of Azerbaijan SSR) claimed that education in Azerbaijan did not have future and thus inflicted a serious damage to schools in Azerbaijani-populated villages of Nagorno-Karabakh. Also, negligence of the problems in Azerbaijan-populated villages brought to the artificial “drainage” of these villages.” (Nazim Mammadov. Azerbaiyanc SSR-in Dağlıq Qarabağ Muxtar Vilayətinə təsəllən inkifəşı (XX yüzəlliyn 50-60-ci illər)) (Development of Education in Nagorno-Karabagh Autonomous Region of Azerbaijan SSR (50s-60s of the 20th century): “Azad Garabagh”. September 29, 2006. #8).

An interesting point in the 1978 Constitution is a specification of the Russian language from among other minority languages: Russian had come to be a second language rather than a minority language at that time.

3.2.2. Legislative Support of Minority Languages in Post-Soviet Azerbaijan

Although the post-Soviet language and language-related legislation, including the Constitution of 1995, declare the official status of Azerbaijani, none of these acts restricts the minority language use at the official level to the point where this would imply human or linguistic rights violation. Language rights of minorities are protected by a number of laws and legislative norms. For example, the Law on Media adopted in December 1999 states:

Article 6. Language of Media

No restriction shall be imposed on the language of media on the territory of Azerbaijan. The right of the citizens of Azerbaijan Republic to use the official state language, the other languages of Azerbaijan’s population as well as internationally spread languages shall be regulated by the relevant legislation.

The Law on the “TV-Radio Broadcasting” of June 2002 implies access to TV and radio for other languages. Although the Law does not contain any specific provision on the language of the TV and Radio broadcasting, it can be conferred from Article 21 that the language choice for TV and radio programs is not restricted:

Article 21. Contents of the Special Permit (License)

The special permit (license) shall contain the following information:

……..

21.1.11. the language (languages) of the TV-Radio broadcasting

The basic legal act on language is the Law on the State Language of Azerbaijan of 2003. The Law stipulates Azerbaijan as the official language of Azerbaijan, but as distinct from the previous Language Law of 1992, does not identify Azerbaijani (in the previous Law – Turkic) as a common language of communication for all nations living on the territory of Azerbaijan. The new Law recognizes the rights of minorities to use their languages at certain official instances such as in courts, notary public etc. For example, Article 11.3 states: “If, according to the provisions of the Law on Notary Service, a person applying for notary service does not know the State language, or requests that the procedures be taken in a different language, the notary officials are allowed to produce the texts in the language desired by the applicant, or to have the text translated into such desired language.” There have been cases of criticism of the Law on the State Language of Azerbaijan for perceived restriction of certain instances of language usage to the state language only (specifically, criticism concerned Article 6 of the Law, which, as adopted originally, stated: “All TV and Radio Broadcasting founded and operating on the territory of Azerbaijan Republic shall be carried out in Azerbaijani. The program conductors of all the channels which are broadcast in Azerbaijan regardless of their ownership shall have sufficient proficiency and fluency in Azerbaijani.” According to Karol Jakubowicz, recommendations have been given to Azerbaijan by the Advisory Committee of the Council of Europe to amend this restrictive provision (see: Karol Jakubowicz. “Analysis and Comments on the Law of Azerbaijan Republic on Public TV-Radio Broadcasting” http://www.internews.az/ssi_eng/legislation/7/7.pdf, p.11).

The concern expressed by the author is understandable. However, by the date of the issue of his analysis the Parliament had already amended Article 6 to remove the restrictive first sentence. Thus, the Law of Azerbaijan Republic on Amendment to Article 6 of the Law of Azerbaijan Republic on the State Language” (#471-IQD) of June 10, 2003 eliminates the restrictive provision and proposes the statement as follows: “The program conductors of all the channels which are broadcast in Azerbaijan regardless of their ownership shall have sufficient proficiency and fluency in Azerbaijani.” However, the author does not mention in his analysis the amendment, and an impression is created on Azerbaijan’s failure to compile with international standards for the protection of minority languages.

Article 6 in the previous version of the Law was a result of the lack of due diligence exercise while formulating the language of the Law, rather than negligence of minority rights. Since the Law is “On the State Language”, entire thought might have been given to the formulating of the status of the official language by failing to take minority languages into account. The language was also ambiguous in the. The restrictive provision, as indicated above, was followed with the statement which implied the possibility of other languages in media: the attributive clause “which are broadcast in Azerbaijani” meant the existence of channels which did not broadcast in Azerbaijan. Karol Jakubowicz states himself in his report that minority language broadcasting continued in Azerbaijan even after the adoption of the Language Law...

The restrictive provision could not have had full validity also because although the Language Law officially overruled the previous Language Law of 1992, it did not consider null and void, or did not amend accordingly, the relevant provision of the above mentioned Law on TV-Radio Broadcasting of 2002, and the Law on Media of 1999.

3.2.3. Maintaining Linguistic Diversity

Some legislative acts and statutory resolutions contain provisions for promoting linguistic diversity.

Article 21 of the Constitution of 1995 states:

*The state (official – JG) language of Azerbaijan Republic is the Azerbaijani language. Azerbaijan Republic shall ensure the development of the Azerbaijani language. Azerbaijan Republic shall ensure independent use and development of other languages spoken by the population.*

The maintenance and encouragement of linguistic diversity is guaranteed by the 1992 Presidential Decree “On Protection of the Rights and Liberties, and Development of Languages and Cultures of Ethnic Minorities Living on the Territory of Azerbaijan Republic”. The Decree envisages equal rights to the majority and minority population in respect of education, employment and participation in the administrative and cultural spheres in Azerbaijan, maintenance and/or improvement of conditions for minorities to practice their religion and customs and develop their folklore and ethnic art, preservation of history, historic and cultural monuments etc. belonging to minorities, and prevention of any violation of these rights and liberties.

The Decree refers to the relevant legislation for preventive actions and punitive measures for the violation of the above rights. Correspondingly, Article 109 “Discrimination” of the Criminal Code of Azerbaijan states:

*Prosecution of any group or organization on political, racial, national, ethnic, cultural, religious motives, motives of a sexual belonging or on grounds of another motive forbidden by norms of international law, that is rough infringement of rights of people for a belonging to these groups or organizations, connected with other crimes against safety of mankind – shall be punished by imprisonment for the term from five till ten years.*

Article 8(I) of the Law of Azerbaijan Republic on Administrative Offences provide:

*Assemblies advocating national, racial, or religious hatred or that incite discrimination, hostility, or violence, are prohibited.*

The Decree provides a broad spectrum of possibilities for minority education, full integration of minorities in the social life, their public and social safety, as well as for the development of minority languages and cultures.

The Decree instructs the Ministry of Education to include in the curriculums of secondary schools the subject studying the language and literature of a relevant minority language (as a required subject in relevant areas and an elective subject in the cities of Baku and Sumyagıt). In addition, the Decree envisages the training of professional resources in the area of Literature, Language and Art of minorities. Thus the Guba branch of the Azerbaijan Art Academy and the Gusar branch of the Azerbaijan Teacher-Training College are instructed to train local specialists for the ethnic minorities in the corresponding region. Azerbaijan University of Languages is instructed to establish programs in the area of minority languages.

The National Academy of Sciences and Baku State University are instructed to establish/develop ethnography studies, the research of the history, literature and culture of minorities at a higher level, and to open the departments of antic, Caucasian and Semitic history, ethnography, languages and cultures. The State Committee on Media and Press is assigned to issue books, textbooks, directories and other related materials in the languages of minorities living in Azerbaijan.

The State Committee on the Tele-and Radio-Broadcasting is assigned to develop programs elucidating the literature, art and folklore of minority languages, to provide news programs in Lezgi, Talish and Kur languages, and to provide programs in the minority languages through the local radio network.

3.2.4 Discussion

3.2.4.1. Sources of Possible Impressions

The language policy of the Government manifests its willingness to provide opportunities for maintaining and developing diversity. To this date, if we pick up a few points of view that we would like to add a few thoughts on “would-be” linguistic claims of some minority groups in Azerbaijan.

Some legislative acts and statutory resolutions contain provisions for promoting linguistic diversity.

For the law of the local government, the Law officially overruled the previous Language Law of 1992, it did not consider null and void, or did not amend accordingly, the relevant provision of the above mentioned Law on TV-Radio Broadcasting.

Possible impressions of such violations may stem from three main sources:

- Misinterpretation produced by the lack of due diligence (or by some other factors, political or group interests among them) in the analysis of international experts
- Confusion of linguistic right claims of minorities with their often implicit political motives (such separatism, power ceasing aspirations etc.)
- Linguistic ambiguity of the local Law.

Above we have discussed cases of misinterpretation of “stata quo” by international experts or evaluators and further we deal with linguistic ambiguity the local law. At this point we would like to add a few thoughts on “would-be” linguistic claims of some minority groups in Azerbaijan.

Some of such “claims” in Azerbaijan often originate from the representatives of the Talysh and Lezgi minorities; both live in borderland zones – Talysh areas border with Iran, and Lezgi – with Russia. Both Iran and Russia have a vested interest in maintaining instability in Azerbaijan. We read in the US State Department’s Country Report on Human Rights Practices on Azerbaijan (March 4, 2002). “Separatist activities undertaken by Farsi-speaking Talysh in the south and Caucasian Lezghins in the north in the early 1990’s have engendered some suspicions in other citizens and fostered occasional discrimination.” (http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8225.htm).

On the other hand, there is no doubt that cases of unfair prejudice and discrimination by regional authorities towards the entire ethnicity negatively affect the overall tolerance atmosphere in the country and undermine diversity maintenance efforts of the Government.
3.2.4.2. Ambiguity

Law on Media
More clarity would however be helpful to avoid ambiguity in understanding which legislation would regulate the choice of language, and whether this legislation will authorize the choice of language as a free choice or as a concession in the absence of the knowledge of Azerbaijani.

Law on State Language
Although the amended version of Article 6 removes any alleged discrimination, it could have suggested more clarity and thus would not allow misinterpretation by international organizations. For example, an amendment based on the wording of the relevant Article from the previous Law could have helped avoid ambiguity: the 1992 Law clearly states that “besides the state language, other languages may be used in the mass media on the territory of the Republic of Azerbaijan (Article 15)”.

3.2.4.3. Need for Renewal

Decree of the President of Azerbaijan Republic on Protection of Minorities
This Decree has not however been renewed since the start of new party ruling in Azerbaijan in 1993. The Government has to rely on the provisions of this Decree in the face of the absence of a new one. For example, the case that education in minority languages in some regions is restricted to the teaching of language and literature only, which is one of the most debated issues in respect of minority language education in Azerbaijan, originates from the following provision of the Decree:

The Ministry of Education of Azerbaijan Republic shall prepare and implement measures for the secondary school teaching of minority languages and literature in the form of required subjects in the areas densely populated with minorities and in the form of optional subjects – in Baku and Sumgayit.

A new Law with more specific provisions and a broader framework of possibilities for diversity maintenance is needed in order to enhance the protection of minority languages and cultures and ensure the sustainability of the diversity status.

3.2.4.4. Minority Languages in Azerbaijan and European Charter on Linguistic Rights

A question may be raised whether the minority policy is in compliance with the Universal Declaration of Linguistic Rights, to which Azerbaijan is a signatory. We have discussed above in Section 2.2.2. various kinds legislative support to minority languages. We would also like to indicate several areas, which need reform and improvement.

First, it should be noted that although Azerbaijan has undertaken certain obligations under the above Declaration, the fulfillment of all these requirements in a brief period is not plausible. Secondly, the areas that need reform and improvement do not reflect the situation only with minority languages but also with the official language. For example, Elmira Suleymanova, Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, in her speech on the occasion of International Mother Language Day held in Baku in February 2007, “expressed concern related to the lack of sufficient Azerbaijani literature in Latin script for the young generation of Azerbaijan, as well as the urgent need for further capacity building in the media regarding the correct usage language.” (http://www.today.az/news/society/36962.html).

Public Administration and Official Bodies
The Azerbaijani legislation ensures the rights of minorities to use their mother language in communication with local authorities and officials, (directly or through translator), in the use of the official forms or administrative documents, court trials, public registration and receiving notary services. At the level of implementation, more work however needs to be done to increase availability of general laws and legal norms in minority languages.

It is interesting to note that the previous Language Law of 1992 held a provision about the right of Parliament members to make statements in ethnic languages. Article 8:


How effective would such membership have been without the knowledge of the State language?

We need to dwell on Article 19 of the Declaration, which states: “Representative Assemblies must have as their official language(s) the language(s) historically spoken in the territory they represent.

It produces a sense of “over-occupation” with the issue somehow. Why should the Article restrict the Representative Assemblies to the languages “historically spoken in the territory”? Why to deprive the minority representatives of the right to use other languages at their option? As Humphrey Tonkin states, “access to the language or languages of government is essential for the full development of economic and political opportunity. Without such bilingualism, the inclusion of the language among the constellation of languages in the country in question that are promoted though positive language policies may only lead to the economic exclusion of the population in question, in part through the creation of a language deficit”. (p.5)

Proper Names
After the collapse of the Soviet Union, many artificially created “Soviet” place names were removed to be replaced by original names. During this replacement, no effort was made by the Government to Azerbaijaniise (or Tukicise) the names having other ethnic roots. In the occupied area of Nagorny Karabakh names created in 1920s (e.g., Mardakert (1923) and Stepanakert (1924)) were restored as Aghdere and Khankendi, accordingly. This administrative decision is not implemented by Armenians in the region (where Azerbaijan has not been able to exercise its jurisdiction for more than 13 years), which is a direct violation of Article 32.2 of the Declaration:

All language communities have the right to establish, preserve and revise autochthonous place names. Such place names cannot be arbitrarily abolished, distorted or adapted, nor can they be replaced if changes in the political situation, or changes of any other type, occur. The system of proper names of minorities has never undergone any administrative change or modification.

There is some ambiguity both in the Law on the State Language of Azerbaijan and in the Universal Declaration of Human Rights in terms of the usage of proper names. Both acts need linguistic improvement to avoid such ambiguity. The Law states: Article 8 Use of the State Language in Proper Names...
We can infer, using common sense, what each of these provisions means. The Law probably implies the record of the names in official documents (passports, identity cards, diplomas etc.), which are compiled in the Azerbaijani language. The Declaration, on the other hand, probably provides a protection against possible pressure upon minorities to write (or spell) their names in the State language even in informal situations. However, linguistic deficit in both documents causes misunderstanding.

Communications Media and New Technologies; Culture


The obligations under the Declaration regarding media and culture are such as to require considerable amount of time and efforts on the part of new democracies to adapt their polities to high level international standards and to prepare adequate resources to meet them. In his presentation on International Mother Language Day Fuad Iskenderov, Secretary-General of the National Commission for UNESCO of the Republic of Azerbaijan, stated that "linguistic and religious diversity which was viewed as a threat in Azerbaijan fifteen years ago, now have become an important cultural heritage for the country." (http://www.voanews.com/azerbaijani/archive/2007-02/Aze-anadiliazerbtebriz.cfm).

Current initiatives of the Government (for example, involving minority representatives in active discussions of the best ways of diversity maintenance, visits of the Government representatives to minority populated areas, increase of cultural and religious facilities in the areas etc.) give a firm hope that the State is open to allocate more resources to step beyond the non-discrimination into the area of active promotion of minority languages, in particular, of those which are under danger or extinction. For example, "a total of fifteen cultural centers had been opened in Bakı and the surrounding districts for meeting the needs of many of these (minority – JG) groups.... In the area of print media, a special editorial office, Raduga, was created in the government publishing house, Azerneshr, for publication of materials on the history and culture of languages of several ethnic groups". (See: Current situation on protection of rights of persons belonging to national minorities in the Republic of Azerbaijan: http://www.mfa.gov.az/eng/foreign_policy/inter_affairs/human/ethnic.shtml). To enhance these activities, the Republican Council of Numerically Smaller Peoples was created and the Institute of National Relations was opened in the Academy of Sciences of Azerbaijan (See: Arzumani – 5).

However such diversity favoring steps should be complemented by sustainability measures. For example, programs offered by Universities for enhanced training of minority language and culture specialists would help to sustain the continuity of high-quality teaching resources production for the rural areas. This would also help create resources to provide other services in minority languages, such as provision of programs (news, historical or education programs etc.) on State and Public TV in minority languages.

Another area which needs improvement is the corpus enhancement for minority languages (script development, creating of grammar books, reading materials etc.), especially for those which do not have written records and for some basic development materials have been created just recently (for example, Khinalig). This would help save such languages from disappearance.

Socioeconomic sphere

The main requirement of the Declaration is that opportunities be created for minority languages to be used in the socio-economic sphere, such as economic transactions, banking, insurance, employment contracts trade etc.

As of today, the oral use of minority languages in rendering or receiving such services in the minority areas is not hampered by any administrative or informal restrictions since this usually occurs within the local community where the minority language is not dominated by any other language.

Survey conducted by John Clifton indicates that minorities shift to the official Azerbaijani language in the context of their official work (according to the requirements of the Law on the State Language) and use their native language in non-official business. Minigrants do not encounter problems while receiving services in the State language since they are usually bilingual, which is an advantage from the point of view of their socio-economic integration. The existing bilingualism fails to alert lawmakers to consider possible monolingual minorities. Therefore, it would be helpful if laws concerning socio-economic activities held relevant provisions and if logistics were created in official organizations to meet such unexpected situations.

Article 52 of the Declaration needs more clarity: “Everyone has the right to carry out his/her professional activities in the language specific to the territory unless the functions inherent to the job require the use of other languages, as in the case of language teachers, translators or tourist guides.” How are the linguistic rights of majority representatives to be protected while receiving services from minorities in minority-populated areas? Does the Declaration consider the guarantee of translation at least?

Education

Compliance with the educational requirements of the Declaration will be discussed in Section 3.5.

3.2.5. Point in debate
In general, the public and social attitude towards increasing linguistic and cultural diversity is very positive in Azerbaijan. Individual opinions are heard as suggestions to minorities not to take advantage of the opportunities created for them to make territorial claims. (http://www.voanews.com/azerbaijani/archive/2007-02/Aze-anadiliazerbtebriz.cfm).

References are made to sufficiently high degree of autonomy created for the ethnic Armenians of Nagorny Karabakh, who, according to many opinions, took used this advantage against Azerbaijan’s sovereignty. (http://www.azerigenocide.org/bv.htm).

Although, the Universal Declaration of Linguistic Rights is silent about ways of protecting nations against separatist activities, the European Charter for Regional and Minority Languages of 1992, fortunately, contains a provision which is encouraging for new nations: Article 5 – Existing obligations

Nothing in this Charter may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes of the Charter of the United Nations or other obligations under international law, including the principle of the sovereignty and territorial integrity of States.

4. LANGUAGE POLICY AND ACCESS TO QUALITY EDUCATION

4.1. Language in education policy – challenges for developing nations

The sphere of education is a most vulnerable one to carry consequences of an official language policy. In linguistic literature this part of language policy or language planning is sometimes referred to as educational language policy or acquisition planning (Spolsky, Cooper, Ricento 292). In developing nations emerging after the 60’s of the 20th c., a high emphasis on the promotion of the hitherto suppressed national languages usually associates itself with the necessity of a prompt remodeling of the language balance in education. First of all, national languages find themselves charged with a responsibility to fill, both qualitatively and quantitatively, large gaps created by a sudden language shift in curricula. Secondly, the shift in the balance also affects the fate of the previously dominant language, which is often let to fade out of the education system “due to natural death causes”. And a third possible new component in the revised education curricula is the changing scope of the acquisition of global languages. Finally, having declared themselves as democratic, or democracy-building, societies, new states have to tackle minority languages in education differently, in many cases using the technique altogether novel to them, in order to avoid the risk of criticism from international organizations and, on the other hand, not to undermine yet fragile political integrity.

Some of the obvious challenges that emerging education systems face as a result of such language shift would be:

1. Sudden increase of the hours allocated to, or an introduction in the curriculum of, the study of national languages
2. Introduction of new curricula in national languages

3. Delivery of a new content in the national language, which previously was absent from curricula or was provided in the colonial language
4. A delicate issue of the place of the previous colonial language in the curriculum.
5. A growing demand for the teaching of global languages (usually English)
6. A sharp increase of in the hours allocated for the teaching of global languages (often, of English)
7. The place of minority languages in schooling
8. Conformity of the curricula with international standards

In meeting these challenges the education system should be aware of certain possible negative consequences or difficulties, which could be sustained at least for a transitional period and affect other areas of the social life as well.

In the case of Azerbaijan, for example, some of the resultant difficulties, immediately after the language policy implementation started, were:

1. Insufficiency of the teaching resources to accommodate for the increased teaching load of the Azerbaijani language
2. Lack of high quality teaching resources and new methods to accommodate for new post-Soviet curricula
3. Lack of textbooks and supplementary materials in Azerbaijani
4. Sudden redundancy of the Russian-language teachers
5. Drop of the Russian language skills among the Azerbaijani-speaking youth, which cut off their access to the sources in the Russian language in face of yet unavailable resources in the Azerbaijani language
6. “Student-attracting” initiatives of private schools by designing curricula in the English language without sufficient methodological basis and capability to provide quality teaching in the English language. The courses within such curricula were provided by either a “qualified teacher without adequate English skills”, or “a good-English speaker without sufficient knowledge or teaching experience”. In either case, students were deprived of an access to a quality education.
7. Lack of educational resources for some minority languages
8. Lack of sustainable human resources for uninterrupted teaching in minority languages

As becomes clear from the above, all these can be centered round four major issues: 1. Impact of the implementation of the new national language on quality of education; 2. Discard of the previous colonial language social status of the population and its impact on the quality of education; 3. Inclusion of minority languages in curricula and development of new and adequate resources; 4. Inclusion of global languages and regulating their negative impact on overall education principles.

The following sections consider these issues in the context of, where relevant, their status quo, causes, governmental responses and our own personal perspective.

4.2. Azerbaijani in Education

...
4.2.1. Quality of Schools

The negative heritage of the past which contributed to the lower quality of Azerbaijani-language education in Azerbaijan, and the transition period which even deteriorated this situation, has put the Government face to face with a serious problem: how can we save the future of education in the Azerbaijani language? During the first years of independence, in particular, the situation was extremely difficult. The level of the Azerbaijani schooling went down. Some families, who, motivated by the growing prestige of Azerbaijani, selected Azerbaijani-language medium instruction for their children, resorted back to Russian schools fearing the sustainability of the declining quality. Of course, in these cases, the families were trying to secure the knowledge of Azerbaijani by arranging private language lessons for their children. Some, although did not change the language of instruction, had to solve the problem by arranging private lessons in other subjects.

4.2.2. Declining Language Skills

The drop of effective language skills and increase of incorrect language usage among Azerbaijani-speaking youth immediately after independence was obvious, and this was conditioned by a series of factors, the most serious, to our mind, are the following:

A plurality of hitherto implicit ideas, political interests and power motives, was suddenly unwrapped and many of them were expressed through linguistic initiatives. People were caught up with instability of linguistic norms: spelling rules were under debate, letters in the alphabet could not be agreed upon, vocabulary was constantly changing etc. Language was caught up among pro-Turkish, pro-Russian, pro-Islamic and pro-Azerbaijani political interests. (Tamam Bayatli. 1997. Alphabet Transitions. The Latin Script: A Chronology. Azerbaijan International 5/2 (Summer). http://www.azer.com/aiweb/categories/magazine/52_folder/52_articles/52_alphabet.html)

Azerbaijani schools did not have sufficient high-quality resources to start serious reforms (curriculum design, effective teaching methods, teaching programs, proficiency of instructors) although Government clearly articulated need for serious reform in Azerbaijani schools: “The method of teaching languages also needs to be changed. …… I think we need to adopt new teaching methods, especially in language learning. We need to take advantage of international experience and teaching techniques”. (See Isgandar).

There was a gap between what the school programs offered and the requirements of University admission tests. Therefore, high school students concentrated their attention mostly on preparing themselves to gain a necessary admission score rather than improving their writing, reading, speaking, and analytical thinking skills.

Shortage of textbooks and books in Azerbaijani immediately following the independence was another huge problem that contributed to the declining language skills. First of all, Latin was declared an official alphabet already in 1993 but full implementation did not take place before early 2000’s. Schools and Universities were in the deficit of resources. Secondly, since the establishment of the alphabet and punctuation norms took a few years officially and even more years in people’s minds, books, journals and newspapers were coming with frequent spelling and punctuation errors.

4.2.3. Government Response to Problem

Governmental initiatives to strengthen the education in Azerbaijani are underway: among the highest educational priorities is the introduction of new curricula in the Azerbaijani language. The Ministry of Education has embarked on several international projects for the advancement of education in secondary schools supported by World Bank, SOROS Foundation and other international organizations (Restructuring Azerbaijan’s Educational System. Azerbaijani International 1999. 7.4 Winter http://www.azer.com/aiweb/categories/magazine/74_folder/74_articles/74_education.html). Infrastructurally, Azerbaijani schools have been benefiting from overall secondary education advancement programs (infrastructure enhancement, textbook publication, equipment provision etc.) according to their share in them. According to the report from the Ministry of Education, in the academic year of 2005-2006, 328 new schools were constructed and 239 schools were provided with school furniture and 1039 – with computers and other electronic equipment (http://www.interfax.az/az/index.php?option=com_content&task=view&id=1288&Itemid=70).

Steps have been taken to solve the language acquisition and infrastructural support problems. Under a presidential assignment, the Ministries of Education and Culture, the Writers’ Union, and the National Academy of Sciences are engaged in a huge project covering the period between 2004 and 2008, which envisions the printing and reprinting of books (fiction and science), textbooks, dictionaries, encyclopedias etc. in Azerbaijani Latin.

4.2.4. Discussion

Seriously improved social and economic conditions would give a boost to the solution of the problem. What draws attention in this respect is that quality increase in the Azerbaijani-medium instruction is more dynamic in private schools, which are able to offer better salaries and thus attract better resources and afford better facilities. But the prices are not affordable by certain parts of the population, especially by refugees and IDPs. The problem has been a priority for the Government for some time, which has made several steps to solve the problem by authorizing several pay raises in the sphere. However, the attraction of highly-skilled and dedicated resources to secondary schools requires huge amount of resources and the Government has declared its commitment to continuous addressing of the problem. For example, in Decree #230 of November 4, 2004 of the Cabinet of Ministers of Azerbaijan “On Encouragement Measures for Attracting Teaching Personnel to Rural Secondary Schools”, this problem is articulated and addressed as a need to adopt a comprehensive program for encouragement of teaching activities (Azerbaiyancan Respublikasinin NAZIR LiR KABINETİ SORONCAM № 230 s. Baki şəhəri, 4 noyabr 2004-cü il. http://www.edu.gov.az/?con=227).

There is a serious need to review the programs for teaching Azerbaijani especially at Universities. Many courses are of theoretical nature and do not provide effective skill
learning. A best way to embark on the reform would be to start interactive training program for Azerbaijani language teachers.

However, the most effective way to address these difficulties rests at the core of the language policy. The promotion of a national language, especially in the education system, should be a wise, thoughtful process and not a hasty decision. The elevation of the status of the national language in schooling should be extensively supported by an adequate corpus, acquisition and infrastructure planning. Otherwise, “de-facto” status recognition, in minds of the people, will not hold the sustainability criterion since the officialized language will not be able to compete with other languages with a more developed corpus and more enhanced infrastructure. This will affect the linguistic attitude and behavior of the population, and the forcing of the “official” language which does not offer much will create problems. As J. Fishman states, “obviously, it is unwise for a language to attain new statuses (e.g., in government, the courts, higher education, the military, etc.) without having an adequate corpus by which the topics relevant to such statuses can be readily, accurately, and felicitously expressed. It is similarly undesirable for corpuses to be endlessly extended and modernized without attaining the relevant statuses for which they were intended.” (316). So, the two processes are mutually complementary.

Although educational authorities can put forward suggestions and recommendations, they are not decision-makers in respect of certain general directions, for example, how fast the status of Azerbaijani should be entrenched in the education sphere. Language policy, therefore, besides representing a fair national spirit and political will, should heavily rely on serious academic research and involve pure linguistic expertise, which will offer more reasonable and less emotional implementation procedures.

The Government of Azerbaijan has created for these purposes, a Language Committee under the auspices of the President of Azerbaijan Republic, to rely itself on the solution of the vital problems facing the sociolinguistic situation in Azerbaijan. However, much more needs to be done by the Committee itself for better coordinating its decisions and actions with the academic circles involving, at least as a transition initiative, international expertise.

4.3. Russian – a Continuing Danger?

4.3.1. Authenticating curricula

Russian has entered the orbit of foreign languages in Azerbaijan. In Azerbaijani schools, the hours allocated to Russian have considerably diminished, and in many Universities, Russian is being taught as one of the foreign languages for Azerbaijani-track students. This has created a certain degree of anxiety among Russian language teachers.

This nevertheless, should not be viewed as an expressed official attitude against Russian but rather an attempt for endorsement of logical bases for internationally acceptable curricula, and maybe some other attempts based on individual attitudes. In explaining their initiative to exclude the Russian language from the curricula, for example, many University administrators state that they do not understand why Russian should still be taught as a second language when it is no longer dominant, and this would be politically incorrect. That this is not an official government-encouraged attitude is proven by the mere fact that none of the 400 Russian schools, which existed in Azerbaijan during the Soviet Union, has been closed down after independence. (The official Visit of the President of Azerbaijan to Russian Federation: Diplomatiya Alemi #6, 2004. Baku p. 39 (http://www.mfa.gov.az/eng/diplomatiya%20Alemi%206.pdf).

4.3.2. Remedial

Several opportunities are available to solve the redundancy problem after this sudden transformation, such executive trainings for re-qualification of Russian teachers as instructors of the Azerbaijani language or literature. Some Universities included in their curricula optional Russian language courses (in particular, to meet the desire of international students), the expenses of which were covered by the University's private resources.

4.3.3. Discussion

However, the removal of the previous dominant language into the domain of other foreign languages should be a gradual and a more careful process. It is our personal opinion that because Russian is no longer a colonial language there is no political meaning or significant danger in continuing to teach it as a second language at least for some transition period. First of all, it is more of a cultural matter since Russian still continues to survive as a socio-cultural phenomenon in urban settings in (and not only in) Azerbaijan. Secondly, it can temporarily be viewed as an educational support before resources are built for research and studies in the Azerbaijani language. Rather than applying a detached mechanical approach, it would be more expedient to proceed from a more general standing and give a more detailed consideration to the existing transitional environment, especially since there is fortunately no signs of general anti-attitude in the society against Russian or Russians.

4.4. English Language Curricula: What are the Real Priorities?

English-language curricula offered by some private schools are one of the direct consequences of the growing prestige of the English language. Employment with international corporations offers better economical and financial standing. And many hire the local youth for the positions which requires more administrative and language skills rather than acquiring diverse knowledge and skills. Subsequently, the youth dedicates a lion’s share of their efforts to learning English and some other Western languages, rather than acquiring diverse knowledge and skills. Subsequently, the youth gives preference to studying in the English-medium instruction groups at Universities attaching no importance to the quality of teaching (although few private schools and Universities have been able to step into a stage where they can offer a quality education in
English by attracting international experts or internationally educated local specialists). On
the other hand, this makes a good reason for Universities and schools to advertise their
offers of English-language education. Moreover, encouragement by some private
Universities of the English teaching (some Universities compensate English-language
teaching of their professors by a generous increase on payment) stimulates many faculty
members to switch to lecturing English using their restricted command of the language,
which is certainly detrimental to the quality of the teaching process. This artificially created
market is harmful for the development of intellectual potential in the country.

It was probably this understanding of the situation that the Ministry of Education had to
resort, in spite of discontent and disappointment emerging from local private schools, to
closing down some programs (e.g., law, medicine) at some private Universities.

4.5. Minority Languages and Education in Azerbaijan

4.5.1. Current status

The promotion of minority languages, as is well-known, is a huge gap in the world education
system in general, including developed countries. As Suzanne Romaine states, “UNESCO’s
much-cited axiom “that the best medium for teaching is the mother tongue of the pupil…” did
not lead to any widespread adoption and development of vernacular languages as media of
education. In most parts of the world schooling is still virtually synonymous with learning a
second language.” (Suzanne Romaine: “The Impact of Language Policy on Endangered
7)

In Azerbaijan certain steps have been taken to implement the measures envisioned by the
Presidential Decree on Protection of Minorities of 1992. Languages of Minorities are taught at secondary schools, and the Ministry of Education has
developed a program on the infrastructural improvement of the minority education. Schools
providing the minority language and literature instruction have been established in all the
minority-inhabited regions of Azerbaijan, and textbooks have been issued for minority
schools. The Universities have established programs studying minority history, culture and languages. Baku State University offers programs in Caucasian Studies with the focus on ethnography
culture and of minorities. Hebrew (the language of Mountain Jews) is being taught in the
Azerbaijan has established ethnic language schools in 13 administrative
regions of Azerbaijan, which, unfortunately is unable to include the ethnic Kurd settlements
(Lachin, Gubadli, Zangelan, Kelbejer) that are currently under Armenian occupation.

In fact Azerbaijan has declared that it is unable to guarantee the application of the provisions of the European Charter for Regional and Minority Languages in the territories occupied by
the Republic of Armenia until these territories are liberated from that occupation (http://
conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=148&CM=&DF=&CL=ENG&VL=1)

4.5.2. Background – a detached analysis

The Nagorny Karabakh issue, and similar ethnic issues in the post-Soviet Georgia and
Moldova, is a direct consequence of the international community’s non-desire to condemn an
aggressor who encroaches upon the sovereignty and territorial integrity of a neighboring
gate. Yes, there are formal “denunciations”, e.g., four UN Resolutions (822, 853, 874, and 884) addressing the Armenian aggression (http://azer.com/aiweb/categories/magazine/
64_folder/64_articles/64_un_yasharaliyev.html), but aren’t they, without real action, simply
part of specifically designed for extreme situations political discourse? Have any of
international organizations issued any warning or sanctions against Armenia? Armenian
intervention cannot even be considered as humanitarian intervention according to Article
73.9 of the UN Charter since the concept of humanitarian intervention excludes territorial
occupation and annexation of a state.

Why does, for example, US State Department remove the original “occupied Nagorno
Karabakh” formulation from the text of the U.S. State Department’s 2006 report on Human
Rights and to have to restore it back when the Azerbaijani side expresses its serious concern
about it? Why no to put the correct and genuine wording from the very beginning? Why
should they be so much under the influence of the Armenian Lobby? Especially, at the eve of
the coming elections, where so many candidates rely so much on financial support, it is not
probable whether the State Department will be able to resist the Armenian “lobbying”
This problem has its direct impact also otherwise in the sphere of education. www.unesco.org/education/wef/countryreports/azerbaijan/rapport_1.html).

Armenian aggression and resulting massacres in several regions of Azerbaijan. (http://

in 1998 compared to earlier years, partly a result of declining population growth rates

The UN Report indicates that “the number of new entrants to primary school …. decreased in 1998 compared to earlier years, partly a result of declining population growth rates …………”, which indicates the decrease in the birth rate in 1991-1992 – the peak of the Armenian aggression and resulting massacres in several regions of Azerbaijan. (http://

This problem has its direct impact also otherwise in the sphere of education.

The loss of 20% of Azerbaijan's territory brought about a significant inflow of refugee and IDP children to schools, which strongly challenges the goals of education in the country. The continuous inflow of refugees during 1989-1993, doubled with the economic crisis in the country made the overall enrolment extremely difficult for several years.

4.5.3. Discussion

Language Law

The Law grants rights to education institutions to offer education in languages other than Azerbaijani:

Article 5. The functioning of the educational enterprises in other languages in the Azerbaijan Republic shall be regulated by the procedure established by the relevant legislation.

Since the object of the Law is specifically the State Language, it does not hold specific provisions about the minorities or ethnic groups as did the Law of 1992 “On the State Language in the Azerbaijan Republic”:

Article 3. Citizens of the Republic of Azerbaijan shall be guaranteed the freedom to choose a language of teaching.

Nationalities and ethnic groups compactly residing on the territory of the Republic of Azerbaijan shall be granted the right to establish, by means of the state bodies of the Republic, pre-school institutions in the native language as well as general secondary schools or separate classes and groups in the native language at various educational institutions.

Such a specification in the new Law would however provide a more effective ground in handling the education in minority languages.

Education Law

As the long-discussed new education law, which will hopefully soon replace the existing one, has not been adopted yet, we have to turn to the previous law to see how the education in minority languages is addressed:

Article 6 Language of Education:

1. The language of education in education enterprises of Azerbaijan Republic shall be the Azerbaijani Language

2. In accordance with the societal demands and with the desire of the citizens and founders of educational enterprises, schools may provide, within the State standards, education in the languages of minorities as well as in foreign languages provided that the Azerbaijani language, history of Azerbaijan, Azerbaijani Literature and Geography of Azerbaijan are required subjects in their curricula.

Since the societal demands and the desire of the citizens are often changeable under globalization tendencies and natural integration processes in developing countries
(especially in smaller ones), and since such tendencies usually encourage young generations of minorities, especially of smaller ones and of those with no written traditions, to integrate with larger social or ethnic groups to enhance their social and economic standing, the fate of minority languages and cultures often become doomed to extinction. Therefore, however democratic and non-discriminatory the above opportunities for minority education may be, a “beyond-discrimination” step should be taken forward: provision of education in minority languages should not be relied only on the desire of the citizens, it should also be part of the implementation of the diversity maintenance segment of the official language and education policy. Thus the legislation should stipulate that education in minority languages should also be provided “within the framework of the language and education policy designed for the maintenance of linguistic diversity”, especially since the actual policy in education does support such diversity.

Hopefully this vision is present in current discussions of the coming education law.

Strategy

Nothing, whether in legislation or in official policy, in principle poses any obstacle to instruction in minority languages in Azerbaijan. Efficiency of implementation of the law or official policy may however depend on the commitment of the regional authorities or local education officials, economic factors and initiatives of the communities themselves. Such “ad-hoc” problems are responded by central officials and education authorities in a timely manner.

Effective solution of such problems would also depend on adequate revision of the strategy. For example, in order to enable schools to offer the teaching of a broader spectrum of subjects in minority languages, a comprehensive program should be worked out to involve Universities in the training of specific specialists in ethnic languages.

A steady strategic planning is also needed in research (record of cultural traditions, folklore, history etc.) and corpus building (developing writing systems, source materials) in respect of minority languages in order to enhance the status of the education in these languages. As David Crystal states, “there us no substitute, in language maintenance, for careful, long-term forward planning, with the first priority being the promotion of a language's cultural milieu, and within which an array of short-term measures have been judiciously selected.” (Crystal, 126).

Endnotes

1. Vice Rector for International Relations, Azerbaijan University of Languages
Legislating for Higher Education in SEE Countries: the Language Question (2005)
Legislating for Higher Education in SEE Countries: the Language Question (2005)

Dennis Farrington

1. INTRODUCTION

Work on drafting new higher education laws and university statutes in Central and East European countries and Central Asia has been in progress since the fall of communism and socialism at the turn of the 1990’s, notably under the auspices of the Legislative Reform Programme for Higher Education and Research (LRP). All the legal systems of the countries concerned are based on civil law, with constitutions and education legislation. Some constitutions are more specific than others about higher education or topics related to it, such as the issue of language of instruction. This issue bedevils the successful reform and integration of higher education institutions in SEE countries since, although the main state languages except Albanian share common roots and are mutually comprehensible, there are deeply-engrained historical and cultural obstacles to achieving consensus on language use. This is not of course only a problem in the SEE region. The list of 141 European minority languages prepared by Sabhal Mòr Ostaig, part of the UHI Millennium Institute, is indicative of a wider European issue. Even where as in the United Kingdom there is no constitution, legislation which it would be politically impossible to repeal is illustrated by the Welsh Language Act 1993 and although there is no legislation as such, the encouragement given to higher education in Scots Gaelic at Sabhal Mòr Ostaig provides an interesting model for ‘minority language’ instruction by consensus.

After some introductory remarks on language problems in the SEE region, the paper will concentrate on the language policies of the Republic of Macedonia and how the South East European University (SEEU) has managed to adopt a modern ‘flexible use of languages’ policy designed to equip students to meet the needs of the modern employment market. It shows how over time it may be possible to resolve some of the difficulties, at least in Macedonia, by switching to a curriculum based on a steady acquisition of English as a common medium of international business, trade and academia.

2. PROBLEMS IN THE SEE REGION – KOSOVO-UNMIK AND BOSNIA & HERZEGOVINA

The problems in SEE countries are illustrated by the situations in Kosovo-UNMIK and Bosnia & Herzegovina. In Kosovo-UNMIK, Article 4.4(b) of the Constitutional Framework for Provisional Self-Government and UNMIK Regulation 2001/9 provide that Communities and their members shall have the right to receive education in their own language. UNMIK Regulation 2003/14 on higher education prohibits discrimination in access, etc. on ground of language. However, in practice, higher education at the recognised public university, Pristina, which prior to 1991 was bilingual, is delivered only in the Albanian language, which is the language spoken by the great majority of present inhabitants. A separate Serbian language university has been created in the northern part of the UNMIK-administered territory. This means that there is no common language between the two universities and no opportunities for collaboration or mobility, a problem unlikely to be resolved until the final status of Kosovo-UNMIK is itself resolved. Foreign language training is part of the curriculum, but it is difficult to envisage this being developed in poorly-funded state institutions. Kosovo-UNMIK now has about ten private higher education institutions which have been created since the Regulation 2003/14 provided for licensing: some of these concentrate on teaching in English.

In Bosnia-Herzegovina the preparation of a Framework Law for higher education has been held up, in part, because of questions related to language. The Constitution of Bosnia and Herzegovina enshrines the basic constitutional principles and goals in view of the functioning of Bosnia and Herzegovina as well as a catalogue of human rights and fundamental freedoms, all of which represent the constitutional guidelines or limitations for the exercise of responsibilities of Bosnia and Herzegovina and of its Entities. Article III (1) of the Constitution of BiH does not list education as a responsibility of the Institutions of Bosnia & Herzegovina. Article III (3) a) provides that all governmental functions and powers not expressly assigned to the Institutions of Bosnia & Herzegovina shall be those of the Entities. Therefore, the Constitution of BiH assigns a competence over education to the Entities. However, it has been held by the Constitutional Court of BiH in its Partial Decision no. U 5/98–II of 19 February 2000 (hereinafter "Partial Decision II") that Article II (3) of the Constitution of BiH gives to the Institutions of BiH a general competence to regulate all matters enumerated in the catalogue of human rights which cannot exclusively be left to the Entities since the protection has to be granted to “all persons within the territory of BiH”. It has therefore been argued that considering that Article II (3) (i) of the Constitution of BiH enshrines the right to education and considering that Article 2 of the First Protocol to the European Convention on Human Rights guarantees that no person shall be denied the right to education and that the provisions of the said protocol are directly applicable in Bosnia and Herzegovina pursuant to Article II (2) of the Constitution of BiH, the Institutions of BiH have a constitutional basis to regulate matters related to education in accordance with the findings of the Constitutional Court of BiH in the Partial Decision II case.

The Draft Framework Law generally aims at providing each citizen of Bosnia and Herzegovina with equal access to higher education, and is designed to enable the equal and uniform representation of all universities in BiH and abroad, the recognition of foreign qualifications in BiH as well as the recognition abroad of diplomas obtained in BiH: these objectives are generally related to the right to education guaranteed to all BiH citizens under the Constitution of BiH. Different attempts were made at various stages in the lengthy drafting process to satisfy the wishes of users of different, although closely-related languages, (Serbian-which can be written in two scripts - Croatian and Bosnian) to use one official language of administration while allowing the use of the others in teaching and research, so promoting equality and mobility, and for making some kind of financial provision to cover the additional costs of doing so. With the removal of most of the financing provisions from the latest draft of the law, as they would require constitutional change to implement, such provisions are unnecessary. However, the issue may well resurface once the final
65% have stated Macedonian ethnicity, 25% Albanian, ca. 4% Turkish, ca. 3% Roma and 3% others. Use of ‘mother tongue’ language follows the same general pattern. In pursuance of the theme ‘no one shall be discriminated against by any public authority on the ground of language,’ the principal issue, therefore, is to try to provide equal rights in access to education to citizens speaking two entirely different languages: the official state language Macedonian (a language of the South Slavonic group written in the Cyrillic alphabet) and Albanian (a unique Indo-European language written in the Latin alphabet.) In practice, most urban and many rural-based citizens with Albanian mother-tongue also speak Macedonian, having learned it compulsorily at school, but relatively few of Macedonian mother-tongue speak Albanian. The western regions of Macedonia dominated by Albanian-speakers have close historical, family and related ties to Albanian-dominated Kosovo which between 1991 and the conclusion of the conflict in 1999 was officially dominated by the Serbian language. Macedonian-speakers, on the other hand, often have close links with Serbia and Montenegro or with Bulgaria: the Macedonian language has many similarities with the other South Slavonic languages Serbian (and Croatian and Bosnian) and Bulgarian but none with Albanian.

Prior to 2000, higher education in Macedonia was delivered exclusively in the Macedonian language, apart from a small teacher-training section in Albanian. The South East European University (SEEU) was a politically-negotiated international response to demands for recognised higher education in Albanian. It set out to help to solve the problem of under-representation of Albanian-language students in higher education in Macedonia while being open to students from all ethnic groups. Macedonia’s international obligations allowed the OSCE and the Council of Europe to successfully argue for a change in state policy which allowed SEEU to open. In 1998, prior to the independence of Macedonia, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1353(1988) on access of minorities to higher education: as is well known this says that education is a fundamental human right and therefore (sic) access to all levels, including higher education, should be equally available to all permanent residents of the states signatory to the European Cultural Convention (ECC). Macedonia acceded to the ECC in 1995, ratifying the separate European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1997. The 1988 Recommendation says that member states with minorities should avoid prescribing the exclusive use of the official language. It also recognises the fundamental liberty to engage in higher education activities and to establish institutions for that purpose. Such institutions, it says, should be officially supported once their satisfactory quality has been established – on a non-discriminatory and fair basis – and a genuine demand has been demonstrated; language should not be a criterion for recognising institutions or qualifications. Also, broadly, members of the European Higher Education and Research Areas are voluntarily committed to bring some degree of uniformity to the higher education systems of the wider Europe while maintaining diversity of approach. They aim, through changes to legislation or otherwise, to create a framework of comparable and compatible qualifications seeking to describe them in terms of workload, level, learning outcomes, competences and profiles. The uniformity of approach is intended to increase opportunities for student mobility, the European Union target of at least 20% of students by 2010 considered achievable given the emphasis on common language learning within the Common European Framework (CEF) to be discussed later, usually English.

Albanian fits the definition of a regional or minority language in the European Charter for Regional or Minority Languages (ECRML) (1992), which entered into force in 1998. ECRML was signed by Macedonia in 1996 but by 2005 had not been ratified so the state is at the time of writing not obliged by the Charter’s terms to promote and protect the use of Albanian in education. However, in 1998, Macedonia ratified the more comprehensive Framework Convention for the Protection of National Minorities (FCPNM) (1995), which obliges Parties to promote equal opportunities for access to education at all levels for persons belonging to national minorities. Parties are obliged, within the framework of their education system, to recognise that persons belonging to national minorities have the right to set up and manage their own private educational and training establishments, not in itself entailing any financial obligation for the state.

The Constitution of Macedonia states that parents have the right and responsibility to ensure their children’s education (Art. 4); that all citizens have an equal right to education; and that basic education is compulsory and free (Art. 44). Private education institutions may be established at all levels except basic education (Art. 45). The Constitution was amended following the ‘Ohrid’ Framework Agreement of August 2001. Article 7(6) of the Constitution provides that ‘In the units of local self-government where at least 20 % of the population speaks a particular language, that language and its alphabet shall be used as an official language in addition to the Macedonian language and the Cyrillic alphabet. With respect to languages spoken by less than 20% of the population of a unit of local self-government, the local authorities shall decide on their use in public bodies.’ Article 48(4) of the Constitution provides that ‘Members of communities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in another language, the Macedonian language is also studied.’ Among other changes in legislation to accommodate this provision, changes in the higher education law in 2003 have permitted publicly-funded institutions to offer courses taught in the Albanian as well as in the Macedonian language. Prior to that, only private (i.e. non-state founded) institutions could do so, which was a cause of major concern in the country. The revised Article 95 of the Law on Higher Education provides:

‘1. The Macedonian language is a language of instruction in the higher education institutions. In accordance with this Law and the Statute of the higher educational institution, in order to express, nurture and develop their identity and other peculiarities, the members of the communities shall have the right to acquire their education in the State higher education institutions, through certain study programmes in the language of the community, different than the Macedonian language. The State will provide financing for
Committee of Ministers Recommendation R(98)6 concerning modern languages. The 2002-2003 iv, as the policy of 'flexible use of languages' dates back to Council of Europe the concept of a 'flexible approach' to language use was adopted by SEEU during Republic of Macedonia through an additional quota, determined by the Government of the equitable representation of citizens, who belong to the communities that are minorities in the competition for enrolment of students in the first year of studies, the universities shall provide realising the activity of higher education.

The Rules of norms and standards for establishing the institution of higher education and of the institution of higher education, which will determine the fund of lectures, determined in programme will be studied in Macedonian. The subjects shall be determined with the statute shall be held in Macedonian language and at least other two subjects of the study majority in the Republic of Macedonia, in accordance with paragraphs 2, 3 and 4 of this Article. 3. Elementary education as well as the education in the didactical and methodical subjects for secondary school teachers may be held in the languages of members of other communities that are not in majority in the Republic of Macedonia. The lectures in the institutions of higher education can be held in one of the world languages for certain study programmes of foreign languages, for parts of study programmes in which professors-guests from abroad take part and study programmes for which the lectures are held in the Macedonian language and in accordance with paragraph 2 of this Article. The institutions of higher education may offer that the lectures for the complete study programme are held in Macedonian language and in one of the world languages in parallel.

4. In the private institutions of higher education, the lectures can be held in the languages of members of the communities, which are not majority in the Republic of Macedonia or in foreign languages. When the lectures are held in the languages of members of the minority communities in the Republic of Macedonia or in foreign language, the Macedonian language shall be studied as a separate subject and the lectures shall be held in Macedonian at least for another two subjects.

5. When the lectures are held in the languages of members of the communities that are not majority in the Republic of Macedonia, in accordance with paragraphs 2, 3 and 4 of this Article, the Macedonian language shall be studied as a separate subject and the lectures shall be held in Macedonian language and at least other two subjects of the study programme will be studied in Macedonian. The subjects shall be determined with the statute of the institution of higher education, which will determine the fund of lectures, determined in the Rules of norms and standards for establishing the institution of higher education and realising the activity of higher education.

6. In the state institutions of higher education, as part of determining the conditions at the competition for enrolment of students in the first year of studies, the universities shall provide equitable representation of citizens, who belong to the communities that are minorities in the Republic of Macedonia through an additional quota, determined by the Government of the Republic of Macedonia. Taking advantage of paragraph 4 of this Article, which is essentially unchanged from 2000, the concept of a ‘flexible approach' to language use was adopted by SEEU during 2002-2003, as the policy of ‘flexible use of languages’ dates back to Council of Europe Committee of Ministers Recommendation R(98)6 concerning modern languages. The Recommendation encourages teaching programmes at all levels that use a flexible approach, taking into account the ECRML and the FCPNM. The Recommendation promotes the genuine intercultural outlook encouraged by bilingual and bicultural education, and points to the need for adequate numbers of suitably trained language teachers. The ‘flexible language policies’ are also mentioned in Article 5.3 of Council of Ministers Recommendation R (98)3 on access to higher education. SEEU has faced questions about its policy to develop flexible language use in a cost-effective way, which is in line with these two Recommendations, although it became apparent over the first four years that some members of the local European diplomatic community seemed unaware of their contents. This is not the place to describe the policy in detail, but adjustments to curricula consequent on adopting ‘3 plus 2’ instead of ‘4 plus 1’ first and second cycles from October 2005 are almost certainly necessary if the correct balance is to be drawn between learning professional subjects and language skills.

Whatever the policy adopted, the curriculum must pass the scrutiny of the Licensing and Accreditation Board of the Republic of Macedonia, since courses which do not convey required professional competences will not be acceptable for recognition of diplomas. Successful completion of a higher education programme in the Republic of Macedonia, as in other neighbouring countries, has hitherto depended on the ability to learn facts and to be able to repeat them in a written examination, rather than on the acquisition of competences including language competence.

4. A SOLUTION: GRADUALLY SUBSTITUTING THE ENGLISH LANGUAGE

The Council of Europe’s Common European Framework for language learning provides a common basis for the elaboration of language syllabuses, curriculum guidelines, examinations, textbooks, etc. across Europe. It describes in a comprehensive way what language learners have to learn to do in order to use a language for communication and what knowledge and skills they have to develop so as to be able to act effectively. The description also covers the cultural context in which language is set. This provided the basis for the new approach to language learning in SEEU. Given the objectives of the Framework, and in accordance with the law, SEEU requires students to have a solid knowledge of Albanian and Macedonian languages. This helps the process of integration of students, and consolidate linguistic and cultural diversity, one of the greatest strengths and defining characteristics of SEEU. SEEU’s work allows students from both major language groups to follow higher education of a quality comparable to western institutions. Nevertheless, it is obvious to all that given the high level of competition in the new marketplace of higher education from systems originating outside the SEE region, in particular from the United States, and the relatively poor funding of state education, the only way in which a student can achieve personal goals which include a high standard of living is to have a good command of an international language, in practice the English language. It is recognised that success in the modern world depends in most subjects on having a good command of a modern international language related to the subject discipline. It is not only for professional reasons. The European Union takes the view that learning to communicate in common languages helps to tackle xenophobia and ultra-nationalist backlashes as a primary obstacle.
to European mobility and integration, and as a major threat to European stability and to the healthy functioning of democracy.

Whether this means that the actual teaching has to be carried out only in English is another question entirely. SEEU takes the view that it does not necessarily aid the economic and social development of the country or the region to attempt to exclude local languages from the teaching process, as is the case in some private providers, not least because as yet there is an inadequate cadre of senior professors able to teach in English. The law envisages either teaching in the ‘languages of the communities,’ in practice Albanian, or in foreign languages. A mixed approach means that Macedonian must also be studied. The flexible use policy therefore has high cost. The policy of SEEU is to help students in international subjects such as Business Administration (BA) and Communications Sciences and Technologies (Computing Branch) to reach at least the level of B2 independent user. However, achieving this is not based solely on the number of hours of instruction undertaken at SEEU: many students arrive at SEEU having already reached A1 or A2 level. It is not the University’s sole responsibility to provide language tuition within the Common Framework: as this makes clear, it is necessary for common language learning to be encouraged, put on an organised footing and financed at all levels of education by the competent bodies. So the state also has a responsibility to encourage and finance language learning at all levels. One contribution of SEEU to this, with government financial support, is to help with the provision of well-trained teachers in Albanian-language schools. SEEU also has the right to expect the government to help with the costs of providing high level language tuition in the national interest but so far this has not happened.

The ground is prepared for a possible next step if the law is further liberalised during the course of 2005-2007. It is possible to envisage a one or two year foundation programme as part of the National Qualifications Framework in which students concentrate on gaining language, IT and other generic skills leading to entry to or completion of Year 1 of the three-year first cycle degree, depending on ability and performance. After that, professional subjects could be taught in English. However, the current law is not flexible enough to allow study programmes to be responsive to student needs. As it is, now all students entering SEEU must take the TOEFL exam (Pre-TOEFL) in order to enrol. The results represent a proportion of the points required for entry. For prospective students in all faculties a minimum score of 300 is required (Pre-TOEFL has a maximum score of 500). In addition, the results of the TOEFL score will be used to place students in the appropriate Basic Skills in English (BSE) course. Given that the various Faculties at SEEU have different requirements in terms of students’ knowledge of English, minimum scores from 300-400 points are required. There are not absolute guidelines for the admission of students based on Pre-TOEFL, so in practice, SEEU may choose to vary these requirements in the light of demand. It allows the gradual introduction of teaching in English in the third year of the first cycle, and in the second cycle in Business Administration and Computing, with some availability of teaching in English in law (Public and Private International Law including European Law) and Public Administration (related to accession to the European Union). This implies a strategic restructuring of basic and special purposes English courses.

5. CONCLUSION

Issues of language are of fundamental importance to the different communities which make up countries in the SEE Region. By preserving and protecting their use in higher education while opening up possibilities for students to learn English as a medium of international communication, institutions can enhance the prospects for employment and personal development of their students. However, it is necessary that laws recognise this. While the Kosovo-UNMIK and draft Bosnia & Herzegovina legislation place no obstacles in the path of these developments, there is a long way to go before either country is in a position to realise them. By contrast, the Macedonian law is still somewhat restrictive and arguably needs further refinement if the goals established by SEEU are to be fully achieved and disseminated to other parts of the Macedonian higher education system.

Endnotes

4. This followed meetings between the Rector and other SEEU staff with the relevant officials of the Council of Europe in Strasbourg.
Linguistic Rights in Conflict Ridden Countries in the Balkans (2005)
Linguistic Rights in Conflict Ridden Countries in the Balkans (2005)

Adila Pašalić - Kreso

1. GENERAL DATA ON BOSNIA AND HERZEGOVINA AND ITS POPULATION

Bosnia and Herzegovina (BiH) is located in the southeastern part of Europe, in the western area of the Balkan peninsula. It borders with Croatia to the north, west and south, while on the east it is bordered by Serbia and Montenegro. The capital city is Sarajevo. Bosnia and Herzegovina declared its independence on April 5, 1992. At present, population of BiH is estimated to 3,950,000.

According to the last formally conducted census in 1991, BiH population structure included 44% Bosniaks (then declared as Moslems), 31% Serbs and 17% Croats, while 6% of people declared themselves as Yugoslavs.

During the war 1992-1995, approximately 200,000 people were killed, while nearly half of the overall population sought refuge abroad or were expelled from their homes and displaced within the territory of Bosnia and Herzegovina. According to recent statistical approximations, BiH nationalities are as follows: 48% Bosniaks, 37.1% Serbs, 14.3% Croats and 0.6% others.

Ethnic and linguistic division mostly follows the pattern of different religious traditions or regional belonging – Croats, mainly Roman Catholics call their language Croatian, while Bosniaks, mainly Moslems, call their language Bosnian, and Serbs, mostly Orthodox Christians, call the language Serbian.

2. HISTORICAL FACTS RELATED TO LANGUAGE DEVELOPMENT IN BOSNIA AND HERZEGOVINA

2.1. Official language (languages) today

Currently in BiH, official languages of the population of BiH are: Bosnian, Croatian and Serbian. Names of the languages on the territory of former Yugoslavia have never been officially established solely based upon linguistic characteristics. Political reasons have often been predominant over linguistic. In socialist Yugoslavia, three languages were officially used. Slovenian was used in the Republic of Slovenia, Macedonian in the Republic of Macedonia (now FYROM), and Serbo-Croatian or Croato-Serbian. This was the most commonly used language, throughout Croatia, Bosnia and Herzegovina, Serbia and Montenegro, as well as the other republics, while the standard of this language was determined by the Novi Sad Agreement in 1954.

After proclamation of independence, the first Constitution of BiH (proclaimed on February 24, 1993) in Article 4 stipulates: “Within the Republic of Bosnia and Herzegovina the official language to be used is Serbo-Croatian/Croato-serbian of “ijekivica” pronunciation. Both alphabets, Latin and Cyrillic are fully valid in use.” (Collection of Constitutions 1997, p. 177).

In addition, already in 1994, a law on language in BiH stipulated that the language in BiH is named Bosnian, Croatian, Serbian and the alphabets in use are both Latin and Cyrillic, providing the right to each constitutional people in BiH to choose the name of its language.
and alphabet. Thus, the old name of the language Serbo-Croatian/Croato-serbian was not sustainable, primarily due to political reasons.

In spite of the difference in names, all three variations of the language remain mutually comprehensible, and differ primarily in the usage of a select few words and grammatical structures. The situation is not unlike that of Australian or Canadian English and the English spoken in the UK, or French in Belgium and in France.

2.2. Historical Interconnection of Language

Many regional dialects had been spoken throughout the region prior to the 19th century, and no consistency existed in either the spelling or the pronunciation. The Serbo-Croatian language was a result of the work of Serbian linguist Vuk Stefanović Karadžić, who combined segments of all dialects. It is thus justifiably called Serbo-Croatian.

V.S. Karadžić was a part of the Pan-Slavic movement of the 19th century, which sought to unite all Southern Slavic peoples into one nation. His linguistic work, to write morphological and spelling rules, created the modern language, which he coined Serbo-Croatian, since it incorporated the most sensical portions from all dialects. Vuk Stefanović Karadžić, in the first half of 19th century, declared the dialect of Eastern Herzegovina to officially be Serbian, and had given this language ekavski dialect. This modern form of the language was spread with Karadžić's translation of the Old Testament into the new literary language, and his version of the rules became the official form of the Serbo-Croatian language. Croatia and Bosnia and Herzegovina utilised ijekavski dialect, while most areas of Serbia used ekavski dialect. Other dialects remain only in local diction, and are not appropriate in official discourse.

2.3. Language in Social Changes

Recently, one of the most manipulated issues in BiH has been the articulation of separate local languages. The differences between the Croatian, Serbian and Bosnian languages (or more appropriately - dialects) follow fairly standard rules, not unlike those in many other languages. They are usually present in words with vowel diphthongs, where, eg. the word for milk mljeko in ijekavski dialect, becomes mleko in Serbian, which uses the ekavski dialect. When the same example is applied to the word pretty lijepo the structure becomes predictable, since ekavski simply drops the long diphthong to lepo. One example of forcefully inventing differences in language includes the fact that in Serbian a house is called kuća, while the housekeeper or housewife is called domaćica. In Croatian, house is called dom while a housekeeper is kućanica.

Many linguists from the territory of former Yugoslavia claim that this is one language, and that the differences arise in the preferred use of certain terms in the language (or languages) spoken in Croatia, Bosnia and Herzegovina, Serbia and Montenegro, but not exceeding 4-5%. Even these specific terms are widely understood. Kruh or hjieb (bread), dijete or dite (child), bijelo or belo (white), dom or kuća (home), kava or kahva or kafa (coffee) etc. But following the split of Yugoslavia (during 1991), the slight regional differences seemingly became more pronounced and noticeable in the three major ethnic groups and cultures of Bosnia and Herzegovina. It was not due to actual differences but rather due to impacts of the political interference in the field of linguistic. Before the war, the only real differences being that Serb traditionally held to writing the language in Cyrillic alphabet.

Nevertheless, all three ethnic groups understand each other perfectly, and irrespective of these efforts, their languages are difficult to differentiate. The language issue has had a detrimental impact on various facets of everyday life in BiH and especially so on the quality of political discourse. At the Dayton talks, representatives of the three peoples argued strongly that each had the right to use their own language, so this too became a defining principle enshrined within the accord. The international community has been obliged to accept the existence of three different languages, and large sums of money are expended on translation from one to another language of public documents, and official correspondence.

Serb politicians in BiH, have begun to force them selves to speak the equivocal - typical pronunciation used in Serbia, but (historically) never in BiH to demonstrate belonging to Serb nationality. Equally, Croatian officials make incredible efforts to learn the new vocabulary advocated by nationalist interests in Zagreb. Trivial and minor differences in a common language are being exploited for the purpose of differentiation in the education system, in the arts and society at large. As with other disputes rooted in nationalist politics, this debate remains highly politicised and divisive.

Immediately following the war, Bosniaks have established the norm of the Bosnian language and have insisted on words and phrases such as lađko, mehko, hlupati (with the added “h”), etc. They have also revived a number of outdated archaic words which have almost been forgotten (dating back to the Ottoman empire) and for a very long time used only locally.

Many international experts for Slavic languages still refuse to leave the term Serbo-Croatian behind and this is how they refer to languages spoken in Croatia, Bosnia and Herzegovina, Serbia and Montenegro, which is in fact considered to be one language, and that the differences amongst these languages are solely political, for example, arising from the promotion of ethnic tensions and lack of tolerance. On the other hand, eminent experts for Slavic languages have gathered in Vienna to mark 150 years of the agreement on modern Slavic languages (reference), and have expressed their understanding of the linguistic changes in the Balkans. Giving the right to Bosniaks to entitle and change their language according to their own needs, W. Lehfeldt has also confirmed that “Bosniaks have kept and nurtured an adopted child – Serbo-Croatian the longest, even though they are not included in its name, nor was their literary culture included in its norm.”

Further elaborating his opinions, Lehfeldt states that “for me there is undoubtedly a Bosnian language. This statement is a result of my convictions that all peoples have the right to entitle their language, which they use in a manner which is correct for them. I consider it fully justified, especially for the Muslim population of BiH to want to use their own language, rather than Serbo-Croatian/ Croato-Serbian, as they are excluded as a people by the name of this language, and even though the linguistic base for this language as sought out by Vuk Stefanović Karadžić, should be looked for exactly in Herzegovina.”
This brief review of historical development and use of languages within former Yugoslavia and Bosnia and Herzegovina can at least partially present the complex, intertwined and highly politicised linguistic issue, which is greatly reflected in current linguistics.

Currently, in BiH all three languages are proclaimed as equal throughout the territory of the entire country, that is every constitutional person living in BiH has the right to use and name their language in accordance with their nationality. This decision seems to be valid for a number of reasons, and has a deeper meaning founded on democracy, humanity and culture. An additional issue is posed by the fact that this decision is not respected in its entirety. However, in areas where this equality of languages is respected it represents, at the same time, a specific nonsense. The peoples in BiH perfectly understand each other, and due to a few specific phrases or forms of dialect, all formal documents are being translated and printed in all three languages, all administrative forms, all papers for governmental institutions, parliamentary sessions, etc. This is just one unnecessary expense, as is demonstrated by the three texts attached, written in Bosnian, Croatian and Serbian. Differences have been pointed out.

3. CONSTITUTION AND LEGAL REGULATION OF LANGUAGE IN BIH

3.1. Constitutions of Bosnia and Herzegovina

The Dayton Peace Agreement, that is Annex 4 of the Dayton Peace Agreement/Constitution of BiH (1996) did not specify the official language used in BiH. In the Constitutions of the Entities and Cantons made at a later date (13 different constitutions), a lot of variety is present. This lack of precise specification within the Constitution has allowed the entities and cantons to resolve this issue as they please, determining educational and linguistic counties, and entitling curricula and language as is suitable to the present national and political interest.

The table below presents an overview of constitutional proclamations of the official language and alphabet in individual entities and cantons up to 1999:

<table>
<thead>
<tr>
<th>Entity/Canton</th>
<th>Official Language and Alphabet</th>
<th>Constitutions Articles and page no.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Federation BiH</td>
<td>Bosnian and Croatian; Latin alphabet</td>
<td>Art. 6, p. 62</td>
</tr>
<tr>
<td>2. Republika Srpska</td>
<td>Serbian with ijekavica and ekavica dialect, Cyrillic alphabet</td>
<td>Art. 7, p. 178.</td>
</tr>
<tr>
<td>3. Una-Sana</td>
<td>Does not specify an official language</td>
<td>-</td>
</tr>
<tr>
<td>4. Posavina</td>
<td>Croatian and Bosniak*; Latin alphabet</td>
<td>Art.10 p.290</td>
</tr>
<tr>
<td>5. Tuzla</td>
<td>Bosnian and Croatian; Latin alphabet</td>
<td>Art. 6, p. 322</td>
</tr>
<tr>
<td>6. Zenica – Doboj</td>
<td>Bosnian and Croatian; Latin alphabet</td>
<td>Art. 9, p. 382</td>
</tr>
<tr>
<td>7. Bosna-Podrinje</td>
<td>Bosnian and Croatian; Latin alphabet</td>
<td>Art. 8, p. 418</td>
</tr>
</tbody>
</table>

* See footnote no.7 on previous page

The different approach to official languages in different constitutions has, in practice, resulted in numerous problems. According to these regulations, no one within the Federation could officially use the Serbian language or Cyrillic alphabet, while in RS Latin alphabet and Bosnian or Croatian would not be considered official.

In July 2000, the Constitutional Court of Bosnia and Herzegovina brought about a partial Decision, which states that Bosniaks, Croats and Serbs are considered to be constitutional peoples throughout the entire territory of Bosnia and Herzegovina, and as such have the legal right to equally use all three languages. This decision was very significant as it clarified the legal status of Serbs in the Federation BiH and Bosniaks and Croats in Republika Srpska.

Even though the right to use their own language and alphabet was de jure determined, de facto it is being daily forcefully deprived to the minority populations, most frequently being refugees returning to their hometowns and homesteads from which they were expelled during the war.

3.2. Legal Regulations in Education

Intervention of the International Community

More than 6 years passed after peace in Bosnia and Herzegovina was finally established, before the unified, state-level Law on Elementary and Secondary Education was passed. Due to the activities and support from OSCE, educational authorities have made a reform document which represents a framework for future steps for full legal regulation of the educational system.

The Education Reform agenda has publicly entered into at a meeting of the Peace Implementation Council (PIC), Brussels on 21.11. 2002. This Education Reform agenda is a comprehensive document, composed of five pledges, listing goals for education reform in Bosnia and Herzegovina and focusing on the action needed to realise those goals.

Under Pledge 5 of the Education Reform Strategy, education legislation at all levels is to be developed, adopted and implemented based upon European pedagogical and organisational standards and norms, using international human rights conventions as its basis.

Top priority was given to the development of the State-level Framework Law on Primary and Secondary Education (reference), which was unanimously adopted by the BiH Parliament and entered into force on 4 July 2003. All of the lower-level legislation on primary and secondary education in the Cantons, the RS and the District of Brcko, has been brought in compliance with this Framework Law.

The State-level Framework Higher Education Law, which was initially put into Parliamentary procedure in spring 2004, is still under discussion. The draft Laws on Pre-School Education,
Vocational Education and Training and an Agency/ies for Education have, to date, not entered into parliamentary procedure.

Legal Regulations Dealing with the Languages in Education

The above mentioned Framework Law on Primary and Secondary Education is a document delivered at the state-level that particularly addresses the issue of language as a possible means for segregation of children during their education. Hence, one of the general aims of education listed in Article 3, point d.) is defined as: Development of consciousness of patriotism and belonging to Bosnia and Herzegovina, its own cultural identity, language and tradition, in a manner adequate to civilized trends, acknowledging and respecting others and those different, respecting diversity and nurturing mutual understanding, tolerance and solidarity between all people, nationalities and communities in Bosnia and Herzegovina and world-wide*.

Further, in Article 7 languages are addressed through: Languages of the constitutional peoples of Bosnia and Herzegovina shall be used in all schools, in accordance with the Constitution of Bosnia and Herzegovina. All students shall, in schools, learn the alphabets that are officially used in Bosnia and Herzegovina.

Even though there are no minorities in BiH who are represented by more than 0.5% of the population, this Law has also defined their linguistic and cultural rights in education. Article 8 states that: Language and culture of every significant minority living in Bosnia and Herzegovina shall be respected and incorporated into schools in a manner feasible, and in accordance with the Framework Convention on the Protection of Rights of National Minorities. This Article addresses minority communities that is, true national minorities (listed in the Law) and not constitutional peoples that can be a minority in a certain area.

Due to the low number of children from national minorities, they are often subjected to classical examples of assimilation without acknowledgement of any specific characteristics that would arise from their languages, culture, religion, etc. Currently, more and more Roma that have been in the educational system are identifying themselves as Bosniaks and not Roma, as they were forced to suppress their culture, tradition and language during their schooling.

Article 10 precisely states the situations and activities that can be offensive to the language and culture of individuals during their education: During educational and other activities conducted within school premises, it is forbidden to use or exhibit didactic or any other type of material, to issue statements by the teachers and other staff within the school, that could be considered as offensive to the language, culture, or religion of students that belong to a different national or ethnic group or religion.

It is the responsibility of the Entity, Canton and District Brcko educational authorities to form an agency that would conduct supervision and monitoring regarding offenses made in schools regarding the activities listed in the paragraph above.

Upon review of the legal documents and regulations made within them, one can freely state that BiH is a country with proper legislation and legal arrangements, not only in education but in other segments of social life and work. However, daily offenses are made of the legal regulations, without any official enforcement of the law or trial processes.

3.3. Offenses of the Law and Constitution without Repercussions

Within schools there are numerous examples of deprivation of rights, and segregation of children of returnees, due to their language, and with the help of language if they are minorities in a given community. As a result of the war, most of the elementary and secondary schools are based on a single, majority nationality and language. In areas where schools are mixed, as the case is with Central Bosnia (6th) and Herzegovina Neretva (7th) Cantons, classes are mostly divided in the same building according to nationality. This is a post-war phenomenon of BiH education – two schools under one roof. Two school systems, one Bosnian the other Croatian, in the same school but separated onto different floors, separate entrances or in separate shifts. Some of the underlying reasons rest in the right to conduct education in mother tongue, while using education in order to create specific linguistic characteristics which would place emphasis on national differences. In this way, the general objective of the war is being accomplished in a more subtle manner. Differences would be stressed and emphasised, leading to the belief that any sort of tolerance and life together is impossible.

As a result of the above-defined educational politics, a specific situation is happening in 60 schools throughout BiH. In the same school building there are two principals, two counselors, two different administrations, two secretaries, double addresses etc. Even though the children understand each other very well, local authorities, under the influence of nationalistic ideology separate them and educate them to think in the terms of us and them. Hence, most of the school-aged children are already thinking along the prejudices of we are different, they are different from us and we cannot live together. We are better than them, our language is better than theirs, our culture, our religion etc. is better than theirs leading up to the real-life situations where children pinch their nose when passing by each other, or fight and argue based on whose culture is better.

Personally, I am not aware of these cases being processed by an authority, other than occasional repercussions by the OHR (Office of the High Representative). On such cases the BiH public is informed by the news headlines and TV reports. Following the media coverage, the Office of Ombudsmen of BiH or the Helsinki Committee for Human Rights are bound to react, along with some other international organization. This leads to a temporary agreement and promises that this practice shall not occur again. However, in most cases it is short-lived and after a little while everything is back to the way it used to be. Educational rights as a legal field does not exist, and it is rather difficult for the legal provisions to be applied in a correct and objective manner.

4. COMPULSORY EDUCATION AND LINGUISTIC (ANTI) POLITICS


Bosnia and Herzegovina is a multi-ethnic, multi-cultural and multi-religious country with a tradition dating back a thousand years. This tradition, up until the war, was strongly supported by the education system. However, the war has brought a number of shifts in values, and as a result, the situation in BiH is currently different from what it used to be. Differences in culture, nationality, religion or language are currently over-emphasised, especially in certain areas, beyond all logic and rationale.

Before the war (beginning of 1992) BiH had 100% coverage of children going to compulsory, elementary schools for the duration of 8 years (in accordance with the Yugoslav General Law on Schooling from 1958). After the war, this coverage had dropped, and it is estimated that 5% of children do not even start elementary school. There are multiple reasons for this, such as the distance of their home to school, poverty, unemployment of parents, family reasons, and frequently the fact that the school is following the curriculum of a different country (mostly Croatia). In these schools the curriculum and language being used is not familiar to most of the children in that area. Hence, the school language and curriculum pose a problem, and are different not only to the children of different cultures but also to the children of that cultural origin. If the school insists on the new language, new pronunciation and grammar which are a foreign concept to the children, and are not used in daily life, then education can be a real nightmare.

The school which is based on a mono-national programme and curriculum of the majority population, frequently using textbooks imported from a foreign country, is not ready to adapt and tolerate cultural, linguistic, religious and other specific characteristics of children belonging to the minority nation in the given society. Even though the law is binding on the school to promote tolerance and diversity, in particular in Articles 6,7 and 8, this is rarely implemented in real life, and in most cases it is solved through the formation of the second school beneath the same roof. If there are not enough students of the minority nation to form a new school, then the minority students frequently travel on the average some 25-30 km to the school that uses a curriculum which is more suitable, and acceptable to them.

In the city of Jajce, which does not have a sufficient number of schools that work with a Bosnian curriculum, Bosniak parents would rather send their children to a school that follows a curriculum from Croatia, rather than to have their children travel an hour or two to the school and back.

In the beginning of this school year, the international community had intervened in order to prevent an initiative to form separate schools for Bosniaks in the cities of Prozor-Rama and Stolac, both with a Croat majority in the population.

Absurd situations frequently occur in all mixed societies. Literal application of the right to have an education in the native tongue leads to nonsense. Artificial division of languages amplifies differences of students of different nationalities and leads to segregation and separation. In BiH, all three nationalities can be found either as a majority or minority. The majority population usually causes injustices for other nationalities, which they would not wish to have in other societies, where this population is a minority. A majority of Cantonal officials consider it proper and right to educate children in “their own national schools”.

Children and parents can only accept what the political powers determine. Bosniaks in Bosniak schools, Croats in Croatian schools, Serbs in Serbian schools. They all believe, aside from numerous objections and warnings that the appropriate and valid motto is “separate and equal”. A similar situation occurs in high schools and at higher levels of education. For example, in Mostar, after the war, the first national University was formed in Croatian language.

5. NATIONAL SCHOOL OR ONE BIH SCHOOL

Immediately after the war, national schools were established in most of BiH. The curricula and books used were from neighboring countries, in the RS from SR Yugoslavia, in Croat majority areas from Croatia, in areas of F8BiH controlled by the Army of BiH books and curricula used were provided by the Ministry of Education of FBiH. This represented a true educational catastrophe, with three different versions of history and the past war. A few years ago, representatives of the international community (OHR and OSCE) ordered all the textbooks from the so-called ‘national group of subjects’ to be withdrawn, as most of them contained offensive contents for the others. As this had proven to be an expensive attempt at a unified school curriculum, the international community instead had ordered the offensive content of the textbooks to be blacked out with a marker. This represents a single case in the history of BiH education, even though the OHR had brought this decision as a replacement solution to the expensive printing of new textbooks.

Educationally, this had proven to be a defeat. Students were even more curious to find out what was blacked out and attempted to find out. It is important to point out that majority of textbooks used are currently printed within BiH, while a few of cantons still prefer textbooks imported from Croatia and Serbia.

Schools which are headed by a single nationality and its ideology, forcefully name the school in a manner that is unacceptable to all children, prefer and promote a certain type of greeting which is not common, celebrate holidays of solely one nation or religion, and the overall atmosphere in schools can be unpleasant or offensive to other children. Numerous interventions have been made by the members of the international community, but unfortunately with very few results.

The overall situation in BiH education is still very complex. All attempts to form a single BiH school with unique basis, which would promote togetherness, multiculturalism, mutual respect, trust and above all patriotism towards the homeland are very slow and labored. Strongly decentralised and thrown into pieces, education in BiH provides for a number of possibilities for the local authorities in education to carry out their own ideological or political desires.

6. NATIONAL AND POLITICAL MANIPULATION OF LANGUAGE
The current depiction of the BiH linguistic politics, offers three names for basically one language: Serbian, Croatian and Bosnian languages (to which we can also add Montenegrin language). Linguists, not burdened by politics, uselessly attempt to prove that this is one language, with different variants and sub-variants, with an almost identical grammar system, with synonyms and lexical doublets can only enrich a language. This is not a problem of different names for the same language. Each culturally and politically aware ethnic community, with recognisable social and cultural identity, has an unalienable right to its own language, including the name of this language. There is no need to discuss this right. The problems arise once the language issue gets to the dangerous ground of political manipulations and politics, which are rather frequent in BiH.

Sensitivity of this issue is directly involved in the sphere of education. Schools that segregate children based on the language they speak, regardless of whether they are both under one roof or physically separate, develop segregation curricula, especially in the group of so-called nationalistic subjects. Whether in the neighborhood, or under one roof, with different curricula, with opposing facts in history class or with negation of the other culture, religion, nationality or its creative productions clearly represents violence over younger generations.

Language, as a living matter, does not withstand violent and artificial formation of norms. This is currently being done throughout BiH. Violence over languages is motivated by political reasons and tendencies to point out the differences, representing acts of culture-cide in very essence. Every attempt at forceful unification of language is not acceptable. Both tendencies could well be fought against if it was not for constant involvement of local nationalists.

The current (možda je višak) dilemma cannot simply be written off as a choice between two good chances to take a better one. Instead it is a choice of the lesser evil. The guiding rule should be to make the decision which shall impose the least harm on the young generation and the country that they are going to live in.

Is the damage going to be less if we raise our youth in “purity” of one-national language through enclosure in mono-national schools, without a sense of patriotism to the local community/homeland, without basic knowledge of their neighbors, their culture, religion and customs, without tolerance and respect for others?

Or will the damage be less if we reject the reasons for conserving “pure” language, and by teaching in the schools just mother language, use schools to promote meeting of cultures, nations and religions, mutual tolerance and respect, and moreover patriotism towards one homeland, and the homeland of our ancestors?

Three languages, nowadays are the key factor of disintegration and segregation in BH schools:

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7. SUMMARY

As a result of the recent war in Bosnia and Herzegovina, the country is divided in political, ideological, cultural, linguistic and of course educational field. In the recent years, great effort has been made to develop legislation in Bosnia and Herzegovina, with the assistance of the international community. Currently, BiH has delivered all of the significant laws required for successful functioning of the country and its basic activities, all of which are based on the most important international documents regarding human rights in modern, democratic conditions.

However, most of these rights are being violated, or are not in place at all. Particularly there is a significant lack of respect in education. The right to attend the nearest school (Article 12) is being violated, along with the basic right to attend school in mother-language in a public school (Article 7 and 8), the right to follow a curriculum adapted to all children based on their cultural and other specific characteristics (Article 4), the right to attend religious classes (Article 9) for all children equally, and many other rights. As these violations are not being attended to or reprimanded, most of them are continuously being repeated.

Involvement of neighboring countries in matters of language, but also in many other questions, are so strong and complex, that it is impossible to prevent them, nor is there a will to do so.
In the meantime, all of the peoples of Bosnia and Herzegovina, adults and children, at least regarding their native language, understand each other perfectly well, while many children ask why are they separated and what the differences are amongst them.

Thank you!

HVALA!  HVALA!  ХВАЛА!

8. REFERENCES

4. Dizdar, S. (1998): Razvoj i perspektive obrazovanja nastavnika u Bosni i Hercegovini (Development and Perspectives of Teacher Education in Bosnia and Herzegovina)
7. Jabučar, A. (1997): Zbirka propisa u oblasti obrazovanja (Collection of Regulations for Education), Sarajevo ( only in Bosnian)
9. Mialaret,G.direc.(1979): Zbirna propisa u oblasti obrazovanja (Collection of Regulations for Education), Sarajevo ( only in Bosnian)
19. The website www.bosnianlanguage.com provides the first written declaration in Bosnian language dating back to 1189, along with other useful information on language.
23. USTAVI Bosne i Hercegovine (Constitutions of Bosnia and Herzegovina), Federacije Bosne i Hercegovine, Republike Srpske, Kantona Federacije Bosne i Hercegovine (1999), Federalno Ministarstvo pravde, Sarajevo
25. ZBIRKA USTAVA BOSNE I HERCEGOVINE (Collection of BiH Constitutions), (1997), Službeni list BiH, Sarajevo

Endnotes

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4. During the time period of Kallay, the official language since 1883 in schools was Bosnian, and following 1907 under various pressures this language was changed to Serbo-Croatian (Jahić, S. and Palić, I. (2000))
5. In 1998 was the first Symposium on Bosnian language in Bihać. People have the right to call their mother tongue based on the name of people.
7. In 1998 was the first Symposium on Bosnian language in Bihać. People have the right to call their mother tongue based on the name of people.
Pašalić-Kreso, A. (1999a), Inalienable rights of a child – culturally sensitive education or survival of hemophiliacs in the educational system, Oslobodenje, KLIN, 19.09 1999;

Dennis J Farrington

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1. BACKGROUND

The Republic of Macedonia (recognised by EU and UN as FYROM), has a population according to the 2002 census of just over 2 million, of which about 65% have stated Macedonian ethnicity, 25% Albanian, ca. 4% Turkish, ca. 3% Roma and 3% others.1 Use of ‘mother tongue’ language follows the same general pattern. In pursuance of the theme ‘no one shall be discriminated against by any public authority on the ground of language,’ the principal issue is to try to provide equal rights in access to education to citizens speaking two entirely different languages: the official state language Macedonian (a language of the South Slavonic group written in the Cyrillic alphabet) and Albanian (a unique Indo-European language written in the Latin alphabet.) In practice most urban and many rural-based citizens with Albanian mother tongue also speak Macedonian, having learned it compulsorily at school, but relatively few of Macedonian mother-tongue speak Albanian. The western regions of Macedonia are dominated by Albanian-speakers and have close historical, family and related ties to Albanian-dominated Kosovo, in which between 1991 and the conclusion of the conflict in 1999, was officially dominated by the Serbian language. Macedonian-speakers, on the other hand, often have close links with Serbia and Montenegro or with Bulgaria: the Macedonian language has many similarities with the other South Slavonic languages Serbian (and Croatian and Bosnian) and Bulgarian but none with Albanian.

Macedonia is a complex, and perhaps unique, society which has developed out of hundreds of years of conflict including 500 years of Ottoman rule. Various attempts have been made to compare the demographic problems of the country with Moldova2 and with Northern Ireland;3 the former has experienced problems with two languages written in different alphabets and the latter has provided material for study of segregated education although along religious/ community lines rather than on linguistic lines. The view is often expressed that in contrast to the techniques used by ethnic groups in the nineteenth century to form national states, ranging from assimilation to expulsion to genocide, the Macedonian approach was one in which the state was established through a policy of integration without assimilation, through tolerance. The Macedonian language is said to integrate society as a whole, permitting communication between local communities. At the same time, ethnic identity and distinctiveness on the local level involves the use of each group’s mother tongue in self-government and local communication, thereby guarding against cultural assimilation. This dichotomy is often quoted as what makes Macedonia a successful example of multiethnic democracy which has in fact survived a quite difficult period between the independence of the state in 1991 and the present day. Such a democracy can function only when ethnic rights are de-territorialized. In contrast, recognition of collective rights would, it is said, lead to the establishment of parallel institutions, as we shall note in the context of the long-running dispute over recognition of an Albanian-speaking institution of higher education, and in turn to secession, disintegration, and the destruction of the state.4 The tension between the integrationist view of Macedonian society and the deeply-held views on the common cultural identity of Albanian speakers is an extraordinarily difficult issue to deal with in the context of education, particularly higher education.

2. MACEDONIA’S INTERNATIONAL OBLIGATIONS

In 1988, prior to the independence of Macedonia, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1353(1988) on access of minorities to higher education: education is a fundamental human right and therefore (sic) access to all levels, including higher education, should be equally available to all permanent residents of the states signatory to the European Cultural Convention (ECC). Macedonia acceded to the ECC in 1995, ratifying the ECHR in 1997. The need to assist the states emerging from the collapse of Soviet communism and Yugoslav socialism was recognised by the Council of Europe Parliamentary Assembly in Recommendation 1123(1990) on practical educational assistance to Central and Eastern Europe, which gave birth to the Legislative Reform Programme for Higher Education and Research (LRP). As we recall, the 1988 Recommendation says that member states with minorities should avoid prescribing the exclusive use of the official language. It also recognises the fundamental liberty to engage in higher education activities and to establish institutions for that purpose. Such institutions, it says, should be officially supported once their satisfactory quality has been established – on a non-discriminatory and fair basis – and a genuine demand has been demonstrated; language should not be a criterion for recognising institutions or qualifications. Albanian fits the definition of a regional or minority language in the European Charter for Regional or Minority Languages (ECRML) (1992), which entered into force in 1998. ECRML was signed by Macedonia in 1996 but by 2005 had not been ratified so the state is, at the time of writing, not obliged by the Charter’s terms to promote and protect the use of Albanian in education. However, Macedonia ratified the more comprehensive Framework Convention for the Protection of National Minorities (FCPNM) (1995) in 1998, which obliges Parties to promote equal opportunities for access to education at all levels for persons belonging to national minorities. Parties are obliged, within the framework of their education system, to recognise that persons belonging to national minorities have the right to set up and manage their own private educational and training establishments, not in itself entailing any financial obligation for the state. In view of the subsequent lead role taken in Macedonia by the OSCE High Commissioner for National Minorities (HCNM), reference should also be made to the OSCE recommendations on educational rights of minorities (1996) and statements on linguistic rights (1998).5

3. STATISTICS

Reliable statistics are difficult to obtain and in this chapter I have adhered to figures produced in official reports by UNESCO and OECD, as up to date as possible. The figures in Table 1 for participation rates in education by ethnic group for the years 1998/99 (primary), 2000/2001 (upper secondary) and 2001/2002 (tertiary excluding the newly-founded SEE University and the unrecognised Tetovo University) illustrate some of the discrepancies.6
Despite these figures representing 'snapshots' at different times up to 2001, the major and obvious discrepancy is in the number of students of Albanian ethnicity reaching tertiary education at the recognised state universities up to 2001/2002 and the lower transition rate in the same group from primary to upper secondary. UNESCO reports that by academic year 2003/4, the number of students in recognised tertiary education had increased from 24457 to 46484 including 4227 in the recognised private sector (mainly the South East European University, SEEU). The figure for participation in tertiary education per 100,000 population at 2537 is still the second lowest in the 16 Central and Eastern European (CEE) countries for which figures were available: Macedonia has consistently been among the lowest two or three in this group over the past few years and would need an increase of about 25% in its tertiary education student population to come up to the CEE average. However, the success of SEEU, the creation of the State University of Tetovo and the growing number of private providers of higher education suggests that this figure will gradually increase.

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As approximately 80% of the SEEU students were of Albanian ethnicity in 2003/2004, the percentage of Albanians attending tertiary education had increased substantially by that date. Without adequate state statistics it is not possible to be precise, since some students of all ethnicities may have switched from the state to the ‘private’ sector. However, SEEU itself estimated an increase in age participation rate from 4.9% to 14.9% Albanian enrolment by 2004. This is still well below the age participation rate for those of Macedonian ethnicity, but the opening of a new State University in Tetovo providing higher education almost exclusively in the Albanian language should bring the two APRs into the correct proportion by 2006/7.

4. DEVELOPMENTS IN MACEDONIA POST-1999

The EU and OSCE mediated ‘Ohrid’ Framework Agreement of 13 August 2001 brought an end to hostilities in the country which arose following the conclusion of the Kosovo conflict and a renewed interest in securing equal rights for Albanians including access to recognised tertiary education in their own language. It prompted a new agenda for the public sector with a plan to decentralise government, including education governance, special measures to provide primary and secondary education for all ethnic groups in their language with uniform standards, providing state support to higher education for all ethnic groups with a size of at least 20% of the total population in their mother tongue and some positive discrimination to provide equal access to higher education for all ethnic groups. In practice the Agreement provided for equal status of the Albanian language with the Macedonian language in areas where more than 20% of the population are Albanian-speakers.

The Constitution of the Republic of Macedonia states that parents have the right and responsibility to ensure their children’s education (Art. 4); that all citizens have an equal right to education; and that basic education is compulsory and free (Art. 44). Private education institutions may be established at all levels except basic education (Art. 45). The Constitution was amended following the Framework Agreement. Article 7(6) of the Constitution provides that ‘In the units of local self-government where at least 20% of the population speaks a particular language, that language and its alphabet shall be used as an official language in addition to the Macedonian language and the Cyrillic alphabet. With respect to languages spoken by less than 20% of the population of a unit of local self-government, the local authorities shall decide on their use in public bodies.’ Article 48(4) of the Constitution provides that ‘Members of communities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in another language, the Macedonian language is also studied. Among other changes in legislation to accommodate this provision, changes in the higher education law in 2003 have permitted publicly-funded institutions to offer courses taught in the Albanian as well as in the Macedonian language. Prior to that, only private (i.e. non-state founded) institutions could do so, which was a cause of major concern in the country. It is still prohibited to offer private basic education.

5. LANGUAGE RIGHTS IN COMPELLSORY EDUCATION


In regards to primary and secondary legislation, provision of publicly-funded education in Albanian, or indeed minority languages other than the official state language of Macedonian, has been part of the education system for many years although standards have been variable, as illustrated in part by the lower progression of Albanian speakers to the post-compulsory education institutions. Under the legislation governing compulsory education, teaching must be provided in the mother tongue of the children (Macedonian, Albanian, Turkish, Serbian), and curricula, textbooks and tests must be provided accordingly. Most schools operate on a two- or three-shift system to accommodate numbers and languages of

### TABLE 1: PARTICIPATION IN EDUCATION

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Macedonian</td>
<td>142116 (57.7%)</td>
<td>699991 (77%)</td>
<td>39765 (88.9%)</td>
</tr>
<tr>
<td>Albanian</td>
<td>76225 (30.9%)</td>
<td>15718 (17.3%)</td>
<td>2192 (4.9%)</td>
</tr>
<tr>
<td>Turkish</td>
<td>10453 (4.2%)</td>
<td>1665 (1.8%)</td>
<td>546 (1.2%)</td>
</tr>
<tr>
<td>Roma</td>
<td>7970 (3.2%)</td>
<td>499 (0.5%)</td>
<td>126 (0.3%)</td>
</tr>
<tr>
<td>Vlach</td>
<td>435 (0.3%)</td>
<td>128 (0.3%)</td>
<td>417 (0.9%)</td>
</tr>
<tr>
<td>Serbian</td>
<td>2757 (1.1%)</td>
<td>1217 (1.3%)</td>
<td>822 (1.9%)</td>
</tr>
<tr>
<td>Other</td>
<td>6534 (2.6%)</td>
<td>1652 (1.8%)</td>
<td>707 (1.7%)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>246490</td>
<td>90980</td>
<td>44575</td>
</tr>
</tbody>
</table>
instruction. The structure of education is, since 2004, 9 years of compulsory education from the age of 5, plus 4 years (or in some cases in vocational schools 2 or 3 years) of post-compulsory school education. In all cases in which the student’s mother tongue is not Macedonian, compulsory education and testing in the Macedonian language is required. 

A strategy for reform of the education system was developed for the period 2001-2010. A World Bank funded project for modernisation of the education system started in 2003 and will run until 2009. The government’s objectives are: (i) the Framework Agreement (including the rights for equal access to ‘uniform’ quality of education, some extra support to ethnic minorities in terms of access); (ii) the Government Education Strategy of preserving or improving the quality of education; and (iii) the ongoing process of decentralisation of public administration, including a Law on Local Self-governance, empowering the new municipal governments elected in 2005 to establish, administer and finance public education at pre-primary level. The project has the following three components: improving the quality of learning and education participation at the targeted schools through strengthening school level planning and management, and through the implementation of a school grants programme; building capacity for the central and local governments to operate in a decentralised education system; providing overall coordination and supervision of project activities, and ensuring the highest quality through monitoring and evaluation of project indicators.

The rational for the modernisation project, so far as it relates to linguistic rights, is clear. As the table above illustrates, the rate of success in education has varied dramatically between the different groups. In the justification for World Bank support of the modernisation project in 2002, it is stated that ‘survival rates’ of Albanian, Turkish and Roma students were at that stage unsatisfactory beyond grade 8. Participation in pre-primary education varied greatly by ethnic group (90% among Macedonians, 54% among Albanians, 37% among Turkish), by region, urban versus rural area and by income level. Because of the variations and the fact that many children entering grade 1 had limited or no pre-school experience, student achievement during the first years of basic education was very uneven. Consequently, a few children gained an advantage at the start of the otherwise competitive and selective system, an advantage which the dominant pedagogical approaches further reinforced rather than balanced out. Primary school coverage went down to 85% in 1993 since 1990 and has since come up slowly to what is now estimated by UNICEF as 93%. Since both dropout and repetition is minimum (less than 1% each), the cause of less than adequate coverage is likely to be limited access by some ethnic groups and children from the poorest backgrounds. Overall secondary school enrolment rates (around 65 %) in Macedonia are low by both regional (South-East Europe) and international standards. Low enrolments result from both demand and supply factors. The decline in enrolments reflects a decline in real household income, an increase in indirect income (in terms of foregone income for higher ages), and an increase in direct costs of obtaining an education (as a result of the increased fees and reduced subsidies on textbooks). Supply has also diminished and the programmes offered appear increasingly inadequate to the needs of a market economy. Low enrolment rates at the overall secondary level (general and technical/vocational) signal emerging and important inequalities.

Differences emerge across ethnic groups, gender, location, and income groups. While, for instance, as the Table illustrates, Albanians represent a higher proportion among pupils participating in basic education relative to their proportion in the overall population (indicating higher birth rates), their participation in secondary education, though growing, is significantly lower than their proportion within the cohorts or even lower than their proportion within the overall population.

There have been no applications to the European Court of Human Rights relevant to legislation in compulsory education and no reported domestic litigation in the area. However there has been significant political activity designed to equalise provision.

6. NON-COMPULSORY EDUCATION

By the time students reach the end of grade 12, the vast majority of those continuing into higher education were, until the recent changes, Macedonian. Prior to the conflicts of the 1990’s, Macedonian Albanians graduating from high school nearly all attended Prishtina University in Kosovo; (in 1991/92, out of 22 994 registered students in Macedonian higher education only 386 were ethnic Albanian, 172 Turks and 14 Roma: by 1998/99, the figures were only slightly better out of a total of 34 850, 1 916 were Albanian, 371 Turks and 48 Roma). The highest numbers of young unemployed persons are those with only basic or secondary education. Consequently, those coming from ethnic minority groups and have low education attainment also have the highest risk of becoming unemployed, one reason for starting the South East European University (SEEU) Project.

In SFRY Yugoslavia, higher education was organised in the constituent Republics by the Law on Directed Education of 1985 (amended in Macedonia eight times to 1995) and the Law on Expert Tittles and Academic Degrees of 1963 (amended twelve times to 1985). The disintegration of the SFRY into constituent republics, some seceding relatively peacefully, others with notorious and on-going violence, was accompanied by a decision of the rump FRY (Serbia and Montenegro), after revoking the quasi-autonomy of Kosovo within Serbia, to turn the previously bilingual (Serbian and Albanian) University of Prishtina into a monolingual (Serbian) institution. Higher education in their mother tongue for those of Albanian ethnicity in both Kosovo and Macedonia became an extremely hot political issue as Albanian speakers could no longer attend the University of Prishtina and movement to other successor republics became much more difficult.

In Kosovo, as part of the campaign of peaceful resistance to the Serbian authorities, the Albanian University of Prishtina went ‘underground’ when the campus of the University of Prishtina was taken over by Serbs. Finally at the beginning of academic year 1991/1992 nearly 30,000 Albanian students were denied access and 863 Albanian staff were dismissed for refusing to co-operate with the ‘emergency’ authorities. The self-proclaimed Republic of Kosovo passed its own Decree-Law, establishing special curricula and study programmes in the Albanian University of Prishtina; the ‘underground university’ re-hired many of the displaced staff. In 1994 in Tetovo, the unofficial capital of the Albanian community in Macedonia, an initiative was launched in conjunction with staff of the underground, and technically illegal, Albanian University of Prishtina to create a new institution, the self-styled
Those of Macedonian ethnicity. Compared to that expected on the basis of population was extremely low by comparison to participation rate for access by those of Albanian ethnicity to recognised higher education recognised internationally. As a result, before SEEU opened its doors in late 2001, the age signing the FCPNM - but also that the education offered was of low quality and unlikely to be state language (Macedonian), as indeed provided by the Constitution – apparently even after people with technically worthless qualifications by the time the issue was resolved in 'University', its teachers, its students or its diplomas (thus leaving several hundred young failed to achieve the closure of UT by force, in 2003, the government and its successors took the position that it would allow the activity to continue but would not recognise the 'University', its teachers, its students or its diplomas (thus leaving several hundred young people with technically worthless qualifications by the time the issue was resolved in 2004/5). Not only was the view taken that higher education should be available only in the state language (Macedonian), as indeed provided by the Constitution – apparently even after signing the FCPNM - but also that the education offered was of low quality and unlikely to be recognised internationally. As a result, before SEEU opened its doors in late 2001, the age participation rate for access by those of Albanian ethnicity to recognised higher education compared to that expected on the basis of population was extremely low by comparison to those of Macedonian ethnicity.

Redressing the limited opportunities for access to higher education for the Albanian-speaking national minority (until 2001 only 56% of Albanian-speaking school-leavers applied for university places in recognised institutions as opposed to 94% of the Macedonian-speaking majority) was the primary motive for the foundation of SEEU. Indeed it was also the motivation for the establishment of UT. The crucial difference between the two is that UT actively sought to be an almost exclusively 'Albanian language' university offering traditional courses taught in traditional ways at relatively low cost, redressing to some extent the disparity between the percentages quoted. By contrast as we shall see, SEEU was planned to be open to all, offering courses taught according to Western models, with a high quality infrastructure and with flexible use of languages, a more expensive option sustainable only through relatively high tuition fees backed by transitional donor support. The state's response to the obvious Albanian complaints of under-representation prior to the development of the SEEU concept was to try some positive discrimination by introducing a quota system for entry of students of Albanian ethnicity to the Faculties in Skopje, to be taught of course in the Macedonian language and to establish a small programme in training primary school teachers in the Albanian language by a Law on Languages of Instruction at the Pedagogical Faculty of the University of Skopje (1998).

Higher education is now regulated by an Act of 25 July 2000, substantially amended following the Framework Agreement by an Act of 17 July 2003. The relevant provisions are found in Article 95 of the Act of 2000, as amended by the Act of 2003:

**Article 95 (as amended in 2003)**

The Macedonian language is a language of instruction in the higher education institutions.

In accordance with this Law and the Statute of the higher educational institution, in order to express, nurture and develop their identity and other peculiarities, the members of the communities shall have the right to acquire their education in the State higher education institutions, through certain study programmes in the language of the community, different than the Macedonian language. The State will provide financing for higher education in the language that is used by at least 20% of the population in the Republic of Macedonia.

Teaching at the private education institutions may be done in the languages of the members of the communities that are not in a majority or in some of the world languages. When the language of instruction is a language of the members of the communities that are not in a majority or a world language, the Macedonian language is studied as a separate subject and Macedonian will be used as language of instruction in at least two other subjects.

Elementary education as well as the education in the didactical and methodical subjects for secondary school teachers may be held in the languages of members of other communities that are not in majority in the Republic of Macedonia.

The lectures in the institutions of higher education can be held in one of the world languages for certain study programmes of foreign languages, for parts of study programmes in which professors-guests from abroad take part and study programmes for which the lectures are held in the Macedonian language and in accordance with paragraph 2 of this Article. The institutions of higher education may offer that the lectures for the complete study programme are held in Macedonian language and in one of the world languages in parallel.

In the private institutions of higher education, the lectures can be held in the languages of members of the communities, which are not a majority in the Republic of Macedonia or in foreign languages. When the lectures are held in the languages of members of the communities that are not a majority in the Republic of Macedonia or in a foreign language, the Macedonian language shall be studied as a separate subject and the lectures shall be held in Macedonian at least for another two subjects.

When the lectures are held in the languages of members of the communities that are not a majority in the Republic of Macedonia, in accordance with paragraphs 2, 3 and 4 of this Article, the Macedonian language shall be studied as a separate subject and the lectures shall be held in Macedonian language and at least other two subjects of the study programme will be studied in Macedonian. The subjects shall be determined with the statute of the institution of higher education, which will determine the fund of lectures, determined in the Rules of norms and standards for establishing the institution of higher education and
realising the activity of higher education. In the state institutions of higher education, as part of determining the conditions at the competition for enrolment of students in the first year of studies, the universities shall provide equitable representation of citizens, who belong to the communities that are minorities in the Republic of Macedonia through an additional quota, determined by the Government of the Republic of Macedonia.

There has been no litigation on these provisions but a great deal of political activity and interest leading up to the 2003 amendment. Essentially this allows teaching in a non-majority language (i.e., in practice in Albanian) provided Macedonian is studied as a separate subject and at least two other subjects in the programme are studied in Macedonian. That is a reasonably flexible provision and without stating so, deals with the problem that there are as yet insufficient numbers of academic staff of Albanian ethnicity trained to a high level.

SEEU was established following the Act of 2000, but on the basis of the more restrictive criteria set out in the original Article 95, itself ‘thrashed out’ in negotiations with the Macedonian government led by the OSCE High Commissioner on National Minorities, Max van der Stoel and experts selected by him and the Council of Europe.23

The principal difference was

Education at private higher education institutions may also be performed in the languages of national minority members or in the world’s languages. In cases where education is provided also in the languages of national minority members or in the world’s languages, the Macedonian language shall be studied as a separate education subject and education shall be provided in the Macedonian language for at least two additional education subjects.

This in effect allowed only non-state institutions to teach in the Albanian language, with the same restrictions on teaching Macedonian and two other courses in the Macedonian language.

SEEU set out to help to solve the problem of under-representation of Albanian-language students in higher education in Macedonia while being open to students from all ethnic groups. The concept of a ‘flexible approach’ to language use, adopted by SEEU during 2002-200324, as the policy of ‘flexible use of languages’ dates back to Council of Europe Committee of Ministers Recommendation R(98)6 concerning modern languages. The Recommendation encourages teaching programmes at all levels that use a flexible approach, taking into account the ECRML and the FCPNM. The Recommendation promotes the genuine intercultural outlook encouraged by bilingual and bicultural education, and points to the need for adequate numbers of suitably trained language teachers. The ‘flexible language policies’ are also mentioned in Article 5.3 of Council of Ministers Recommendation R (98)3 on access to higher education. SEEU has faced questions about its policy to develop flexible language use in a cost-effective way, which is in line with these two Recommendations, although it became apparent over the first four years that some members of the local European diplomatic community were unaware of their contents, indicating the need for a European-wide approach to disseminating information on this subject.

Returning to the requirements of Article 95 of the Law on Higher Education, the teaching of two additional subjects, in addition to the language itself, in Macedonian, was part of the political settlement and accepted by the international experts as the best that could be achieved at the time. Apart from the general constitutional/political principle that the Macedonian language permeates all levels of education, it has no logical academic basis: why ‘two subjects’ and no qualification as to subject? SEEU has approached the issue in a more constructive and apolitical way and without demur on the part of the Ministry of Education and Science or the Licensing and Accreditation Board which is technically responsible for ensuring that the restrictions in Article 95 are followed. SEEU follows the tenets of Council of Europe policy on regional and minority languages by encouraging all students from Macedonia to learn to communicate well in the two major local languages as well as learning to communicate in English.25 SEEU believes, backed up in this by the EUA26 and the OECD27, that this is one of its essential strengths and a way in which it can contribute to the stability of society. SEEU believes that beyond this policy the ‘language of instruction’ in ‘two subjects’ is an outdated concept and that the other universities, the Ministry and the Licensing and Accreditation Board all recognise this. All want students to learn, as opposed to being instructed, in the best available medium whether that happens to be Albanian, Macedonian or English (and in appropriate cases other modern languages). This means that the institution has to pay attention to the available human and other resources. It is not academically sound to help students to learn in Macedonian if there are no Macedonian-speaking professors and no modern literature in Macedonian. On the other hand there are a number of key subjects, particularly in Computing Science and Law, offered in Macedonian by professors from Skopje University and by SEEU Macedonian-speaking staff with literature provided in Macedonian and, if possible, in Albanian. It is accepted that to openly insist on students of Albanian ethnicity taking subjects in Macedonian for non-academic reasons, or forcing staff to teach in Macedonian for its own sake, would not be in SEEU’s interest nor that of the University community. What SEEU wants to achieve is a multi-lingual, multi-ethnic institution based on free consent, not on compulsion.

7. CONCLUSION

In recent years, the Republic of Macedonia, assisted by international organisations and donors, has made considerable progress in creating equal access for students of minority ethnicities to all levels of education, with particular emphasis on tertiary, or more precisely higher, education. The provision of education in two languages (Macedonian and Albanian) in the relevant communities and institutions is however an additional cost which a state with a relatively poor economic performance cannot readily sustain out of public funds. The insistence on everyone learning some Macedonian at all levels of education is directed towards securing the integrity of the state and inter-community dialogue but at least it is now possible for students in higher education to undertake most of their learning in their mother tongue while experiencing the ‘flexible use of languages’ culture at SEEU and learning alongside members of different language groups.

Endnotes
Over the period 1994-2002 UT claimed to have registered more than 10,000 students, either full-time or part-time, in 11 Faculties and to have an active student body in 2003 of about 6000. In that time only 400 students had ‘graduated’ with unrecognised diplomas, an indication of how few students had followed regular programmes within a normal timescale. In essence therefore, shorn of any political motivation or ambition, as explained earlier in this introduction, UT had provided a form of open university or extension college operated by staff of accredited institutions outside the borders of Macedonia, which had given its courses a limited form of recognition in Kosova and Albania. It now sought once again to translate itself into a university able to award diplomas recognised in Macedonia itself and therefore internationally. In a ‘normal’ higher education environment, this was not an unusual route for eventual achievement of university status – several universities in Europe started in this way - although the circumstances were unique. The figures for student enrolment quoted could not be verified and were regularly challenged, not least because they could not be correlated with the number of students leaving high school, nor with the number entering the recognised universities including SEEU. The most reliable estimate was that there were 2500-3000 regular students, the two largest Faculties being Law and Economics, and an unidentified number of part-time students. Many students were understood to be citizens of Kosovo or Albania who could not find places at universities in their own countries. Like the student numbers, the figure for staff, said to be about 400, was believed to be exaggerated. According to ‘UT’, the majority were part-time staff from the state universities in Kosova (50%) and Albania (30%). The remainder were from Macedonia. The number of full-time staff might be small, although it is not easy to understand what was really meant by ‘full-time.’ The main source of funding of UT was believed to be undisclosed donations from Albanians living abroad; student fees were broadly similar to those charged to fee-paying students at state universities, ranging from EURO 200 to EURO 1000 per year, even more for medicine. The tendency of the controlling authorities of UT continually to exaggerate and make spurious claims about student and staff numbers had severely hampered its attempts to gain any form of recognition or support in Macedonia, or sympathy from the international community.

1. CIA World Factbook 2005: Macedonia.
8. Albania was the lowest (2200); others range from Slovak Republic (2756) to Latvia (5504).
9. Neighbouring countries to Macedonia apart from Albania are Bulgaria (2929) and Croatia (3341).
12. Article 8.2 Law on Primary Education; Article 4.2 Law on Secondary Education.
15. Pursuant to a Law on Universities and various emergency measures adopted by the Assembly of SR Serbia in 1990-1.
17. Over the period 1994-2002 UT claimed to have registered more than 10,000 students, either full-time or part-time, in 11 Faculties and to have an active student body in 2003 of about 6000. In that time only 400 students had ‘graduated’ with unrecognised diplomas, an indication of how few students had followed regular programmes within a normal timescale. In essence therefore, shorn of any political motivation or ambition, as explained earlier in this introduction, UT had provided a form of open university or extension college operated by staff of accredited institutions outside the borders of Macedonia, which had given its courses a limited form of recognition in Kosova and Albania. It now sought once again to translate itself into a university able to award diplomas recognised in Macedonia itself and therefore internationally. In a ‘normal’ higher education environment, this was not an unusual route for eventual achievement of university status – several universities in Europe started in this way - although the circumstances were unique. The figures for student enrolment quoted could not be verified and were regularly challenged, not least because they could not be correlated with the number of students leaving high school, nor with the number entering the recognised universities including SEEU. The most reliable estimate was that there were 2500-3000 regular students, the two largest Faculties being Law and Economics, and an unidentified number of part-time students. Many students were understood to be citizens of Kosovo or Albania who could not find places at universities in their own countries. Like the student numbers, the figure for staff, said to be about 400, was believed to be exaggerated. According to ‘UT’, the majority were part-time staff from the state universities in Kosova (50%) and Albania (30%). The remainder were from Macedonia. The number of full-time staff might be small, although it is not easy to understand what was really meant by ‘full-time.’ The main source of funding of UT was believed to be undisclosed donations from Albanians living abroad; student fees were broadly similar to those charged to fee-paying students at state universities, ranging from EURO 200 to EURO 1000 per year, even more for medicine. The tendency of the controlling authorities of UT continually to exaggerate and make spurious claims about student and staff numbers had severely hampered its attempts to gain any form of recognition or support in Macedonia, or sympathy from the international community.
18. This was reflected in a response of the HCNM to a draft report of the OECD-IMHE Feasibility Study, May 2003, which had in his opinion not fully understood the position of UT at that time. The final report was published in 2004 in Higher Education in Transition in FYROM.
19. This was not the only example of force being used to prevent the public display of Albanian symbols and other challenges to the young Macedonian state.
20. The percentage of students of Albanian ethnicity in recognised higher education had risen from an estimated 4.9% in 2001 to an estimated 14.9% by 2004, entirely due to SEEU and with no financial assistance whatsoever from the state beyond the initial assignment of land previously used as a site for secondary education in agriculture.
21. Feeling among some Macedonians ran so strongly against the latter development that it was unsuccessfully challenged in the Constitutional Court.
23. The expert team included the author and Professor Dr Jan de Groof.
24. This followed meetings between the Rector and other SEEU staff with the relevant officials of the Council of Europe in Strasbourg, February 2002.
25. There is a different approach in the case of students from outside Macedonia, as SEEU considers itself a regional institution although it still expects them to gain some knowledge of Macedonian.
Overview of the Language Situation in the Sphere of Education in Georgia (2005)

Aurelie Perrin
Overview of the Language Situation in the Sphere of Education in Georgia (2005)

Aurelie Perrin

Education is one of the most important factors in terms of solution of the whole spectrum of global, regional and local problems, and without education it is impossible to improve life standard of an individual and further development of humanity.

1. STATISTICAL DATA

In Georgia there are: 141 Azerbaijani-speaking secondary schools and 8 independent Azerbaijani-speaking sectors attached to other schools, 133 Armenian-speaking schools and 20 independent sectors, 87 Russian-speaking schools and 152 independent sectors, 10 independent Ossetian sectors. Altogether, in Georgia there are 361 so called non-Georgian-speaking schools and 190 independent sectors where languages of instruction are languages of ethnic minorities (here and after statistical data on Abkhazia and South Ossetia are not included).

2. GENERAL SITUATION

Today, we may argue that Georgia, which finds itself in such a difficult social-economic situation, pays attention to the issue of education on minority languages. One the one hand, the aforementioned special attitude to representatives of different ethnic minorities may be considered as certain manifestation of respect to and esteem of cultural and linguistic rights of citizens of Georgia belonging to different ethnic groups, if not the existence of specific difficulties that thwart all the efforts undertaken by the State in the sphere of education of ethnic minorities.

Against the background of the existing problems in the system of education, it is rather difficult to single out and emphasize the aforementioned problems, unless the existence of such types of problems that further aggravates the already unfavorable situation in the educational establishments of language minorities.

3. PROBLEMS OF TEXTBOOKS

Many secondary schools, where language of this or that ethnic minority is used as the language of instruction, tend to get textbooks from different countries-historic homelands of ethnic minorities, where programs of education do not coincide with the standards adopted in Georgia. We may also underline the poor typographic quality of textbooks published in Georgia, the lack of appropriate and proved educational programs for those establishments, where minority languages are applied as languages of instruction. In addition, there are no efficient structures that would be able to work out appropriate educational programs.

4. SECONDARY SCHOOLS

The quality of education in those secondary schools where language of this or that ethnic minority is used as the language of instruction, is more or less the same as in those schools where the language instruction is the State language of Georgia. That can be explained by a number of the aforementioned problems, including the problem of textbooks (the lack of textbooks, high prices and poor quality), deficit of qualified teachers, and factual absence of teachers of Georgian language. This deplorable fact can be attributed, at least in part, inability of the State to pay salary to teachers in the regions compactly populated by ethnic minorities. At the same time, the absence of special and proved educational programs and the lack of adequate number of state high education establishments, where language of instruction is a minority language, may further aggravate the situation and add to the feelings of despair.

5. BI-/MULTILINGUAL EDUCATION

Currently, in Georgia there are bi-/multilingual classes in secondary schools, where a language of this or that ethnic minority is used as a language of instruction, is more or less the same as in those schools where the language instruction is the State language of Georgia. That can be explained by a number of the aforementioned problems, including the problem of textbooks (the lack of textbooks, high prices and poor quality), deficit of qualified teachers, and factual absence of teachers of Georgian language. This deplorable fact can be attributed, at least in part, inability of the State to pay salary to teachers in the regions compactly populated by ethnic minorities.

The State educational agencies do not include in curriculum histories of people, part of who is represented as ethnic minorities in Georgia as mandatory discipline. In this case, the State and society face a dilemma: introduction to secondary schools of history of ethnic minorities by the State may lead to further aggravation of the inter-ethnic tensions, since, more often than not in the aforementioned textbooks there is information that contradict to interpretation of historic facts provided by Georgian history textbooks. All that, can lead to politicization of interpretation of history, not conducive to strengthening the principle of territorial integrity of country. On the other hand, further dropping of requirements of the part of population, belonging to ethnic minorities, to introduce the abovementioned discipline to secondary schools, may lead to the erosion of loyalty of ethnic minorities towards the State. However, it would be unfair to fail to underline that history of historic homelands of ethnic minorities are taught at secondary schools, though as optional disciplines, and do not encounter any serious opposition on the part of the State.
representatives of ethnic minorities as well. These people are mostly those who live in large towns with mixed population, as well as representatives of local ethnic minority elites.

2. Opponents:
Opponents of the aforementioned idea of bilingual classes are mostly forces of nationalistic character, both representatives of ethnic minorities and the mainstream population, and there are opposed to this idea due to absolutely different reasons: if nationalists from the mainstream population are opposed to the introduction of bilingual schools in order to maintain the existing advantage over ethnic minorities based on the principle of ethnicity, which is sometimes the case in daily life, as well as trigger and encourage the process of immigration of ethnic minorities, then nationalists belonging to ethnic minorities are in opposition to the aforementioned novelty out of being afraid to be assimilated (or integrated?). If we refrain from saying that the existence of the aforementioned category of people in the State structures and organs of self government may have serious impact on the future of bi-/multilingual schools, at least we can state with certainty that at the moment the State does not possess enough financial and human resources necessary for comprehensive implementation of this idea. At the same time, however strange it may seem, are those leaders of ethnic minorities who are afraid of loosing their position and status in the society, because in those regions where overwhelming majority of population is a rural population (of ethnic minorities) and they tend to fail to comprehend the perspectives of the aforementioned strategy. Headmasters and teachers' staff of those secondary schools where language of this or that minority is used as the language of instruction, as well as aged teachers, unable to undergo re-qualification, and naturally enough afraid of loosing their jobs, can be attributed to the aforementioned category.

6. PRE-SCHOOL EDUCATION

In Georgia, there are no State-sponsored establishments in Georgia where children of ethnic minority parents would be able to be educated in their native languages, except for Russian. This situation can be attributed to the fact that there is sizable Russian-speaking population in Georgia, however, there is no bilingual education in the kindergartens, because, those children attending Most part of Russian-speaking kindergartens, at the moment of entering secondary schools, in fact, do not speak the Georgian language, and respectively, those children attending the Georgian-speaking kindergartens are not able to actively develop their knowledge in the languages of this or that ethnic minority, even if they do belong to those minority groups.

7. HIGH EDUCATION

The number of high education establishments in Georgia is absolutely inadequate to the number of secondary schools. The problem is that today, representatives of ethnic minorities, while being educating in their native languages, are largely deprived of possibility to learn the State language in a proper manner, and not surprisingly, are unable to obtain higher education, and respectively, to make full-fledged usage of their knowledge and expertise obtained after graduation of educational establishment, for the benefit of the society. Therefore, due to reasons beyond their control, the level of their civil usefulness is considerably reduced, and that in turn, leads to further isolation from the rest of society. This paradoxical situation, understandably enough, do not serve the best interests either of the State or representatives of ethnic minorities.

One of the results of the aforementioned is the fact that alumni of secondary schools are deprived of possibility to continue education, are becoming uncompetitive on the labour market of qualified jobs, and as a result, the most talented and capable representatives of ethnic minority youth tend to immigrate to their historical (ethnic) homeland, other countries or are "lost" in the crowd without any trace. That is, what we have got is the existence of language filter, through which prestigious social jobs are unavailable for representatives of ethnic minorities.

8. CIVIL EDUCATION

One of the major pre-condition for active participation of ethnic minorities in Georgia’s State building is the existence of legal and civil education among them. Many difficulties prevailing in inter-ethnic sphere, delayed integration processes that do not allow representatives of ethnic minorities to actively participate in the process of development of Georgian society and state are mainly due to very low quality of legal and civil education among the representatives of ethnic minorities. For example, many of them do not bother themselves to take commitments with regard to the state and these sad realities are largely due to the lack of knowledge of their own rights, and more often then not, distrust towards them. All the aforementioned, naturally enough tends to lead to self-discrimination, partial isolation and inadequate participation of the representatives of ethnic minorities in the social, political life of the country. At the same time, it is paradoxical that many of the most active representatives of ethnic minorities do not have information not only about the instruments of protection of human rights of minorities lay down in the normative legal acts of Georgia but sometimes are not aware of the existing of such legal acts at all.

9. THE STATE SYSTEM OF EDUCATION, NON-GOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

The failures to find solutions to the aforementioned problems very often are the results of:
- The non-existence of efficient state policy in the sphere of education of national minorities;
- The failure to take into account the real situation in the education system;
- Frequent incongruence between the goals and allocated means expected to achieve these goals, that leads to misunderstanding between high rank and rank-and-file officials working in the education sphere;
- Groundlessness of a number of decisions, since these decisions were made out of political considerations and failed to take into due account long term political consequences;
12. RECOMMENDATIONS

- Lack of rendered methodological and pedagogical assistance to parents and lack of information at parents’ disposal;
- Non earmarked allocation of financial means and credits, as well as the practice of corruption in almost all levels of education system, that led to non-implementation of such important tasks as improvement of the quality and expanding the scope of learning the State language are;
- The absence of cooperation with the non-governmental sector.

10. THE NON-GOVERNMENTAL SECTOR

More often than not, representatives of non-governmental organizations do not have leverages necessary to influence the reform process in the system of education due to the policy of distancing themselves and real isolation from the non-governmental sector. Meanwhile, activities of non-governmental organizations of ethnic minorities in this sphere are absolutely minimal, and sometimes these activities entail support for secondary schools, where the language of this or that ethnic minority is used as a language of education, in terms of providing those schools with textbooks published in native languages of ethnic minorities.

11. INTERNATIONAL COMMUNITY

The international community, being aware of the problematical character of the current situation, is trying to contribute to the ongoing reforms through rendering financial assistance to the State central structures, and such a policy, unfortunate, has not bring any substantial results up until now. Meanwhile, the NGO sector, very often, is left out and deprived adequate attention, thereby NGOs have no real leverages to exert influence on the process of reforms in the system of education.

12. RECOMMENDATIONS

- To accelerate the process of reform of the education system in general, and in the sphere of education of ethnic minorities, in particular, support educational initiatives and novelties, create conditions necessary for survival and development of educational system, legal and economic protection of education and its subjects, make prognoses and take preventive measures.
- To establish centers on civil and legal education, with simultaneous teaching of the State language.
- The Central Authorities should secure conditions for representatives of ethnic minorities that would enable them to learn the State language in proper manner
- To set up a group of NGOs to carry out monitoring on implementation of State programs in the sphere of education, including on the program of teaching the State language.
- To consider the issue to what extent the Georgian Authorities are committed to the principle of equal level of education in all secondary schools, to put it otherwise, level of education in those State schools, where languages of ethnic minorities are used as languages of instruction, should be brought to the level of education of those schools, where the State language is used as the language of instruction.
- To consider the possibility of usage of languages of ethnic minorities as a language of instruction in technical, professional and university establishments of higher education.
- An educational plan, envisaging teaching of professional-technical disciplines on native languages of students should be elaborated in a manner, which would allow the students, after graduation, to work un accordance his/her profession using both minority and the State language.
- Educational programs related to ethnic minorities, should be worked out through active participation of ethnic minority organizations.
- To introduce bilingual education in kindergartens, increase consultative support and improve methodological training of teachers of kindergartens
- To secure State-sponsored training of teachers of bi-/multilingual schools.
- To create structures aimed at elaboration and assessment of educational programs for those establishments, where languages of minorities are used as languages of instruction.
- To create new principles of organization of educational process, including bi-/ multilingual education

13. RECOMMENDATIONS TO THE MINISTRY OF EDUCATION:

- To work out instruments that would allow to assess effectiveness of the process of bi-/multilingual education and to carry out, on a permanent basis, monitoring of this process through active participation of the NGO sector.
- To carry out research work and discussions on major issues of bi-/multilingual education.
- To carry out analysis of the situation in the education sphere, through invitation of independent experts, interested groups and organizations.
- Together with mass media, to work out a system aimed at providing information on the most important decisions taken in the sphere of education to the society.
- To create within the system of education a Directorate of education of minorities. Head of this directorate, enjoying the status of deputy Minister of Education and recommended by the public consultative council, composed of representatives of school administrations, teachers, NGOs, parents and students, should be endorsed by the Minister of Education. The Directorate should work in accordance with rules of
procedure, endorsed by the Ministry of Education with the consent of the Public consultative council.
Overview of Legislation on the Use of Languages in Education in Moldova (2005)

Olga Goncearova
Overview of Legislation on the Use of Languages in Education in Moldova (2005)

Olga Goncearova

1. HISTORY

The modern legislation about the functioning of languages on the territory of the Republic of Moldova began to form in the late 1980s, when the country was part of the Soviet Union. At present, in line with the Constitution of the Republic of Moldova and the Law on the Functioning of Languages on the Territory of the Republic of Moldova, there are many other normative acts which regulate the function of languages. In accordance with the legislation in force, the state language of the Republic of Moldova is Moldavian, based on the Latin script and considered a language of interethnic communication. Also, this function is conferred upon the Russian language, which guarantees large use of the language in Moldova. In many cases, the sphere of its use is similar to that of the state language. In the legislation of the Republic of Moldova, with regard to the functioning of languages, Russian also belongs as an official language. The status of official languages are attributed to the main languages used in the autonomous regions which have legal status. Nowadays, there are two autonomous regions in the country – Gagauzia and Transnistria (at present this region is practically uncontrolled by the constitutional bodies of the Republic of Moldova). On the territory of Gagauzia, the official languages are Moldavian, Gagauzian and Russian, in Transnistria the languages are Moldavian, Ukrainian and Russian. The status of official language supposes its use in all the spheres of activity within the formed autonomy. Other languages, including Ukrainian (beyond Transnistria borders), Bulgarian and others are the languages of national minorities and can be easily used, including the relations with the local public authorities in the regions compactly inhabited by minorities.

Below, in chronological order, the main steps of development in the legislation on the functioning of languages on the territory of the Republic of Moldova are presented.

On 31 August 1989, the law about the status of the national language of the Moldovan SSR was adopted. In accordance with the provisions of this normative act, the constitution of the former Moldovan SSR was changed, adding the Article about the national language of the country, and recognizing it as Moldovan. At the same time, the conditions of development and the use of Russian language, also the languages of other ethnic groups were guaranteed.

On 1 September 1989, the Law on Functioning of the Languages Spoken on the Territory of the Moldovan SSR (the Republic of Moldova) went into force. This law is the basic normative act that controls the sphere of functioning languages on the territory of the Republic of Moldova. According to this law, the state assures the conditions for the use and development of the Russian language and the languages of other ethnic groups who live in the Republic of Moldova. The law regulates the issues concerning the use of Moldavian language, as a national language, and also provides for the use of the Russian, Ukrainian, Bulgarian, Hebrew, Yiddish, and Gypsy languages, as the languages of other ethnic groups inhabiting the country. In accordance with the law, Russian is also given the status of a language of interethnic communication.

On 29 July 1994 the Constitution of the Republic of Moldova was adopted. According to the Constitution, the national language of the Republic of Moldova is Moldovan, and its writing is based on the Latin alphabet. The state acknowledged and protected the right to preserve, develop and use the Russian language and other languages spoken within the national territory of the country.

On 23 December 1994 the Law on the Special Legal Status of the Gagauzia (Gagauz-Yeri) went into force. In accordance with the law, on the territory of the formed autonomy with the special status, as a component part of the Republic of Moldova, the official languages are Moldavian, Gagauzian and Russian.

On 19 July 2001, the Law Concerning the Rights of the Persons, Belonging to National Minorities and the Judicial Status of their Organization was adopted. This law regulates the use of Moldovan, Russian, and other languages, including the minority languages in different regions. The content of the law, regulating the use of languages is based on the regulations of the Law on Functioning of the Languages Spoken on the Territory of the Republic of Moldova.

On 19 December 2003 the Law about Ratification of the National Policy Conception of the Republic of Moldova was adopted. The Conception is a basic document for public authorities to promote economic, social and cultural policies in the field of development and strengthening of independence and sovereignty of the country, and multicultural people of the Republic of Moldova. The Conception foresees to take measures to ensure the use of Moldavian language, confirms the status of Russian language, as language of interethnic communication, guarantees the state assurance for the development of the Ukrainian, Bulgarian, Jewish, Yiddish, Gypsy (Romani) and other languages of national minorities, inhabiting on the territory of the Republic of Moldova.

On 22 July 2005, the Law on the Basic Regulations of the Special Legal Status of the Left-bank Regions of Dniester River (Transnistria) was adopted, in accordance with this, the official languages are Moldavian, Ukrainian and Russian on the territory of Transnistria – the formed autonomy with the special status, as a component part of the Republic of Moldova.

The Republic of Moldova is part of the basic international acts in the field of human rights, such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the ECHR, and the Framework Convention for Protection of National Minorities. The state has also adhered to the Final Act of the Conference on Security and Cooperation in Europe (Helsinki), the Charter of Paris for a New Europe, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, etc. At present, the ratification of the European Charter for Regional and Minority Languages is examined. The Republic of Moldova has signed the Charter on 11 July 2002.
2. LANGUAGE RIGHTS IN EDUCATION

The legislation in force in the Republic of Moldova, guarantees the right to obtain pre-school education, general education, high-school and professional education, and higher education in Moldavian and Russian languages. It also guarantees the creation of adequate conditions for the exercise of the rights of people of other nationalities to education and training in their native language (Gagauz, Ukrainian, Russian, Bulgarian, Hebrew and Yiddish etc.).

According to the Constitution of the Republic of Moldova, the right of access to education is put into effect through the compulsory comprehensive public school system, lyceal (public secondary school) and vocational education, as well as the higher education system, and other forms of instruction and training. State public education is free. The access to lyceal, vocational and higher education is equally open to all and is based on personal merit. The State ensures, under the law, the right of each person to choose his/her language in which teaching will be effected.

The basic law, which decides on the state policy in the field of education, regulating the establishment and function of the educational system is the Law on Education. According to this law, the state public education is refractory to discrimination on the grounds of party or ideology choice, race and nationality.

The compulsory general education lasts nine years. The compulsory attendance scholarship finishes when the pupil reaches the age of 16. The state ensures the right to choose the language of education and training at all levels of education. The right of citizens to education and training in their mother tongue is ensured through the necessary institutions of education, forms, groups, as well as through its ruling conditions.

In accordance with the Law on Functioning of the Languages on the Territory of the Republic of Moldova, the state guarantees the right to obtain pre-school education, general education, high-school and professional education, higher education in Moldavian and Russian languages, also the creation of adequate conditions for the exercise of the rights of people of other nationalities to education and training in their native language (Gagauz, Ukrainian, Russian, Bulgarian, Hebrew and Yiddish etc.).

Pre-school institutions and general schools are based on the principle of mono-lingualism. In the special regions pre-school institutions and general schools based on the principle of bilingualism are created.

According to the Law Concerning the Rights of the Persons, Belonging to National Minorities and the Judicial Status of their Organisation, the state guarantees the implementation of the rights of the persons, belonging to national minorities for preschool, elementary, secondary (general and professional) and higher education in Russian and Moldavian languages and is to create conditions for the implementation of their right to education in their mother tongue (Ukrainian, Gagauz, Bulgarian, Jews, etc.). In order to ensure the educational process in the institutions where the education is conducted in the national minority languages, the state is to contribute to the elaboration of didactic programs and literature, to the teaching of the didactic staff, collaborating in this with other countries.

The above regulations are totally available for the foreign citizens and stateless persons, who have the same rights and obligations as the citizens of the Republic of Moldova, in accordance to the legislation in force, except ones established by law (for instance, foreign citizens are exempt from some political rights, for example, they cannot be members of parties and other socio-political organisations etc.)

3. THE APPLICATION OF THE LEGISLATION IN PRACTICE

Nowadays, there are institutions for general education in Russian and Moldavian languages as well as mixed institutions. Minority languages are taught in many schools and higher educational institutions. In some of these schools, the minority languages (Ukrainian and Bulgarian) are also used as the languages of instruction. There are private educational institutions established by the persons belonging to national minorities on the territory of the Republic of Moldova.

Curriculums on teaching the minority languages are being elaborated and implemented. The textbooks for learning Russian, Ukrainian, Bulgarian literature and language are being elaborated and published. The course "History, culture and traditions of Ukrainian, Russian, Gagauz and Bulgarian people" was prepared. Facilities for training the pedagogical staff for the educational institutions, where the minority languages are taught, have been created. Usually, the teachers pass the qualification on minority languages in Ukraine, Russian Federation, Turkey and Bulgaria.

The Constitutional Court ruled on the constitutionality control of some provisions of the Law About acts of civil status and the Law About the rights of the persons, belonging to national minorities and the judicial status of their organization. In this case, some provisions of the Law concerning the rights of the persons, belonging to national minorities and the judicial status of their organization have been examined under the aspect in accordance with the Constitution of the Republic of Moldova. With regard to the functioning of languages in the field of education, the Court noted that the provisions of the law concerning the rights of persons belonging to national minorities, and the judicial status of their organisation, stipulating that the state guarantees the rights to education in minority languages, are based on the regulations of the Constitution, according to which the state ensures the right to choose the language of education and instruction. This guarantee also emerged from the provisions of the Law on the Functioning of the Languages on the Territory of the Republic of Moldova, according to which, the Republic of Moldova guarantees the right to obtain pre-school education, general education, high-school and professional education, higher education in Moldavian and Russian languages. The creation of adequate conditions for the exercise of the rights of people of other nationalities to education and training in their native language are also guaranteed. The constitutionality of these provisions is enshrined in the Framework Convention on the Protection of National Minorities. In cases of adequate
necessities in the regions inhabited traditionally or numerically by persons belonging to national minorities, the parties tend to ensure the ability of persons belonging to national minorities to teach its native language on the base of their educational systems.

Endnotes

3. Law No.3464-XI
4. Law No. 3465-XI
5. Law No. 344-XII
6. Law No. 382-XV
7. Law No.545-XV
8. Law No. 173-XVI
10. Law No. 547-XIII / 21 July 1995
11. Law No. 3465-XII / 1 September 1989
12. Law No. 382-XV/ 19 July 2001
13. Constitutional Court decision No.28 of 30.05.2002
14. Law No. 100-XV of 26 April 2001
15. Law No. 382-XV of 19 July 2001

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The Russian Federation is one of the most multinational states in the world. According to the All-Russian population census of 2002, more than 160 ethnic groups differing in language, culture, level of socio-economic and cultural-historic development live currently in the Russian Federation. Seven peoples (the Russians, Tatars, Ukrainians, Bashkirs, Chuvashes, Chechens and Armenians) have population size of more than a million. The Russians are the most numerous people (116 million people, 80 per cent of the country’s population).

Every people has the right to maintain and develop its culture, traditions and language, including a people who does not have a state-territorial entity or a people whose representatives migrate from other states to the territory of the Russian Federation. At the same time, possibility to understand each other, presence of a common language of understanding allows to unite and secure cohabitation of numerous ethnic entities in frames of a single multinational state.

Taking this factor into account, issues of the use of languages, equality of the languages, attachment of a certain status to the language (e.g. international legal status of the UN languages, status of the language of international communication, language with constitutional status, national (native) language, language used in professional environment) are a subject of close attention in the Russian Federation. One of the fundamental principles of the state policy in the field of use of languages in the Russian Federation is the principle of equality of languages.

The legislative basis of the legal regulation of the use of the languages in the Russian Federation was formed primarily in the last decade. It rests on general principles and norms of international law and on the international agreements of Russia, reflected in the Constitution of the Russian Federation, with the principle of prohibition to discriminate on basis of sex, race, nationality, language, origin and other similar criteria being a priority.

In particular, the International Covenant on Economic, Social and Cultural Rights of 1966 states that the States Parties to the Covenant undertake to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind and, in particular, as to language. The adherence to this principle is confirmed also in the International Covenant on Civil and Political Rights of 1966, in which it is laid down that in the countries in which ethnic, religious and linguistic minorities exist, persons belonging to such minorities shall not be denied the right to enjoy their own culture or use their native language.

The principle of linguistic non-discrimination has been also proclaimed in the Convention Against Discrimination in Education of 1960, the Declaration on the Right to Development of 1986 and a number of other international acts.

The international agreements prescribe for the obligation of the states to protect and promote languages of the national minorities and indigenous peoples. In accordance with the Document of the Copenhagen Meeting of the Conference on the Human Dimension of 1990, persons belonging to national minorities have the right freely to express, preserve and develop their linguistic identity. In particular, they have the right to use freely their mother tongue in private as well in public; to establish and maintain their own educational institutions, organisations or associations.

The Convention Against Discrimination in Education of 1960 (entered into force for the USSR on 1 November 1962) states that it is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language under certain non-discriminatory conditions.

On 1 March 1998 the European Charter for Regional or Minority Languages, which fixed a range of obligations of the states for the development of regional or minority languages, entered into force. Although the Russian Federation does not participate in the European Charter for Regional or Minority Languages, the majority of the latter’s provisions are reflected in the legislation of the Russian Federation.

The Constitution of the Russian Federation identifies the right to use one’s mother tongue, to choose a language of communication, upbringing, instruction and creative work as one of the basic rights and freedoms of a person and citizen in the Russian Federation.

The Constitution of the Russian Federation defines that the official language of the Russian Federation on the whole of its territory is the Russian language (Article 68 section 1). At the same time, the Constitution guarantees to all peoples of the Russian Federation the right to preserve their mother tongue, create the conditions for its learning and development (Article 68 section 3).

Taking into account the peculiarities of the constitutional legal status of the republics within the Russian Federation, the Constitution of the Russian Federation guarantees them the right to establish their own official languages and use them in the state bodies, municipal bodies, state institutions of the republics alongside with the official language of the Russian Federation (Article 68 section 2).


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The Law lays down the following rights of citizens to use the languages of the peoples of the Russian Federation: the right to choose a language of communication, upbringing and instruction, the right to favourable conditions for learning and teaching a mother tongue and other languages of the peoples of the Russian Federation, being secured by the state.

Article 6 of the Law of the Russian Federation on the Languages of the Peoples of the Russian Federation, which specifies Article 68 of the Constitution of the Russian Federation, states that the Russian Federation represented by its supreme state bodies carries out the establishment of the general principles of the legislation of the Russian Federation on the languages of the peoples of the Russian Federation; provides guarantees of functioning of the Russian language as the official language of the Russian Federation; promotes the development of the official languages of the republics; creates the conditions for preservation and development of the languages of small peoples and ethnic groups not having their national-state or national-territorial entities or living beyond their borders.

This provision has been confirmed by the Constitutional Court of the Russian Federation in its decision of 16 November 2004 N 16-П in the case of examining the constitutionality of Article 10 point 2 of the Law of the Republic of Tatarstan on the Languages of the Peoples of the Republic of Tatarstan, Article 9 section 2 of the Law of the Republic of Tatarstan on the Official Languages of the Republic of Tatarstan and other Languages in the Republic Tatarstan, Article 6 point 2 of the Law of the Republic of Tatarstan on Education, and Article 3 point 6 of the Law of the Russian Federation on the Languages of the Peoples of the Russian Federation. The decision concerned the complaint of citizen S.I. Khapugin and request of the State Council of the Republic Tatarstan and the Supreme Court of the Republic of Tatarstan: ‘... The Law of the Russian Federation on the Languages of the Peoples of the Russian Federation provides for its learning (official language of the Russian Federation) in institutions of general education and educational institutions of vocational education, what is governed, in the educational institutions having state accreditation with the exception of pre-primary educational institutions, by state educational standards (Article 10 point 2). At the same time, the teaching of official and other languages in the republics is carried out in accordance with the respective republics’ legislation (Article 10 point 3). According to the Law referred to, the right to choose an educational institution with one or another language of upbringing and instruction of children belongs to the parents or other persons, who replace them in accordance with the legislation of the Russian Federation (Article 9 point 3). The language(s) in which the upbringing and instruction is carried out in the educational institution, is determined by the founder(s) of the educational institution and/ or the constituent documents of the educational institution in accordance with the legislation of the Russian Federation and the legislation of the subjects of the Russian Federation (Article 9 point 4).

Similar provisions are laid down in the Law of the Russian Federation on Education, which additionally states that, in accordance with their respective status and competence, the subjects of the Russian Federation are entitled to adopt laws and other normative legal acts in the field of education that do not contradict federal laws in the educational field (Article 3 point 3). This means that the laws and other normative legal acts of the subjects of the Russian Federation in the field of education may not restrain the rights of the citizens in the field of education, laid down in the Constitution of the Russian Federation and the federal laws, including the rights which are connected with the learning and teaching of the Russian language as an all-federal official language in the whole territory of the Russian Federation and on basis of the established federal state educational standards’. The same Law stipulates that the citizens of the Russian Federation have the right to receive lower secondary education in their native language and to choose a language of education within the limits of options provided for by the system of education (Article 6).

Legislator, basing on the premise that the realization of these rights requires corresponding state guarantees, envisaged a number of corresponding norms.

According to the Law of the Russian Federation on the Languages of the Peoples of the Russian Federation, the right of citizens of the Russian Federation to receive education in their mother tongue is secured with establishment of a necessary number of corresponding educational institutions, classes, groups, and also with creation of conditions for their functioning.

The right to receive lower secondary education in a native language and to choose a language for upbringing and instruction is stated also in the Federal Law on National Cultural Autonomy. At the same time, it is stipulated that state bodies of the Russian Federation, state bodies of the subjects of the Russian Federation secure carrying out state policy aimed at preservation and development of national (native) languages.

Article 11 of the mentioned Law states that, aiming at securing the right to receive lower secondary education in a national (native) language and to choose a language of upbringing and instruction, national cultural autonomies may form non-state (public) pre-primary institutions or groups in such institutions with upbringing in the national (native) language, and also to create non-state (public) educational institutions (of general education; of primary, secondary and higher professional education) with instruction in national (native) language; to establish other non-state (public) educational institutions with teaching in national (native) language and also to elaborate, with participation of interior educational institutions, curricula, publish textbooks, methodical manuals, other study literature necessary to secure the right to receive education in national (native) language; to undertake
other measures for securing the right to education in national (native) language, choice of language of upbringing and instruction in accordance with law of the Russian Federation and law of the subjects of the Russian Federation.

In Article 69 the Constitution of the Russian Federation guarantees rights of small indigenous peoples in accordance with general principles and norms of international law and international agreements of the Russian Federation. The Federal Law on Guarantees of Rights of Small Indigenous Peoples of the Russian Federation states that persons belonging to small peoples, unions of small peoples are entitled, *inter alia*, to preserve and develop their native languages, receive and disseminate information in their native languages, establish mass media aiming at preservation and development of their original culture and in accordance with the legislation of the Russian Federation. Basing on the federal law the subjects of the Federation are entitled to draft and adopt their legal acts governing different aspects of life-pursuing of specific small peoples who traditionally inhabit their territories.

There are norms in the current legislation of Russia which are substantially similar to many provisions of the *European Charter for Regional or Minorities Languages*, including, *inter alia*, provisions on questions of use of national (native) languages.

At the same time, the legislation of the Russian Federation does not provide for a definition of ‘national minority’. The Constitution mentions ‘national minorities’, ‘small indigenous peoples’, ‘small ethnic entities’. However, for the legislator, the notion of ‘ethnic minority’ is not identical with the notion of ‘small ethnic entities’ and is not equal to the notion of ‘small indigenous peoples’.

In realization of different requests of national minorities, two groups of entities are singled out in the ethnic composition of the Russian Federation. They are: - peoples formed historically or living in the territory of Russia during the long period of time, i.e. indigenous peoples; - ethnic groups of a later origin whose ‘mother’ ethnic groups live outside the Russian Federation (CIS and Baltic states, as well as Bulgaria, Hungary, Germany, Poland, Finland, etc.) and those not having statehood at all (Roma, Kurds, Assyrians and Karaims).

Disputable among the Russian academicians and politicians is the question of considering those groups of population representing the peoples of Russia who live outside their respective national-territorial entities in the Russian Federation (Tatars, Bashkirs, Mary, etc.) to be minorities.

Absence of a precise definition of national minority in the legislation of the Russian Federation results in elaboration of contradictory terminology at the level of the subjects of the Russian Federation and in the use of specific notions that cannot be found at the federal level, e.g. ‘ethnic minorities’ (the Republics of Tatarstan, Khakassia), ‘ethnic disperse minorities’ (the Tomsk region), ‘indigenous national minorities’ (Buryatia) and so on. This diversity creates difficulties in carrying out the *Framework Convention for the Protection of National Minorities*, which entered into force for the Russian Federation on 1 December 1998.

In accordance with the Constitution of the Russian Federation (points “b” and “e” section 1 Article 72) and the Law of the Russian Federation on the Languages of the Peoples of the Russian Federation, subjects of the Russian Federation are entitled to adopt laws and other legal acts on the rights of citizens to the free choice of language of communication, upbringing, instruction and creative work.

Laws on languages are adopted in all republics of the Russian Federation (e.g. in the Republics of Khakassia, Bashkortostan, Sakha (Yakutia), Tatarstan, Adygeya). The laws stipulate that in the territory of the republics language sovereignty of each person, irrespective of its population and legal status, and language sovereignty of a person, irrespective of origin, social or property status, race or national belonging, sex, educational background, attitude towards religion or place of residence, is guaranteed.

Laws on the languages of some subjects of the Russian Federation provide also for the institute of responsibility for violation of language legislation of the republics, often stating the basis for such responsibility and sanctions. In a number of subjects of the Russian Federation (republics) laws on languages do not formulate such *corpus delicti*.

Laws on the languages of the peoples of the corresponding republics stipulate the rights of citizens to use the languages of the peoples of the republics, in particular, the right of citizens of the republics to choose a language of communication, upbringing and instruction.

As a rule, in the laws of the subjects of the Federation there are provisions on establishment of a system of educational upbringing institutions and of other forms of upbringing and education in official languages of the republic, on creation of conditions for the realization of the rights of citizens bearing different nationality and residing in the republic to have their children brought up and taught in their mother tongue. The laws guarantee assistance to the population residing outside the republic in organizing different forms of upbringing and education in the mother tongue.

Taking this into account, it is necessary to notice that a special responsibility for securing the realization of linguistic rights in the sphere of education lies on the subjects of the Federation, that establish in their respective territories other official languages alongside with Russian and also the rules of their use, *inter alia*, in education.

Rules of the Law of the Russian Federation on Education, stipulating the right of citizens of the Russian Federation to receive lower secondary general education in a native language, and also the right to choose a language of education within the limits of options provided for by the existing system of education (point 2 Article 6 of the Law) are still to find an adequate reflection and development in the regional educational legislation.
At the same time, as a number of experts rightly notes, ‘it is important not only to declare a right, but to legally define its substance also, to point to the level of education, which every pupil can receive in a native language’.9

The stated approach allows filling with specific legal substance such principles of the Russian state policy as assistance to the development of national cultures and languages of the peoples of the Russian Federation, and also protection of the rights of the national minorities, including rights of small indigenous peoples of the Russian Federation.

However, in the laws on education of a number of subjects of the Federation that were adopted in the 90s, the right of citizens to receive education in the mother tongue was interpreted in a peculiar legal way.

In a majority of them this right was understood as a possibility to receive education only in official languages. In the Moscow region and in the Magadan region and also in a majority of other regions the right to receive education in the Russian language was stated. In the Republic of Tuva, Republic of Khakassia, Chuvash Republic, Republic of Tatarstan, Kabardino-Balkarian Republic and others the citizens were entitled to receive education in official languages of the respective subjects of the Russian Federation, meaning the Russian language as an official language of the Russian Federation10 and other languages, recognized as official in this or that subject of the Federation.

In frames of the process of bringing the regional legislation in line with the federal one at the beginning of XXI century, the laws on education of many subjects of the Russian Federation were amended primarily in respect of issues of receiving education in the mother tongue. A norm that general issues of language policy in the field of education in a republic is governed by the Law of the Russian Federation on the Languages of the Peoples of the Russian Federation and a corresponding regional law was included in many republican laws. The provisions were introduced stating that citizens of the Russian Federation residing in the territory of the respective subjects are entitled to receive lower secondary general education in a native language and also choose the language of instruction within the limits of options provided for by the system of education. This right is secured with creation of a necessary number of corresponding educational institutions, classes, groups as well as conditions for their functioning. Introduction of the above mentioned amendments helped to reach a certain equalizing of the situation with the legislative securing of the right of different ethnic groups residing in the territory of the republics within the Russian Federation to education in a native language.

Thus, in the Republic of Tatarstan the official languages are the Russian and Tatarian languages, learning of which is prioritized in this region. In accordance with the Law on Education of the Republic of Tatarstan11 currently in force, both these languages are studied in equal amounts ‘in institutions of pre-primary, general, primary and secondary professional education’ (Article 6 point 2).

Citizens of the Russian Federation residing in the territory of the Republic of Tuva are entitled by law to receive a pre-primary upbringing and general educational preparation in official languages of the Republic of Tuva and the Russian Federation. The graduates of secondary schools may pass the entrance examinations for being enrolled in the institutions of higher and secondary professional education in the Tuva or Russian languages (Article 6 of the Law of the Tuva Republic on Education12).

In the Kabardino-Balkarian Republic the law states that in the educational institutions (those of general education from the first year of studies, primary, secondary and higher educational institutions) where the instruction is given in the Russian language, the language of one of the indigenous peoples (Kabardinian or Balkarian on the wish of a pupil) as one of the official languages of the Kabardino-Balkarian Republic is introduced as an obligatory study discipline (Article 7 point 6 of the Law of the Kabardino-Balkarian Republic on Education13).

The Law of the Republic of Khakassia on Education14 provides for that the instruction and upbringing in state and municipal educational institutions of the Republic of Khakassia is carried out in the Russian language or in the Russian and Khakassian languages. In accordance with the statute of the educational institutions the conditions are created for pupils to learn a mother tongue. The state bodies of the Republic of Khakassia assist different ethnic cultural entities living in the Republic of Khakassia in learning their native language in the educational institutions, inter alia by means of securing conditions for establishing educational institutions with an ethnic cultural component (Article 6).

In the Republic of Mordovia, the right to receive pre-primary, lower secondary general education in the official languages of the Republic of Mordovia, i.e. in Russian, Mordovian (Mokshan, Erzyan), and also to choose a language of instruction within the limits of options provided for by the system of education is guaranteed.15

In the Republic of Bashkortostan the citizens have the right to choose a language of instruction within the limits of options provided for by the republican system of education and to receive (complete) secondary education in a native language (languages of the peoples residing densely in the territory of the Republic of Bashkortostan). The Law of the Republic of Bashkortostan on Education16 provides graduates of the institutions of general education who has been studying and received education of this level in one of the national languages of the Republic of Bashkortostan with the right to pass the entrance examinations for being enrolled into the educational institutions of professional education in this national language (Article 6 point 2).

A number of subjects of the Federation secure on the legislative level the right of small peoples densely residing in their territories to receive education in a native language. In particular, the Republic of Karelia establishes conditions for the representatives of indigenous and small peoples (Karels, Vepses) to receive education in a native language, it also (within the limits of options of the system of education) provides for a free choice of the language of instruction for representatives of other national groups (Article 6 point 2 Law of the Republic of Karelia on Education17).

The Republic of Sakha (Yakutia) ‘provides assistance in preparing specialists for carrying out educational process in the languages of indigenous peoples of the Republic of Sakha
(Yakutia) who do not have statehood in the Russian Federation (Article 6 point 5 Law of the Republic of Sakha (Yakutia) on Education). The Republic of Sakha (Yakutia) who do not have statehood in the Russian Federation (Article 6 point 5 Law of the Republic of Sakha (Yakutia)) residing outside its territory in receiving lower (complete) secondary general education in the native languages'.

Majority of the republics of the Russian Federation work for securing the right of citizens to receive education in the native language outside their territories as well. Thus, according to Article 6 point 3 Law of the Republic of Sakha (Yakutia) on Education 'the Government of the Republic, acting in accordance with international treaties and agreements, provides assistance to the representatives of peoples of the Republic of Sakha (Yakutia) residing outside its territory in receiving lower (complete) secondary general education in the native languages'.

The Republic of Kalmykia also 'provides assistance in preparing specialists for carrying out educational process in the languages of the peoples of the Republic of Kalmykia in the places of their compact residence (Article 8 Law of the Republic of Kalmykia on Education). Similar provisions could be met in the laws on Education of other republics, including the Republics of Khakassia, Bashkortostan, Kabardino-Balkarian Republic and others.

As it follows from the analysis of the practice, the legislation in the sphere of use of languages, which was formed in the 90s, on the one hand, contributed to the development of the languages and cultures, firstly, of ‘status’ peoples, those who did not have such possibilities in the preceding years. In fact, the new opportunities of teaching the mother tongue from first to ninth years of school, provided for by the legislation, could only be made use of by the big ethnic groups having developed native languages. Other ethnic entities had their native language recovered mainly as a discipline or an optional course (45 native languages).

While evaluating the situation we should take into account the fact that the languages of the peoples of the Russian Federation differ both in the cultural civilization parameters (that reflect certain level of the historic development of the peoples) and in the degree of the demand for them in practical life. This is the reason determining the variety of curricula of schools functioning in specific ethnical cultural conditions. Depending on these conditions a native language can be used in completely dissimilar capacities: as a language of instruction for all courses of general education (1-11 years), in levels of education (primary or lower secondary school), as a discipline of teaching at the levels of education, as an elective course, etc.

Currently, in the institutions of general education 31 written languages are used as languages of instruction, out of this number 12 are used in frames of (complete) secondary school, 6 languages are used in lower secondary general school, 13 languages are used in primary school.

The most spread languages (after Russian) are the Tatarian language (it is used for instruction in 2166 schools and for teaching in 2464 schools), the Bashkir language (911 and 1425 schools, correspondingly), the Chuvashian language (571 and 460). Thus, 76 native languages of the peoples of the Russian Federation are learned in the system of education of the Russian Federation.

Numerically, circa 20 per cent of the Russian educational institutions teach the mono-ethnical contingent in a native (not Russian) language today.

In the structure of the Russian educational system these schools, traditionally referred to as ‘national’, act as a specific and independent type of educational institutions. Taking as a criterion the character of structuring the academic process on the bilingual basis five variants of schools can be singles out today.

- **Model 1.** ‘National school’ with instruction in the native language from the 1st to 11th year, the Russian language being learned as a discipline (Tatarstan, Bashkiria, Sakha (Yakutia)).
- **Model 2.** ‘National school’ with instruction in the native language up to the seventh or ninth year, the Russian language being learned as a discipline, with further instruction in the Russian language in senior school (rural school of Tuva, Buryatia, Chuvashia, Kalmykia, school of a number of territories of the Northern Caucasus, town school of Tataria, Bashkiria).
- **Model 3.** ‘National school’ with instruction in the native language up to the forth year, the Russian languages being learned as a discipline, with further switch to the Russian language (town school of Tuva, Kalmykia, Adygeya, Northern Assetia-Alania, Kabardino-Balkaria, Karachaevo-Circassia, Mari El, Mordovia, etc.).
- **Model 4.** ‘National school’ with instruction from the 1st to 11th year in the Russian language with advanced learning of the native language and culture (Karelia, Mordovia, Mari El, Udmurria, Komi, Komi-Permyak Autonomous Area, schools where the children of small indigenous peoples of the Extreme North, Siberia and Far East study).
- **Model 5.** ‘National school’ with instruction in the first-second years in the native language that prepares for the further change to the Russian language of instruction (nomadic school of Trans-polar region, family nomadic schools of the Yamalo-Nents Autonomous Area and other separate territories).

In defining curricula, one of the aspects of this problem is the question of the amount of the official Russian, official republican and other native languages for the different categories of pupils:

- the Russians studying at schools with the Russian language of instruction and learning official language of the ‘title’- (non-Russian) people;
- the non-Russians of the title people studying at schools with a native language of instruction;
- the non-Russians of the non-title people studying at schools of the republics of the Russian Federation with learning of the language of the title people and the native language;
- the non-Russians of the non-title people studying at schools with the Russian language of instruction in the republics with different official language.

In accordance with the Law of the Russian Federation on Education, learning the Russian language in all educational institutions, except for pre-primary ones, having state accreditation is governed by the state educational standards. State standards which include...
Federal and regional components as well as a component of the educational institution are established in the Russian Federation.

Federal components of the state educational standards are determined by federal authorities and define the obligatory minimum of the substance of the main educational programmes, maximal amount of pupils’ academic load, requirements for the level of graduates’ preparation. National-regional components of state educational standards are established by the subjects of the Russian Federation in person of their state bodies. The liability between state bodies of different levels is allocated in the same way.

The matter of correlation between different languages of instruction came into public notice in 2007 in view of the introduction of the single state examination in the Russian Federation. The latter is a form of the final examinations [attestation] after a completion of study of federal component of the state educational standard of complete secondary school and is carried out in Russian. At the same time a number of republics offered to conduct this state examination also in official languages of respective subjects. The proposal is up to debate and a way to resolve it is currently being seeking.

In practice, the question is often raised in the republics within the Russian Federation on how to form schools’ curriculum so that to secure the right to learn a native language and, at the same time, to abide by the norms of pupils’ academic load. For example, a representative of the Bashkir people residing in Tatarstan is obliged to study three languages as a minimum – the Russian, Tatarian, foreign – besides his/her own native language.

The experience shows that serious academic overload always takes place when it is necessary to learn two or three languages (not to count an obligatory foreign language introduced, in accordance with the state educational standard of general education, starting from the second year of school). Effort to secure the fluent knowledge of all these languages results in usurpation of academic time allotted for other disciplines of the regional and, sometimes, of the federal components of the educational standard.

The Constitutional Court of the Russian Federation examined the complaint by S.I.Khapugin, lodged on behalf of his juvenile son, where S.I.Khapugin challenged the constitutionality of the Republic of Tatarstan’s legislative provisions obliging the pupils of the institutions of general education with the Russian language of instruction to learn the Tatarian language in vast amount, thus, in the opinion of the claimant, limiting the opportunities of advanced studying other disciplines of the curriculum and acquiring elective disciplines. Thus, the claimant alleged, the citizens of the Russian Federation residing in the Republic of Tatarstan is obliged to study three languages as a minimum – the Russian, Tatarian, foreign – besides his/her own native language.

In the Decision of the Constitutional Court of the Russian Federation No. 16-P, 16 November 2004, on this complaint it was noted that ‘the legal provision of point 2 Article 10 of the Law of the Republic of Tatarstan on the Languages of the Peoples of the Republic of Tatarstan (as amended by section 2 Article 9 of the Law of the Republic of Tatarstan on Official Languages of the Republic of Tatarstan and Other Languages in the Republic of Tatarstan) and point 2 Article 6 of the Law of the Republic of Tatarstan on Education, which provides that the Tatarian and Russian languages, being official languages of the Republic of Tatarstan, are studied in equal amounts in the educational institutions of general, primary and secondary professional education, is not in contradiction with the Constitution of the Russian Federation, as this provision, its constitutional-legal sense in the functioning system of legal rules, presupposes that learning the Tatarian language must be carried out in accordance with the federal state educational standards, established by the legislation of the Russian Federation, and must not impede passing the final examinations [attestation], issuing the document on the lower secondary general education received and receiving education of a higher level’.

Thus, it can be stated that the federal legislation in the sphere of rights of citizens to free choice of language of instruction within the options provided for by the system of education, meets in general the international obligations of the Russian Federation and establishes a proper legal basis for the realization of this right. From the point of improving the legal regulation in this sphere, as it was noted, it is necessary to elaborate the definition of ‘national minority’ taking into account linguistic, cultural and religious specificities of the peoples residing in the territory of the Russian Federation and this definition’s introduction into the legislative acts.

At the same time, it should be recognized that the imperative sounding of corresponding norms is constrained by the real possibilities to put them into practice. At present, the right of citizens, in the first place representatives of non-title peoples, to receive education in the native language is secured and realized at the different level in the territories of the subjects of the Russian Federation. This is connected, first of all, with the level of development of the native language, financial capacities of the state, presence of the qualified teaching staff.

Taking this into account the task of ensuring for the realization of legal guarantees to choose language of instruction in the Russian Federation is of high priority. The Conception of national educational policy of the Russian Federation and the Plan of realization its preferred trends in general education system till 2010 adopted in 2006\(^\text{23}\) are directed to resolve it. The important provision of its successful realization is the goal-directed and matched activity of federal and regional state bodies, municipalities and national non-governmental organizations for the creation of conditions for equal access of the representatives of various ethnic groups to educational sphere facilities and fulfillment of ethno-cultural educational needs of citizens of the Russian Federation within the framework of integrated federal cultural and educational space.

\(^{22}\) It should be noted that in the Russian language words ‘nationality’, ‘national’, etc. relate generally to the ethnic origins of a person, not to citizenship. However, the specificity of terminology is preserved as ‘ethnic’ appears in the text in its own right.
Endnotes

1. «Vedomosti SND i VS RSFSR», 1991, N 50, Article 1740
2. «Sobranie zakonodatel'stva RF», 2005, N 23, Article 2199
3. «Sobranie zakonodatel'stva RF», 1996, N25, Article 2965
4. «Sobranie zakonodatel'stva RF», 1999, N 18, Article 2208
5. «Sobranie zakonodatel'stva RF», 1996, N 3, Article 150
6. «Sobranie zakonodatel'stva RF», 2004, N 47, Article 4691

7. The mentioned law is currently entitled the Law of the Russian Federation on the Languages of the Peoples of the Russian Federation.


22. «Sobranie zakonodatel'stva RF», 2004, N 47, Article 4691

23. The Order of the Ministry of education and science of the Russian Federation "Conception of national educational policy of the Russian Federation" (of 3August 2006 N 201)
Turkey and Language Rights in Education: A Glass Still More Empty than Full

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1. INTRODUCTION

Nobel Laureate Harold Pinter wrote the play "Mountain Language" in 1988, inspired by a travel to Turkey in the mid-1980s. In Pinter’s play, an officer scolds at a woman belonging to a ‘minority’: “You are mountain people… Your language is dead. It is forbidden.”2 Pinter’s play was not all fantasy; his ‘source of inspiration’ was the public ban the Kurdish language faced at the times of his visit.

All local mother tongues except for the official language Turkish have been facing troubles throughout Turkey’s history. Language policies of the early Republican period is a topic that many researchers have written about, and consensus of the literature is, by and large, that Turkish was endorsed as the unique language of social and official use, at the expense of other local languages3. Therefore, it should not be surprising that most recent of UNESCO’s Atlas of the World’s Languages in Danger of 2010 cites 18 local languages facing danger of ‘extinction’ in Turkey4.

But, in Turkey, it is the issue of language rights5 of the Kurds dominates exclusively the public debates in an ever escalating public manner since the 1980s. Since the Kurds constitute the most populous linguistically diverse community in Turkey6, and because overwhelming majority of them7 demands specifically the “mother-tongue education” and/or “education in the mother tongue”, dominance of references to Kurdish in domestic language rights debates might be deemed as an expected outcome. But another reason that concepts of ‘education in the mother-tongue’ and ‘education in Kurdish’ has become symbiotic issues is also because there has been an open, violent conflict going on since 1984, starting with the first major assault of the armed insurgent Kurdish group Kurdistan Workers’ Party (Partiya Karkerên Kurdistan-PKK). After almost 30 years, the clashes have been continuing up to now, claiming more than 50 thousand lives according to official figures. Only in the summer of 2012, when this article was written, the clashes have flared up (again) and around 800 people have lost their lives8.

On the whole, various Kurdish political figures, civil society institutions, opinion leaders and the Kurdish community itself express demand for the guarantee of a multitude of diverse rights; but all seem to share support for the prospect of education in the mother tongue8. As PKK’s violence and expression of ‘cultural and territorial rights’ coincided, the Kurdish concerns for cultural (and to an extent, other linguistic communities’ interest and wishes for use of having mother tongue education) have come to be treated as an ‘explosive’ issue. But even before PKK existed, language rights have been conceptualized as the first step paving the way towards ‘secession’ and internal strife by the state throughout the history of the Republic of Turkey. Surprisingly enough, despite decades of state efforts to bar the public use of local languages other than Turkish, general public in Turkey is by and large supportive of education in the mother tongue9. Even the voters of the far-right represented in the Grand National Assembly by the Nationalist Action Party (Milliyetçî Hareket Partisi -MHP) regard education in the mother tongue in a positive light by 50%10.

Despite a certain level of progress during 2000s up to day regarding rights and freedoms in general, the state shows enduring reluctance to secure linguistic rights. This is despite the fact that recently, in the 2012 Autumn-Winter semester, elective courses in local mother-tongues have started to be offered, from the fifth grade onwards, for the first time in Turkey’s history and this might be considered as a ‘paradigm shift’ on behalf of the state11. But, it should be pointed out that, simultaneously, Prime Minister Recep Tayyip Erdoğan stated that “Education in the mother-tongue is not a right”12. In Turkey, the state needs to undergo a true, comprehensive and through ideological transformation and start treat cultural, ethnic, and religious diversity as a positive aspect of the local heritage, and recognize that language rights are not ‘ghostly rights’. This is essential to achieve further legislative transformation and to translate existing technical transformation in the legal realm fully into practice. Overall, the issue of language rights remains as a litmus test for measuring the level of progress in Turkey’s democratization process.

2. HISTORICAL BACKGROUND TO THE STATE POLICIES ON LINGUISTIC RIGHTS IN TURKEY

Turkey has a multiethnic, multi-religious, multilingual society, contrary to the commonly cited stereotype that it is a country with over 90% Turkish, Muslim population. As a rump state of the Ottoman Empire, Turkey inherited a highly heterogeneous demography. In his book on ethnic groups in Turkey, P.A. Andrews cites documenting 47 ethnic groups.13 As far as religious groups are concerned, there are Armenians, Baha’is, Chaldeans, Jews, Greeks, Georgians, Maronites, Nestorians, Protestants and Syriacs among the foremost non-Muslim groups. Among the Muslim communities, there are Albanians, Arabs, Bosniaks, a range of Caucasian people who are generally referred to as ‘Circassians’, Kurds, Laz, Pomak, Roma and Tatars. Nonetheless, there are also the sectarian groups who observe different practices of Islam, other than that of the predominant Sunni sect; professed by the majority of the Muslim groups in Turkey. Among them are the Alevi and Caferti communities. There are also the ethno-linguistic minorities, whose existence is a matter of debate among the minorities and so-called majorities alike, such as Zaza.14

As much ethno-cultural and ethno-cultural multiplicity, Turkey inherited the official propensity for keenness on setting up centralized institutional frameworks from the Ottoman Empire. Especially, the 19th century reforms of the Ottoman state were geared towards creating unified, centralized administrative and educational frameworks and networks. In the early days of the Republic, the ‘founding fathers’ of the Turkish Republic decided that they had to unify the ethnically and linguistically diverse population of the country under the homogenous identity of a monolithic nation for ensuring the longevity of the newly founded state. Kemalism, as an ideology, was molded under such an atmosphere, resting over, primarily, the principles of “Laïcité”, “Nationalism” and “Westernization”.15 To an extent, these three key ideals were already being championed by segments of the Ottoman intelligentsia from mid to late 19th century.16 For instance, the Young Turks, primary reformist movement of the 19th century Ottoman Empire, supported especially “Westernization” as a cornerstone of their political philosophy.17 But, alongside Westernization, “Nationalism” became the principle ideological concerns of the Republic. According to one of his allies, Faïl Rifki, Mustafa Kemal Atatürk, the founder of the Republic
of Turkey, did not believe in the so-called “mermaid tale”. Mermaids were a curious analogy; meaning there could not be half-fish, half-human people. This was supposed to serve as an imagery to assert that a homogenous national identity was essential for the newly founded Republic’s citizens.21

Within the first decade of the Republic, there were a number of ‘revolutions’. A brand new civil code that conveyed gender equality was legislated, dressing into ‘Westernized’ costumes were made mandatory and so-called ‘Eastern’ clothing with the veil for women and the caftan for the men were banned, Arabic script was abandoned in favor of Latin alphabet, and education system was transformed with former religious, so-called, Medrese education abolished, with adoption of secular schooling. Educational reforms of the early Republican period were, in a way, completing the ‘Westernizing’ efforts that already began in the late-Ottoman era.19 Nevertheless, beyond Westernization, reforms of the 1920s and 1930s, built a centralized, national education system from scratch. Overall, reforms were not met with public enthusiasm, among at least a segment of the public; as centuries old ways of living were totally altered in a matter of years. Consequently, there were various protests and uprisings; most serious of them being the ‘Sheikh Said rebellion’, staged by Kurdish communities.20 The revolt is said to be decisive in solidifying the new Republic’s stance on pursuing ‘Turkification’ policies in terms asserting cultural homogeneity.

But, aside from the Sheikh Said rebellion, which is arguably of more religious orientation than ethnic, the ideological indoctrinator of the newly founded Republic, Mustafa Kemal had been evidencing his special interest in the Turkish language as follows; “Those who say that I am from the Turkish nation should absolutely and prior to everything speak Turkish”.23 Primarily, legal steps were taken for reinforcing Turkish as the only administrative language of the new state. The Article 2 of the Constitution of 1924 declared Turkish as the only official language of the Republic, and the Article 12 announced that “the citizens who do not speak Turkish on the street, prior to the Alphabet Reform.23 In the pursuit of certain official measures. For example, the Eastern Rehabilitation Plan, legislated in 1925 for the predominantly Kurdish populated regions, stated that: “Those who use another language than Turkish in cities, provinces, state and governmental buildings, schools, markets and bazaars…will be considered as violating…laws and will be punished”.23

In a similar vein, Jews of Turkey were pushed into abandoning Ladino and accepting Turkish as their community language.24 Alongside language, use of Turkish in national education was another subject that the Republican elite prioritized in policy-making. Concern for indoctrinating a national education ideology was evidenced by organization of the Education Congress in 1921, at times when the War of Independence was still continuing.25 Early Republican years witnessed consolidation of the primacy of Turkish language, Turkish nationalism, Turkish history and Turkish culture/civilization in textbooks and creation of the educational doctrine aiming at ‘making of’ loyal and Kemalist citizens true to the “national character”. Atatürk’s successor, İnönü, carried on his legacy after his death in 1938, by cementing the role of Turkish nationalism and asserting uniqueness of the Turkish language. İnönü stated that “other” cultures and communities were required to deny themselves and melt into the national identity, signaling that assimilationist policies would continue to be an inherent part of the Republic. He also perceived national education as the key tool for reproducing nationalist citizens.26

In 1946, Turkey passed onto the multiparty system, but democracy was marred in the coming decades with coup d’etats, and conservative, nationalist and populist rhetoric of the main political parties. There was intense political polarization from the late 1960s to early 1980s, and public opinion became divided between left and right wing movements severely, with sporadic armed clashes erupting among the armed left and right wing militant groups, leading to thousands of deaths. Especially from the mid-1970s onwards up until the 1980 coup d’état, most of the secondary and higher education institutions were absorbed by one political ideology or another, becoming venues of violence. After the coup of 1980, educational institutions also suffered heavily because of repressive state policies. National education system already had been receiving special attention from the junta of 1960 and afterwards, the Army successively tightened its grip on educational policies, regardless of whether civilian governments in power. All in all, between 1960 and 1980s, “Secularism” and ‘Nationalism’ had become chief principles shaping the national education system. But, the Army’s seizure of power in 1980 brought the toughest grip over the educational system by institutionalizing a highly centralized and comprehensive system of surveillance. The 1982 Constitution, which is still in effect after exactly 30 years despite a number of amendments, asserted the legal illegitimacy of mother tongue education in languages aside from Turkish.
This fact evidences that regardless of who is in power, from left wing to right, from junta rule to civilian governments, reluctance to secure linguistic rights stays affirmed as ‘the state policy’. Linguistic rights have come be regarded as a potential threat to the advocacy and protection of ‘indivisibility of the national unity’\(^3\), as it has been frequently phrased in legislations. Thus, although the concept of ‘minority rights’ is an integral part of rights and freedoms debates in Europe, it is almost wholly absent in case of Turkey. As a result of the state’s national security concerns, causing problematization of the issue of minority rights, majority of ‘minorities’ in Turkey do not demand (or even like to be) referred as such. In case of the historically most populous minority, Kurds, there is an underlying argument contending that they were given the promise to be ‘co-founders’ of the Republic in 1920s, on an equal footing with the ‘Turks’. Also because of their sizeable population, foremost Kurdish political actors underline that they are not and do not want to be regarded as minorities\(^3\). On the other hand, smaller ethno-linguistic groups fear that they would be reduced to a second-class citizenship status with the minority status.\(^4\)

3. LEGAL FRAMEWORK REGARDING LINGUISTIC RIGHTS IN EDUCATION

3.1. Lausanne Minorities: Privileged Few?

Only minorities officially recognized in Turkey are those whose rights are guaranteed by the Lausanne Treaty of 1923.\(^4\) In fact, the Lausanne Treaty and the Treaty of Friendship between the Turkish Republic and the Kingdom of Bulgaria of 1925 are the two treaties that concern Turkey’s obligations regarding education in the mother tongue\(^2\). During the negotiations of the Lausanne Treaty, Turkish delegation firmly insisted over the position of accepting “religious” minorities, but denying any protection mechanisms for “ethnic and linguistic” minorities. This strategy of the Turkish delegation prevailed over counter arguments and, finally, the Treaty referred only to “non-Muslim minorities”.\(^3\) Though they are not explicitly named as such in Lausanne, recognized minorities of the Treaty are Armenians, Jews and Greeks (\textit{Rum Ortodoks/Romioi}), traditional groups of the Ottoman \textit{Millet} system.\(^4\) However, some legal experts argue that, theoretically all the minorities of Turkey are under Lausanne’s umbrella.\(^5\) But, this argument was never taken under consideration by the state; therefore, Lausanne minorities will continue to be only linguistic communities having the opportunity to be entitled to certain \textit{group} rights, including education in their mother-tongue. Nevertheless, also the Lausanne minorities have been facing serious problems regarding education in their mother tongues, even though their linguistic rights are de jure secured by both international and domestic laws. Article 40 of the Lausanne Treaty declares that: “Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein”.\(^6\) Furthermore, the Treaty’s Article 41 states that: “As regards public instruction, the Turkish Government will grant in those towns and districts, where a considerable proportion of non-Moslem nationals are resident, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language. This provision will not prevent the Turkish Government from making the teaching of the Turkish language obligatory in the said schools. In towns and districts where there is a considerable proportion of Turkish nationals belonging to non-Moslem minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious, or charitable purposes. The sums in question shall be paid to the qualified representatives of the establishments and institutions concerned”.\(^7\)

Thus, there is a clear case that the Lausanne minorities should face \textit{no obstacles} regarding education in their mother tongue. On the contrary, they should receive state assistance and funding for their schools. Although these minorities do have their own schools since the signing of the Treaty, on the whole their educational institutions lack funding, adequate and qualified teachers, class material, books and therefore number of students wishing to attend them are continuously diminishing.\(^8\) Currently, there are approximately 50,000-60,000 Armenians, 25,000-26,000 Jews and 3,000 Greeks in Turkey, and as of 2012, there are 16 Armenian schools, one Jewish school and five Greek schools in Turkey; all of them based in Istanbul.\(^9\) Overwhelming majority of these communities live in Istanbul, with the exception of a small community of Jews in Izmir, a couple of Greeks on the islands of Bozcaada and Gökçeada in the Aegean Sea, and a handful Armenians in Diyarbakir, Hatay and Kayseri. Among these minorities, Jews’ educational institutions are the lowest in number due to the community’s high preference for the non-communal schools.\(^10\) The Greek communities’ schools barely survive and face serious problems of survival, inter alias due to the quasi-extinction of the community’s population. Furthermore, the “reciprocity clause” of the Lausanne Treaty’s Article 45 that binds parallel legal obligations for Greece and Turkey for protection of their Muslim and non-Muslim minorities; also de facto ties the conditions of their educational facilities to those of the Turkish minority’s schools in Greece. The ‘reciprocity clause’ seems to affect both communities’ institutions adversely as it turns into a ‘reciprocal’ policy that both Greece and Turkey use each others’ faults as an excuse for shortcomings concerning violation of their minorities rights\(^11\).

Alternatively, the Armenian schools cite lack of teachers and various bureaucratic obstacles created by the state specifically to hinder their functioning as their foremost problems. Two key bureaucratic obstacles faced by the minority schools are the legally mandatory prerequisite of presence of a ‘Turkish’ vice-president in schools, and legal categorization of these schools as ‘private institutions’ under the \textit{Law of Private Educational Institutions (No 5580)}\(^12\), even though they do not collect tuition fees from their students as they deem themselves as conducting ‘communal service’.

The state’s reluctance not to address, but remain as ‘the cause’ of Lausanne minorities’ sufferance by educational problems is evidenced by these ever enduring issues. It is ironic that when the former Minister of Education Nimet Çubukçu attended a diploma ceremony of an Armenian school in 2010, constituting a first in Republican history, she also did not refrain from bringing along Turkish language and Turkish culture books of curricula to be distributed as ‘presents’\(^13\). This was a highly symbolic act, as these official books are abundant in number, but Armenian (or Greek, Hebrew/Ladino…ones are missing).

Not just educational material, but also qualified teachers are also lacking in number. Even though Turkey is right in the neighborhood of Armenia and Greece, teachers from these countries are not allowed.\(^14\) The European Union’s Progress Reports have continuously
been drawing attention to obstacles that Greek minority face about finding teachers for their
community schools. It is also reported that it is not easy to become a student of neither of the
Lausanne minorities’ schools, as prolonged procedures of inspection are applied by the
state, in order to verify whether a pupil is really from a ‘minority’. In cases of mixed
marriages, the procedures are said to be especially protracted. Why would the state be a
party to determining whether pupils are of a certain ‘ethnicity’ when the schools they would
be attending are ‘private institutions’ by law? Likewise, the EU’s Report affirms that the
Greek community came across problems related to approval of the new equipment they
wished to employ in their schools. All these aforementioned situations exemplify bureaucratic
impediments that are created by the state and no rationale can explain their existence;
except for prima facie discrimination.

On the whole, another crucial question the minority schools have to bear is the “double
directorship” practice. According to Article 24 of the Law of Private Schools (Law 625,
enacted on 8 June 1965), “schools founded by foreigners and that have a medium of
instruction other than Turkish” must have a ‘Turkish’ vice-director. Nevertheless, the vice-
director de facto has more power than the director of the school, because of direct command
chain extending from the Ministry of Education presiding over the school. On the one hand, it can be claimed that at least these minorities are officially recognized as
such and have rights de jure. On the other hand, their rights remain only on paper within the
context of the Lausanne Treaty, so that their situation cannot be regarded as somewhat
better off than unrecognized ones. On a more positive note, if the situations of their
communal schools could have been ameliorated, their case might serve as a practical
typical example to the rest of Turkey’s ethno-linguistic groups in terms ‘education in the mother
tongue’.

3.2. Turkey’s Overall Domestic Legal Framework Concerning Linguistic Rights and Its
International Obligations:

Contemporary constitutional provisions, laws, directives in effect which are of interest on
language rights, can be divided into two categories. The first category includes legal
documents concerning “freedom of expression, publishing and broadcasting in languages
other than Turkish”. Alternatively, second category, which of more interest for the purpose of
this report, consists of “education in foreign languages” and to a much lesser extent, mother
tongue education. Especially throughout the last decade, there have been various
amendments broadening the scope of rights and freedoms on various fronts; including these
cited spheres. However, although these recent positive developments have somewhat
alleviated the pressure on “mother tongues and dialects other than Turkish” as the ‘official
jargon’ puts it, the legislative framework in Turkey still contains regulations that prohibit the
use of local languages in education. One of the most comprehensive reports on Kurds’
language rights, yet, Scar of the Tongue argues that;

“Turkey follows three paths to preventing the use of the mother tongue in education: (I) It
preserves clauses in domestic law preventing the use of the mother tongue in education,
(II) When accessing to international treaties on fundamental rights and freedoms, it has
expressed reservations concerning clauses stipulating the use of the mother tongue in
education, (III) It refrains from acceding to treaties dealing with language rights and
banning discrimination based on the language of education”.

In order to grasp the scope of change and analyze the prospects of further transformation, it
is useful to go over the existing and amended legislations. As pointed out, public use of local
mother tongues, aside from Turkish, were banned in Turkey up until the 1990s. But still,
‘education in the mother tongue’, or arguably, even ‘mother tongue education’, faces outright
constitutional ban or with a more positive stance, at least, ‘obstacles’. The Article 42 of the
Constitution stipulates that “no language other than Turkish can be used or taught as a
mother tongue to Turkish citizens in educational institutions”. Therefore, ‘primary language’
of primary schools has to be Turkish, and the curricula need to be principally in Turkish.
Only the ‘consular’ schools, teaching ‘diplomatic community’ are exempt. But, ironically, Turkish
citizens who have some linguistic or cultural ties with such ‘foreign communities’ are entitled
to send their children to such schools. As the Lausanne Treaty foresees that the minorities it
specifies are to be guaranteed to have education in the mother tongue, there is an additional
clause to the Article 42, which says, “the principles that educational institutions teaching
foreign languages and foreign language medium schools will follow are regulated by law.
Clauses of international treaties are reserved”. Since Lausanne Treaty is an international
 treaty, this clause prevents its breaching.

So, the constitutional obstacle before securing of language rights, which might be interpreted
in various ways remain intact as the ‘emergency exit’ for the state. But, legislations amended
provide ‘adequate’ flexibility, to serve the ‘needs of the day’, bypassing any all-inclusive
approach to actually ‘secure’ rights. For example, the Law on Publications in Languages
(Other than Turkish) (No 2932, enacted in 1983) criminalized “using languages other than the
first official languages of the states that are recognized by Turkey”. This formulation was
indeed a very “clever” stipulation as it legitimized publications in other nation-states’
languages (such as English), while shutting the doors to local languages of the population
who lacked a nation-state. These legislations apparently targeted Kurdish, which was not the
first official language of any country. The ban on local mother tongues in Turkey became
nullified in 1991 as the Law 2932 was repelled. Basis of the original basis of ‘prohibition’ of ‘certain’ languages was Article 26/5 of the 1982
Constitution. This article used the term “languages prohibited by law” to frame the key
restriction on mother tongues. Exact statement of the law was, “No language prohibited by
law shall be used in the expression and dissemination of thought”. Similarly, Article 28/2 cited
“prohibited language” as one of the reasons to restrict press freedom. It stated that,
“Publications shall not be made in any language prohibited by law”.

Constitutional bases of outright prohibition in public sphere, Article 26/5 and 28/2, remained
in effect until the amendments of 2001. Eventually, the “forbidden language” clause was
removed from Articles 26 and 28 in October 2001 through the set of constitutional
amendments foreseen by the 1st Harmonization Package with the European Union (Law No
4709, enacted on 4 October 2001). However, restrictions on mother tongue education continued on for another decade. Based
on Article 42, the Foreign Language Education and Teaching Law (No 2932, enacted on 14
October 1983) also reiterated the same prohibitions. Until 2002, Article 2/a of the law ruled
that, “Turkish citizens’ mother tongues cannot be taught in any other language than Turkish”.

Article 11/A of Law 4771, which was a part of the 3rd Harmonization Package with the
The 3rd Harmonization Package also ruled that a bylaw would regulate the opening and functioning of the aforementioned private courses. This bylaw was put into effect the same year. According to the bylaw, participation in and recruitment by the private courses were functioning of the aforementioned private courses. This bylaw was put into effect the same year.

Furthermore, there may be broadcasts in the different languages and dialects traditionally used by Turkish citizens in their daily lives. However, the restriction clause rules that, "Such broadcasts shall not contradict the fundamental principles of the Turkish Republic enriched in the constitution and the indivisible integrity of the state with its territory and nation". It is noteworthy that the reference of "the indivisible integrity of the state with its territory and nation", as in the aforementioned legislation regarding ‘foreign language education’, is more protective of the state than the citizens with mother tongues other than Turkish. Nevertheless, with this amendment, broadcasting in mother tongues became legally permissible in Turkey.

Various legal references to the fundamental principle of ‘nationalism’ recognized by the Constitution and ‘Turkishness’ cause ‘indirect’ pressures over mother tongues on the legislation front in Turkey. The Article 2 of 1982 Constitution states that;

“The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk…"67.

In a similar vein, Constitution’s Article 3 rules that, “The Turkish state, with its territory and nation, is an indivisible entity. Its language is Turkish”68.

The laws regulating the field of education refer to “Atatürk’s principles” as the fundamental aim of the related institutions. The Law of Higher Education (No 2547, enacted on 4 November, 1981) states in Article 4 that the aims of the higher education are as follows; “(to educate students so that they will be loyal to Atatürk nationalism and to Atatürk’s revolutions and principles; bearing the national, moral, humanist, spiritual and cultural values of the Turkish Nation, feeling the honor and joy of being Turk”. Similar provisions are present in the Fundamental Law of National Education (No 1739, enacted on 14 June 1973).69

Article 10 of the Fundamental Law also emphasizes that, “It is deemed important teaching the Turkish language, as one of the fundamental elements of national unity and indivisibility, at all levels of the education system without harming its characteristics…”.70 This formulation is a reflection of the decades-long conceptualization of the Turkish language as the unifying core of the society, key to Turkishness.

As for the international legal frameworks, Turkey has expressed reservations on the Article 13 of the United Nations Covenant on Economic, Cultural and Social Rights, regulating the “right of education”. It refrained from implementing paragraphs 3 and 4 of Article 13, referring to the “freedom of individuals and of organizations to found and manage educational institutions”. Articles 3, 14 and 42 of the 1982 Constitution were cited as the underlying reason.

On the broadcasting front, Article 11/B 4771 added a paragraph to Article 1 of Law 2923 permitting courses on different traditional languages and dialects to be offered. On the other hand, the Law on the Establishment and Broadcasting of Televisions and Radios (No 3984, enacted on 13 April 1994) ruled that Turkish was the only language that could be used in the media. The mere exception for “foreign language” broadcasts could be the “languages that have contributed to the production of universal cultural and scientific works”. The 3rd Harmonization Package removed this provision from the law and paved the way for broadcasting in ‘unofficial languages’ by the addition of the sentence reading as: “Furthermore, there may be broadcasts in the different languages and dialects traditionally used by Turkish citizens in their daily lives”. However, the restriction clause rules that, "Such broadcasts shall not contradict the fundamental principles of the Turkish Republic enriched in the constitution and the indivisible integrity of the state with its territory and nation".
Turkey has also expressed reservations regarding Article 27 of the UN Covenant on Civil and Political Rights on the “Protection of Minorities”; citing the necessity to implement this article in line with the clauses and procedures of its constitution and of the Lausanne Treaty, taking into account only the groups recognized as minorities in this Treaty. In addition, Turkey has not become a party to the European Charter for Regional or Minority Languages, adopted by the Council of Europe in 1992, and the Framework Convention for the Protection of National Minorities, adopted by the Council of Europe in 1995. Both of these documents contain important clauses regarding the right to the use of relevant languages in education, the legal sphere, the media, cultural activities and economic and social life. The Convention against Discrimination in Education, adopted by UNESCO on 1960 and coming into force on 1962, has also not been adopted by Turkey. The Protocol 12 of the European Convention on Human Rights that was drafted in 2001 and came into force in 2005, which prohibits discrimination in the enjoyment of general rights, has been signed by Turkey, but has not yet been ratified71.

3.3. Political Context in Turkey in the 2000s Regarding Discussion on the Language Policies:

Resistance to guaranteeing of language rights, first and foremost the right to education in the mother tongue persists in Turkey despite the amendments to the constitution and the bylaws up to 2012, made specifically for ameliorating cultural freedoms in particular and democratization in general. Aforementioned legal amendments72, which will be discussed in detail, were adopted also with the EU’s instigation and encouragement. However, Turkey’s civil society, intellectuals and the general public sentiment favoring the EU membership and yearning for a ‘better Turkey’ had also imperative stakes in inveigling the Turkish Grand National Assembly towards the swift legislation of the democratization packages.73 With an atmosphere of ‘revolutionary change’ gaining momentum, vivid parliamentary debates and public discussions regarding rights and freedoms for democratization, and the language rights ensued in the early 2000s.74 Such ‘cultural rights’ issues centered on conducting broadcasts and receiving formal education in mother-tongues, among various other critical questions faced by the minorities. Nonetheless, even during this ‘democratization wave’, education in the mother tongue was not among the leading issues that were debated, but remained as a ‘fringe’ concern under the broad-spectrum reference to ‘cultural rights’. Furthermore, at that period, the demands for mother tongue education were rallied predominantly by Kurds of Turkey. By 2012, As Turkey’s grassroots are becoming expressive in all kinds of identity issues in the recent years; it has become possible to witness voicing of language rights demands by the Circassians, the Laz, and the Roma. Especially, the case of the Circassians is interesting. Recently, the Circassians, who happen to be the Caucasian ethnic and linguistic groups emigrated to the Ottoman Empire and the newly founded Republic of Turkey throughout the 19th and early 20th centuries have begun bringing forward demands for the language rights; especially those in education. Circassians are known to be an ethnic community in ‘good terms’ with the state, embracing Republican ideals of citizenship; which is in contrast with the Kurds who have fallen into continuous polarization with the state. In case of Circassians, assimilation into the Turkish identity was a signifier of loyalty to state and Turkish nationalism. Tendency towards assimilation might have several reasons in case of Circassians; this community is in fact, highly diversified within itself made up of Northern Caucasian peoples. Circassian is the mother tongue of the mother tongue of some of this group referred to as ‘Circassians’. Secondly, as an immigrant community that, by and large, came from Caucasia in the 19th century as a result of wars and expulsion by the Tsarist Russia, feelings of gratitude towards the Ottoman Empire and the Republic of Turkey was prevalent among these communities. As a result of the settlement policies of both the Empire and the Republic, the Circassians are geographically highly dispersed. The fact that they have conducting public demonstrations to claim rights in mother tongue education is highly significant75. Circassian demands for language rights is part of a larger trend that encompass other linguistic groups. Laz, a territorially more concentrated minority as the predominant ethnic group of the Black Sea region, also have begun advocacy campaigns for their demands in education in the mother tongue and asked for state funds to the protection of their language and public broadcasting in Laz76. As both Circassians and Laz are considered as communities that have no manifested problems with the state, and as they are said to be mostly are affiliated with Turkish nationalism, their claims signify a turning point. However, also their grassroots demands are not translated into concrete state policies. The AKP has been in power since 2002, and since it has been in government, has come to cast itself as the “dominant party”77. The AKP was founded in 2001 and sees itself as a conservative democratic party akin to Christian Democrat political parties in Europe. Bettering the economic conditions and social services provided by the state has been top priorities of AKP, defined as a pragmatic political movement, with a solid and highly active member profile. Pro-democratization voters have been primarily supporting the AKP, and one of its largest constituencies both in the 2002, 2007 and 2011 elections were the Kurds. Pro-democratization voters, including the Kurds, pinned their hopes that the AKP had the potential to challenge the status quo, especially with regards to achieving civilian oversight of the army; curbing Turkish Armed Forces decades-long influence over politics. There have been highly significant reform steps taken by the AKP in terms of language rights. Prime Minister Erdoğan has delivered a highly emotional speech in the predominantly Kurdish populated city of Diyarbakır located in the Southeast of Turkey in 2005, acknowledging that the state “has made mistakes about the Kurdish issue”78. In the parliamentary elections of July 22, 2007, AKP increased its votes in the Kurdish region of Turkey from around % 26 to approximately % 53. The Kurdish Question is the most pressing political issue before Turkey; no matter from which angle one looks. Scholar Hüseyin Yayman’s research calculating the economic cost and human toll of the Kurdish Question depict a bleak picture. Since 1984; around 44 thousand terror acts have been committed, around 50 thousand citizens of Turkey has lost their lives, around 3,200 villages and according to official estimates, around 1,200,000 people have become internally displaced79, and the Kurdish dominated Southeast and Eastern Turkey have been under “state of emergency” for 50 years80. Hence, if the human cost is not shocking enough, the economic weight placed over Turkey’s developing economy is astounding; Yayman places the total figure of the anti-terrorism measures is 300 billion dollars.81 These figures alone makes it evident, why the concept of language rights, and in general the debates on rights and freedoms in Turkey are anchored to the Kurdish Question. In a sense, the Kurdish Question has become a ganeous wound that is plaguing the whole of the human rights sphere of Turkey. Nonetheless, it is also both inevitable and essential that the
democracy". Few days later, Atalay convened the first of the workshops to listen to the government's intentions to solve the Kurdish Question through "more freedom and more democracy." Later in the visit, Central Anatolian city of Kayseri he reiterated the symbolic words; "Nice things will happen with Turkey" in June 2009. Gül mentioned in this visit, "When Turkey’s democratic standards are raised in total, problems will be automatically resolved". On 29 July 2009, Minister Beşir Atalay announced that the government intended to solve the Kurdish Question through "more freedom and more democracy".

Few days later, Atalay convened the first of the workshops to listen to suggestions regarding the Kurdish Question from some of Turkey’s renowned intellectuals, columnists and academics. On 13 November 2009, Atalay informed the Parliament about the initiative and had preliminary talks with opposition parties regarding the issue. In his speech Atalay said that the Democratic Initiative aims to protect and extend the human rights and freedoms of every citizen, regardless of ethnicity, religion and political or social choice. These developments will align our domestic policies with the European Convention on Human Rights. Atalay disclosed six medium-term goals as part of the Initiative. These were listed as follows:

- An independent human-rights institution
- A commission to combat discrimination
- Parliamentary ratification of the U.N. Convention Against Torture and a national preventative mechanism.
- An independent body tasked with receiving and investigating accusations of torture or mistreatment by the security forces.
- Renaming of residential areas in line with demands from locals.
- Removing barriers for political parties to communicate in languages other than Turkish.

Previously, after a meeting of National Security Council, the list of measures to be taken was summed up by an “anonymous government official” as follows:

1. The former Kurdish names of settlements will be restored. Other ethnic groups in the country will also be able to use place names in their mother tongue if they apply to change them.
2. The scope of freedom of expression will be expanded with changes to Article 216 of the Turkish Penal Code (TCK). At the same time, the government will take measures to ensure that there are no gaps in the law that allow hate speech or hate crimes.
3. Turkish citizenship will be restored to individuals who were forced to leave the country following 1980 military coup.
4. Two-hundred fifty new schools will be built in the East and the Southeast of the country. The practice of the morning reading of the Turkish pledge of allegiance at primary schools will be abolished.
5. Local governments will be strengthened. The bulk of authority of the central government will be transferred to local governments in a way that it will not damage the structure of the unitary state.
6. The content of history courses at high schools and primary schools will be changed over time to exclude the denial of Kurds as an ethnic group.
7. Children from Kurdish families who throw stones at police officers during demonstrations in the East and Southeast have been facing trial in high criminal courts under the Counterterrorism Law. The government will put an end to this practice by changing Article 9 of the law, thus preventing courts from handing down adult sentences for these children.
8. As part of the package, the 81st Article of the Political Parties Law on the Prevention of the Formation of Minorities, which limits the use of non-Turkish languages in political demonstrations, campaign slogans, signs, brochures and other materials, will be changed, allowing the use of Kurdish.
9. A general amnesty will not be granted for “terrorists of the outlawed PKK”.
10. The partial amnesty law stipulated under Article 220 of the TCK -known as the active repentance law- will be made effective.
11. Drafting a new Constitution is not included in the reform plan of the government.

The anonymous source cited said that “the law banning education in languages other than Turkish will be amended, allowing private language schools to teach Kurdish.” It was also reported that:

"According to the government's reform draft, the Ministry of Education will also revise its curriculum to include Kurdish as an elective course at schools in addition to English and German. Although official education in languages other than Turkish will not be allowed, citizens who want to learn Kurdish will be able to study it at public education centers. With an amendment to the Law on the Radio and Television Supreme Council (RTÜK), the government also plans to extend the period of time private television and radio stations are allowed to broadcast in Kurdish. According to the amendment, RTÜK will grant more time to private TV and radio stations to air broadcasts in Kurdish. Private TV stations currently have the right to broadcast programs in Kurdish provided that they do not exceed four hours per week, and radio stations have the same right provided that they do not exceed five hours a week.”

But, the Initiative would not consider “changing the Turkish alphabet to include the letters Q, W and X as part of the initiative.”

In 2008, Istanbul based think tank, the Turkish Economic and Social Studies Foundation (TESEV) had assembled a report proposing resolution to the Kurdish Question largely by focusing over language rights;
5. Health organizations in the region should employ personnel fluent in Kurdish;
6. Educational institutions should employ Kurdish-speaking personnel;
7. State theaters should stage plays in Kurdish;
8. Universities should be allowed to establish Kurdoology institutes.

By 2012, what has been actually done since the beginning of 2009, can be summed up as:
- On January 1, 2009, TRT-6, a 24 hour channel in Kurdish began to broadcast. (However programs for children on TRT-6 fall within the scope of banned programs).
- In June 2009, the Ministry of Justice amended the “Statute on the Administration of Criminal Execution and on the Implementation of Punishment and Security Measures,” thus permitting detainees and convicts to conduct phone conversations in Kurdish.
- In April 2010, Article 58 of the Law on Elections, which “forbids the use of languages and writing other than Turkish in radio and television broadcasts and other election propaganda” was amended and the freedom to use Turkish during elections was recognized. (However, the ban in Article 81/c of the Law on Political Parties still stands). Only a portion of what was targeted by the government could have been achieved by the end of 2009. And the Kurdish Opening faced a dead-end when on 11 December 2009, the Constitutional Court voted unanimously to disband the pro-Kurdish, Democratic Society Party, accused for “being a center of activities against the unity of the state and the nation”.

The verdict resulted in banning of 37 DTP members from politics for five years, including two members of parliament.

Furthermore, since April 2009, around 5,000 people have been detained on charges of being members of “KCK”. This organization is named as the “Union of Communities in Kurdistan”; related to the armed insurgent Kurdish group, PKK. Just as an overview, the KCK is said to be devised as a grassroots structure, with a youth council, women's council and councils of the other territorial entities of areas inhabited by Kurdish people (Turkey, Iraq, Iran, Syria) and one of the European Diaspora, also participating political and armed entities, like PKK, PJAK; etc. The KCK is reportedly devised as a parallel state. It undertakes all the responsibilities performed by state institutions. Its aim is cited as remodeling the Kurdish dominated regions of Turkey into a new system of democratic confederalism. It is said to have established courts to solve disputes, imposing punishments, and also engaging in providing schooling. Most of them are politicians active in the meanwhile closed down Democratic Society Party (DTP) or DTP’s successor, the Peace and Democracy Party (BDP). Trade unionists and human rights defenders have also been among the detainees. By 2012, “Kurdish Opening” facing a stalemate, there have been frequent media reports starting with the sentence; “Kurdish language crisis erupted in the courtroom”. Therefore, the trials of KCK are becoming venues for the advocacy of language rights; probably the only official place where such demands are voiced. The trial scene that keeps repeating itself is when the defendant starts speaking in Kurdish, the judge states that the language spoken is an "unknown language" and turns down the microphone of the defendant. And the aforementioned, 'classical' reports appear in the media; the KCK defendants’ demand for speaking Kurdish before the local courts is rejected, and they rebel against this verdict, and so the vicious circle continues. In that sense, this legal deadlock has come to embody, taking hostage debates on language rights in Turkey. At times, some courts came to accept defendants’ demands to speak in Kurdish, but such cases remain as exceptions. Eventually, the issue of ‘right to defense in Kurdish in courtrooms’ was referred to as one of the ‘demands’ of around 600 inmates of KCK trials, when they started hunger strikes in October 2012. Academic and columnist Mensur Akgün has written in reflection of the hunger strike case that;

“The demand that defenses to be conducted in Kurdish is legitimate. The founding treaty of the Republic, the Lausanne Treaty rules that everyone can have legal defense in their own languages.

Even though this right have not been utilized since years and years, the 5th Paragraph of the Article 39 of the Treaty states that; ‘Notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts’.

As Akgün states, hunger strikes are not just for language rights in judicial processes, but the improving the imprisonment conditions of the PKK leader Abdullah Öcalan. So, such extreme expression of demand for rights becomes an explosive issue, polarizing public opinion. One of the foremost NGOs working on children's rights, Gündem Çocuk (Agenda id Children) has reported that children in prisons are also participating in the hunger strikes for over 40 days.

In other instances, such as when university students campaigned in demand for optional courses in Kurdish in 2001 and 2002, the reaction of the state institutions was quite harsh. When this campaign began, the Higher Education Board recommended university rectors to impose disciplinary sanctions on the petitioners, claiming that the right of petition was being abused in this case. In 2004, 10,538 university students petitioned their universities asking Kurdish lessons to be provided. Among them, 533 were imprisoned, 446 faced court cases filed against, 3621 of them were taken under custody and 15 of them had three years of prison sentence them with the allegation/conviction that they were sheltering ‘terrorists’ or committing acts against the unitary character of the state.

Alongside the students, teachers ran into trouble because of supporting the right to education in other tongue than Turkish. The teachers' trade union Eitim-Sen was almost disbanded in 2004 for this reason. The Chief Prosecutor accused Eitim-Sen of breaching the Constitution because an article in its statutes supports the right to education in the mother tongue. Ankara Second Labor Court ruled in favor of Eitim Sen, acquitting the union of all charges. The court affirmed that “teaching of a mother tongue in private courses would act as a bridge in ensuring the loyalty of the citizens to their state”. Nonetheless, the Chief Prosecutor of Ankara took the case to the Court of Appeals. This body rejected the ruling of the Ankara Second Labor Court and the case went back for a second ruling. The Labor Court insisted with the initial ruling and the case returned to the Court of Appeals once more. The Court of Appeals decided that Eitim-Sen should be closed unless it changed its statute. In the end, Eitim-Sen changed its statute and deleted the clause on education in the mother tongue.

A court decision made by the Regional Administrative Court of Diyarbakır in 2003 also illustrates the various legal, social and political opinions clashing with each other currently in Turkey. This case was brought to the court to suspend the disciplinary punishment given to a
student by his university as he petitioned for Kurdish education. The court's decision favoring
the reversal of the student's punishment was a landmark one. The decision cited that:
"language loss can lead to the death of the nation and a language can survive only if it
becomes a written and literary language", and "it must be accepted that, just as every human
being has right to life, every language has the right to life and protection...To create a
humane universal ground to enable the survival of nations and ethnic groups is the duty and
responsibility of all societies and it is necessary to protect the natural structure of
humankind".101
The court continued as follows: "There is nothing wrong in demanding education and training
service from relevant public institutions or bodies that will enable the person to learn his/her
mother tongue, which is one and the most important part of his/her identity and personality. It
is not acceptable that such a demand would cause polarization on the grounds of religion,
language, race, color and sect. Thus, no tension or clash has aroused between the Kurdish
speaking petitioner and Turkish speaking Turkish citizens because of the action which has
been subject to discipline punishment".102 This court decision still remains as the unique
affirmation of the "mother-tongue" being entitled to protection and preservation of mother-
tongue as a "right". Such "rights based" approach by a state institution was never repeated,
so far.
Yet, there was no application of right to education in the mother tongue in Turkey for the local
linguistic groups other than Lausanne minorities, until the opening of the private courses. If it
is to be proposed that private courses are a remedy to the problem of education of
minorities, this supposition could be easily nullified, as after a couple of years of their
opening, all the eight Kurdish courses closed down. The underlying reasons are
interconnected: as these courses are offered by private enterprise there is concern for profit.
Meanwhile, the Kurdish dominated Eastern and Southeastern regions of Turkey are the
economically least developed parts of the country. Therefore, the Kurdish communities are
rarely, if at all, willing to spend money on learning their mother tongue. Furthermore, it is
questionable if they need courses to learn Kurdish in private courses since Kurdish is
spoken thus learnt at homes.
It should be noted that the education system has become increasingly 'electronic' in the
recent years. As of 2012, it is possible to receive weekly updates in the form of text
messages from the Ministry of Education about course schedules, and status of students, in
terms of absences, grades and so forth. It is debatable whether, such intensive information
services violate the rights and freedoms of students themselves. This service is provided via
cellular phone companies with a symbolic charge, but with consent of the parents only.
Another highly important issue is the controversy created by the legislative process
concerning the 'new' Educational Law (Law No: 6287 enacted on 30 March 2012). The Law
6287 introduced a new system for schooling, in which the levels of education are divided into
three stages, each lasting four years; therefore, the system is called '4+4+4'. The new
system foresees four years of primary, middle and high school, and lowers the school
starting age to 60 months plus, from the previous 72 months plus. In the old system, the
schooling was in the form of "8+4", with primary and middle schools functioning continuously
as a whole. In addition to changing nature of the education system, it also introduces
flexibility to choose among different school types after the initial four years. Students might
opt for vocational schools and "imam-hatip" (schools for raising clerics.
The new law brings about very comprehensive changes, and it is criticized because the
legislations process has been swift, with pressures for a hasty parliamentary approval
process by the proposing AKP government, which holds the majority power. There were
concerns expressed by the civil society and opposition parties. AKP described the new law,
"as a move to extend compulsory education from eight to 12 years". But in fact, it was
criticized by other parties in the parliament and experts that, cutting down the primary
education to four years would lead to lesser schooling for the girls. This is because
conservative parents are known to limit the education of their daughters to primary schooling
only. On the whole, legislative process has led to considerable strife in the parliament, and
there have been complaints by the civil society that there has been no consultative
interaction with stakeholders. Thus, inter alia, policies concerning ‘mother tongue
education’ has been shaped in a matter of weeks with any consultation process taking place.
On the other hand, this new law brought important regulations regarding the linguistic rights
with the offering of mother-tongue courses as electives starting from the fifth grade, under
the title; "Living Languages and Dialects", as in the case of university level courses. Starting
from 2013 onwards, if 10-12 students demand, elective courses in mother tongues will be
initiated, just as in the case of foreign languages like English. When the students were
surveyed at the beginning of Autumn 2012 semester, out of around 1 million 200 thousand
students, 495 thousand of them preferred Math courses, and 413 thousand pupils demanded
foreign languages (not local mother tongues, but Western European languages), while 402
thousand demanded Quran lessons, 256 thousand demanded the course on Prophet
Mohammed’s Life’. The elective of ‘Living Languages and Dialects’ was chosen by only 21
thousand students, predominantly in the Kurdish dominated regions, and primarily with a
preference for Kurdish. There were also preferences for Circassian. Overall options presented to the 5th
grade students were; "Quran", "Prophet Mohammed's Life", Fundamental Religious Knowledge", "Reading Skills", "Writing and Writing Skills",
"Living Languages and Dialects", "Foreign Languages", "Scientific Applications", "Math
Applications", "Computer Technologies and Software", "Visual Arts", "Music, Sports and
Physical Education", "Drama", and "Brain Games". These electives would be taught for at
most eight hours, and the students had to choose four courses. The process has been completed on 21st of September; two weeks after the classes began.

Furthermore, process of compilation of the text books for Kurdish electives has been without any consultation process. Eventually, when the books surfaced in October 2012, they have become a matter controversy. On the one hand, text books of Kurdish have also included Kurdish names that has been facing bans until recently, on the other hand, they are highly stereotypical, almost ‘orientalist’, in representing ‘Kurdishness’. Parts of the text book on ‘professions’ feature only photographs of mustached dark men, and parts on ‘seasons’ have the snowman picture with a highly symbolic local scarf called ‘poqoşu’. On the other hand, it is ironic that a university student has been charged with ‘membership to the terror organization’ because of walking around in Istanbul with the same ‘poqoşu’. However, the fact that the textbooks have made available online instantly is a very positive development. In terms of more technical issues, like grammar, text books have been criticized in dire terms. Even though the instructors taking part in preparation of books are from the only ‘licensed’ institution in Turkey, Artoku University, end result has been deemed as ‘insufficient’ by experts that have been working on the Kurdish language and linguistics for decades.

As the think-tank DISA’s work have been pointing out, ‘mother tongue’ and ‘education’ are intertwined concepts. DISA is a unique institution, alongside Education Reform Initiative (ERG), striving to point out that ‘multilingualism is in fact a humane need’. But, real and tangible needs of neither of the linguistic communities of Turkey are being addressed with new educational policies of the government; even if they are deemed as ‘revolutionary’. Another core problem is the way that ‘mother tongue’ and ‘education’ concepts are linked with Kurdish only, even if almost all the linguistic communities of Turkey are demanding language rights.

4. CONCLUSION: IS THE GLASS HALF FULL OR HALF EMPTY?

Turkey is a country that has been specifically facing difficulties in terms of language rights, with stubborn state policies geared towards curbing freedoms and rights rather than securing them. Throughout the last decade, state policies have become more reflexive of peoples’ needs and demands, including the realm of language rights. But, manner in which the state approaches ‘mother tongue education’ and ‘education in the mother tongue’ has been rather towards ‘restraining rights’ rather than ‘securing’ them.

As can be observed from this odyssey in Republican history and contemporary Turkish nationalism and politics, efforts to create a monochrome society left their imprint primarily over the legislations and policies regarding the education system. Sadly, as much as the state establishment is suspicious against minority demands, the public in general seems to be skeptical about the exercising of minority rights; if not in theory, at least in practice. According to a research conducted on Turkish people’s attitudes regarding the EU membership and changes that would be brought by the integration process, 74% of the people in Turkey think that right to mother tongue is an inalienable human right. But, according to the same opinion poll, 58% of the sample population is against the abolition of the ban on teaching in the mother tongue. A decade later, despite the fact ten more years of violence have added to the bitterness of the whole of Turkey’s society, approval rates for education in the mother tongue have not dipped down.

Education in the mother tongue education is not an extravagance for Turkey, but one of the principal needs on the way to democratization. This right should be recognized for and utilized by not just demographically dominant and Lausanne-recognized minorities, but even the smallest communities of Turkey. Moreover, the mere assertion of the right is not enough; the implementation must be carried out smoothly, without the constant insertions of bureaucratic obstacles. In this sense, affirmative action investment, in some form, is necessary. However, this does not need to involve immediate financial burdening of the state; momentarily any little step counts which denote that the state is genuinely and without any discretion recognizing that Turkey is essentially a multicultural, multi-ethnic and multilingual society.

Does Turkey have the funds to do that? The answer is an unering ‘yes’. Thinking about the huge military spending that Turkey mobilizes for counter-terrorism measures, and the general side financial costs of war economy, such as unaccountability of state officials concerning local and country-wide corruption under the pretext of ‘conserving national security’, proliferation of drug trafficking on both insurgents and state supported local feudal war lords, as well as triggering a new wave of socio-economic burdens by veteran soldiers traumatized by the war, creating new masses of internally displaced persons. Currently, a collective sensation of anomic, conviction that the Kurdish Question is simply ‘irresolvable’ is poignantly taking root among the Turkish society, and in case another episode of internal armed conflict begins, the psychological and financial costs would be too much to bear.

A paradigm shift in the mentality of the state is essential so that a democratic rule of law is ensured. Such a transformation will also lead to a paradigm shift among some of the minority groups themselves, who fall into the trap of ‘minority paradox’ by advocating their nationalism to the extreme. The first tangible legal steps that must be taken are the abolition of the 42nd Article of the constitution, and signing and ratifying the European Charter for Regional and Minority Languages for affirming the ‘goodwill’ towards and respect for minorities and their rights.

Such courageous and decisive legal moves would encourage and assist a healthy environment for public debate, paving the way for a citizens’ democracy. Turkey should have to confront its incessant, chronic fear of being ripped apart by demands of minorities and accommodation of ethno-linguistic diversity, sooner or later.

Drafting and legislation process of the new constitution may have served as the most decisive turning point, redefining Turkey’s social contract. A new constitution may also be singled out as the most powerful tool that could assist the resolution of the Kurdish Question, too. Constitutional law expert Sajó has developed a theory on the role of emotions in constitutional design, stating that “(a) simplified vision of modernity claims that law and constitutional design is all about rationality”, but “Compassion and indignation serve as emotional grounds to accept and claim human rights”.

Currently, the only emotions that seems to be coloring the process of the drafting of constitution making is secrecy and weariness. All in all, the experience of constitution-making in Turkey might be described as a series of missed opportunities, and (if one day) a new constitution is to be made by civilian rule, it might be no exception to rule. Inability of the state to accommodate Turkey’s ethnolinguistic diversity so far, let alone acting as the guarantor and protector of basic human rights and values, including the real and tangible need of language rights serves as one of the prime evidences of this less than hopeful analysis. As de Varennes states; “(in order to have pax humana, peace among humans,
Endnotes

2. Ibid, p. 11.
3. With further, much detailed elaboration due in subsequent parts of the paper, it should be mentioned that the commonly accepted analyses by the scholars affiliated with the ‘state’ also recognize that the early Republican policies were geared towards creating linguistic uniformity throughout Turkey. As an example from an academic from the Police Academy of Turkey; see, Çolak, Y. (2004), *Language Policy and Official Ideology in Early Republican Turkey*, Middle Eastern Studies, Vol.40, No.6, p.67 – 91, <http://pol.emu.edu.tr/staff/ylimaz_pub/Ylimaz%20Colak%20-%20-%20language-ideology.pdf>.
4. According to UNESCO’s Atlas, around 2,500 languages are considered as endangered. Of those, the ones enlisted for Turkey are; Abaza, Abkhaz, Adyge, Cappadocian Greek, Gagauz, Heretevian, Homshetmsa (Hemşince), Judezmo, Kabard Cerkes, Laz, Mlahso, Pontic Greek, Romani, Sret, Turoyo, Ubikh, Western Armenian, Zazaki.
5. Throughout this report, the terms, “linguistic rights” and “language rights” are used interchangeably.
6. As there are no official statistics publicly available, and a limited number of public survey research makes estimates ranging from 15% to 25% of the population for the Kurdish community (out of a population of around 75 million peoples in total). KONDA, one of the foremost companies conducting public opinion surveys, calculated the number of linguistic groups in Turkey, based on mother tongues, as follows in 2006; Turkish 84.54%, Kurdish 11.97%, Zazaki 1.01%, Arabic 1.38%, Armenian 0.07%, Greek 0.06%, Hebrew 0.01%, Laz 0.12%, Circassian 0.11%, Koptic 0.01%. Meanwhile, the same study conducted for the Milliyet daily under the title, “Who Are We?” (Biz Kimiz?), listed the populations of ethnic groups as follows; Turkish 78.1%, Kurdish 13.4%, Arab 0.7%, Caucasian originated 0.3%, Balkan originated 0.2%, Asian Turkish, 0.1%, Roma 0.1%. KONDA (2006), *Who Are We? (Biz Kimiz?)*, Istanbul, p. 19.
7. A study conducted by a think-tank based in the Southeast of Turkey, Siyasal ve Sosyal Araştırmalar Merkezi (SAMER) points out that more than 90% of the total population of the Kurdish dominated regions (of Southeast) desires some sort of education in the mother-tongue; of the respondents, 35.2% wants education in the mother-tongue (full mother-language education at all levels of schooling), 35.1% wants mother-tongue education (Turkish as the main language, with courses in mother-tongues optional), and 21 % opts for “Turkish- Kurdish bilingual education” with other languages as elective courses. SAMER, (2012), *Social Problems and the New Constitution: Perception, Expectation and Demands* (Toplumsal Sorunlar ve Yeni Anayasa: Ailgilar, Beklentiler ve Talepler), Diyarbakır, p. 32.
8. Politically and socially wholly diverse civil society platforms have been emphasizing the importance of language rights in the recent years. In the 26th Abant Platform, which serves as a platform for high-profile liberal intellectuals, journalists, legal experts and politicians convened by Muslim conservative circles (namely the Fethullah Gülen sect), was concluded on 11 March 2012 with the recommendation that “Turkey’s new Constitution should recognize the right to education in languages other than Turkish”.
9. Recent research conducted regarding the use of the mother tongue, specifically of “Kurdish in education” have been pointing out to their perception as “necessities” and “essentials” by the Kurdish communities.
12. The foremost educational syndicate, Eğitim-Sen’s survey findings in 2010 show that 69 % of interviewees said that “education in mother tongue should be regarded as a human right”, and “everyone should be able to receive education in their own mother tongue”. Among people whose mother tongue is Kurdish, the percentage has been 92. Eğitim-Sen (2010), *Survey on Attitudes to Education in the Mother Tongue (Anadillde Eğitim Tutum Anketi)*, Eğitim Sen Publications, Ankara.
19. The foremost educational syndicate, Eğitim-Sen’s survey findings in 2010 show that 69 % of interviewees said that “education in mother tongue should be regarded as a human right”, and “everyone should be able to receive education in their own mother tongue”. Among people whose mother tongue is Kurdish, the percentage has been 92. Eğitim-Sen (2010), *Survey on Attitudes to Education in the Mother Tongue (Anadillde Eğitim Tutum Anketi)*, Eğitim Sen Publications, Ankara.
41. The Lausanne Treaty was signed after the World War I, on 24 July 1923 between Turkey on the one part and the British Empire, France, Italy, Japan, Greece, Romania, and the “Serbo-Croat-Slovene” State on the other. It is considered as the “founding treaty” for the Republic of Turkey. For full text of the Treaty, <http://www.lib.byu.edu/~rdh/wwi/1918p/lausanne.html>


43. For the historical pretext of the discussion see; Ürer, Levent (2003), Minorities and Lausanne Debates (Azınlıklar ve Lozan Tartışmaları), İstanbul, Derin, p. 276-294.


45. Among various other scholars in Turkey, Oran argues that some of the minority rights provisions of the Lausanne Treaty cover all the population. Oran, Baskın (2004), Minority Rights in Turkey: Legal and Practical Obstacles (Türkiye’de Azınlık Hakları: Yasa ve Pratik Engeller), in Human Rights in Turkey (Türkiye’de İnsan Hakları), TODAIE, Ankara, p. 255-260.


47. Ibid.

48. Overall, the population of the Lausanne minorities, alongside various other non-Muslim groups of Turkey became depleted over the years due to political and social discrimination. As mentioned previously in this article, there were various traumatic events in the Republican history prompting waves of emigration. For a study on Jews’ emigration see; Bali, Rifat (2003) Turkey’s Jews in the Republican Years: Aliyah The Story of Immigration, 1946-1949, Konseyi Yillarında Türkiye Yahudileri: Aliya Bir Toplu Göçüm Öyküsü (1946-1949), Istanbul, İletişim.


50. According to a rare insight to the historical communal psychology of the Jews of Turkey provided by Bali, Jews chose to keep a low-profile by assimilating into the Turkish identity, in exchange for being left to their own devices in the early Republican years. See Bali, Rifat (2004), State’s Jews and the ‘Other’ Jews, (Devletin Yahudileri ve Öteki Yahudi), Istanbul, İletişim.


52. For in-depth elaboration of the Law that was amended on 2008, see; Hadimoğlu, Nimet Özbeck (2008), Minority Schools, Foreign And International Schools In The New Law On Private Educational Institutions, Ankara Law Review Vol. 5 No. 1, p. 53-100.


56. ibid Those wishing to have their children enrolled to minority schools must prove that the father is from the community in question. Thus, if the mother from a certain minority is in a mixed marriage, she cannot have the children enrolled in her community’s school.


58. Prior constitutions of 1924 and 1961, regulated the educational sphere with articles of Article 80 and Article 141-169, however, they did not refer to the issue of language to be used in the language of education. It was the Constitution of 1982 that prescribed a ban regarding the language of education with its Article 42.


60. For the full text in Turkish with all amendments, see the governmental website for the Constitution, <http://www.anayasa.gen.tr/1982ay.htm>.


64. This bylaw was modified in 2004, with the addendum of documents that should be turned in to the Ministry of National Education; for the 2004 version, see; <http://oegkm.meb.gov.tr/mevzuat.htm>

65. For the 2002 version, see; <http://www.belgenet.com/yasa/k4771-y1.html>.

66. Those wishing to enroll to the courses must meet certain criteria as well. They should be Turkish citizens, with at least a primary level of education. Additionally, while attending to the course both the teachers and the students must confirm to the dress code envisaged by the Ministry of Education. For the bylaw that regulates dress code; see, <http://www.hukuki.net/kanun/83349.35.text.asp>.

68. For the 2004 version, see; <http://www.belgenet.com/yasa/k4771-y1.html>.

69. Basically, display of non-Turkish nationalist symbols is forbidden, alongside headscarves and audacious clothing.

70. The private courses should have Turkish citizens as their employees, who bear pristine criminal records according crimes committed against the state. Curricula of the course cannot cover
anything beyond language teaching, such as lessons touching upon ‘culture’ or ‘history’. In addition, the teaching programs of the courses have to be approved by the Ministry of Education. The minors under 18 years of age should have the consent of their legal guardians, and the list of the students should be submitted to the Directorate of National Education. This ruling also exists in the law regarding all private courses.

At another instance, initialization of the courses was delayed because the building, in which the courses were to take place, had slightly narrower doors than “it is confirmed by the directives”. The Constitution of the Republic of Turkey, <http://www.tbmm.gov.tr/english/constitution.htm>


The local media institutions broadcasting in Kurdish have reportedly faced major problems in order to keep up with the daily bureaucratic paper work immediately after the amendment. For example, the radios have had to record and transcribe and translate every program they broadcast. The local media institutions broadcasting in Kurdish have reportedly faced major problems in order to keep up with the daily bureaucratic paper work immediately after the amendment. For example, the radios have had to record and transcribe and translate every program they broadcast.

1. For a complete list of the legislations see, <http://www.tbmm.gov.tr/Mevzuat.htm/KursTipYon.htm>

There were also certain obstacles placed before the private courses that only became evident with practice, for example the term “Kurdish language” could not be used in the names of the courses. At another instance, initialization of the courses was delayed because the building, in which the courses were to take place, had slightly narrower doors than “it is confirmed by the directives”. The Constitution of the Republic of Turkey, <http://www.tbmm.gov.tr/english/constitution.htm>

2. For a complete list of the legislations see, <http://www.tbmm.gov.tr/ul_kom/kpk/belgeler.htm>


4. Kurdish is not the primary teaching language of the university courses, but their subject; which is an important distinction.


11. The Higher Education Board (Yüksek Öğretim Kurumu) is described commonly as a centralized control mechanism of the higher education institutions set up after the coup d’état of 1980. <http://www.yok.gov.tr>

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21. The Higher Education Board (Yüksek Öğretim Kurumu) is described commonly as a centralized control mechanism of the higher education institutions set up after the coup d’état of 1980. <http://www.yok.gov.tr>


30. Ibid.

31. Ibid.

32. Ibid.


101. Ibid.
102. Ibid.
103. For the website of the university; <http://tyde.artuklu.edu.tr/en/about-us/>

de Varennes states that “There is only a minority problem when you have a political environment where minorities do not feel safe. The best way to avoid this is to create an environment where minorities are not threatened or unduly disadvantaged and that is a genuinely democratic society, one based on respect of human rights, respect of the rights of minorities, and respect for their differences…”
Using Secondary Education in Ukraine as an Example, this Article Analyzes the Policy of the Newly Established State With Regard to the Language of Instruction in the Schools

Georgiy Kasianov
Using Secondary Education in Ukraine as an Example, this Article Analyzes the Policy of the Newly Established State With Regard to the Language of Instruction in the Schools

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1. HISTORICAL BACKGROUND

Until 1991, Ukrainians had no state and, consequently, no educational system of their own. In the 19th and early 20th centuries, when Ukrainian ethnic territories were ruled by two powerful empires, Austria-Hungary and Russia, Ukrainians were educated either at imperial educational institutions or at teaching establishments maintained by private or public funds. The development of national educational institutions paralleled that of standard (literary) Ukrainian. In the late 19th century, instruction in the native language became one of the basic demands of the Ukrainian national movement—a matter of great cultural and moral significance and of fundamental political principle. If Ukrainians in the Austro-Hungarian Empire managed to obtain limited cultural and educational autonomy in Eastern Galicia, those in the Russian Empire, where the great majority of Ukrainians resided, achieved only episodic results in their struggle for the right to education in their native language. Those rights were nullified by the repressive policy of the tsarist regime, which did not legally recognise the existence of Ukrainian as a distinct language.

During the Revolution of 1917-21 and the short-lived existence of Ukrainian statehood, embodied in the Ukrainian People’s Republic and the Western Ukrainian People’s Republic, the basis for a national system of education with Ukrainian as the language of instruction was laid, but the right of other nationalities to education in their own languages was also guaranteed.

After 1921, when most of Ukrainian ethnic territory was constituted as part of the Soviet Union, while the western Ukrainian lands were annexed to Poland, Hungary, Czechoslovakia, and Romania, the question of native-language education became the subject of acute political conflict. In Czechoslovakia, Ukrainians were guaranteed the right of instruction in their own language in institutions financed by the state. In interwar Poland, the Ukrainian population and the authorities waged an extremely bitter conflict over the language question, especially after the introduction of official educational bilingualism (utraquism) in the 1920s, which led to the de facto elimination of the Ukrainian language from the educational system. In Hungary and Romania, the state openly pursued the cultural assimilation of Ukrainians.

In Soviet Ukraine, which was a republic of the Soviet Union and in which ethnic Ukrainians constituted the titular nationality, the communist authorities were obliged to compromise: from 1923 to the beginning of 1930s they implemented the policy of korenizatsiia (taking root), which was intended to win the loyalty of most of the Ukrainian population and to neutralize the impacts of the Russian ‘bourgeois classes’. That policy provided for the large-scale use of the Ukrainian language in state administration and education and supported the development of Ukrainian culture within the limits of official ideology. The policy was terminated in the early 1930s. A campaign of mass repression was undertaken against the Ukrainian intelligentsia under the slogan of combating nationalism, and part of the peasantry was physically annihilated. These two strata accounted for most of the Ukrainian population. Even so, from the late 1920s to the late 1950s most students in secondary schools completed their studies in the Ukrainian language, although the number of these students was always less than the proportion of Ukrainians in the total population. The number of students in higher educational institutions who studied in Ukrainian never rose above 50 percent.

In the late 1950s and early 1960s, according to the official political doctrine of creating a “new historical community, the Soviet people,” a covert policy of linguistic assimilation of Ukrainians was undertaken. A law “On Linking the School with Life” was adopted in April 1959. According to Art. 9, parents had the right to choose the language in which their children would be instructed and, consequently, a school that offered the appropriate language. In formal terms, this legal norm corresponded to the provisions of international conventions on the right to education: the Convention against Discrimination in Education (1963) and the Convention on Economic, Social and Cultural Rights (1966). In actual fact, it led to discrimination against the titular nationality, especially with regard to its right to education in its own language. In November 1978, the government of the Ukrainian SSR adopted a special resolution “On Measures to Further Perfect the Study and Teaching of the Russian Language in the Ukrainian SSR” that assigned highest priority to the teaching of Russian in Ukrainian schools and made the study of Russian obligatory in Ukrainian-language schools from the first grade.

As a consequence, the use of Ukrainian in the sphere of education shrank inexorably for a period of 40 years—in the mass media, publishing, scholarship and education. If in 1957 the proportion of students in Ukrainian-language schools was 74 percent, by 1981 it had diminished to 54.6 percent and by 1989 to 47.5 percent. The Ukrainian language (which was the state language, according to the Constitution of the Ukrainian SSR) was being forced out by Russian, which enjoyed the status of an official lingua franca in the Soviet Union. Ukrainian was marginalized, losing social status and prestige. In eastern and southern Ukraine, Ukrainian-language schools were closed en masse or converted into Russian-language schools throughout the 1980s. By the mid-1980s, in the largest industrial centers, Donetsk and Luhansk had no Ukrainian schools at all (although ethnic Ukrainians there made up more than half the population), while Zaporizhia had one, Kharkiv two (Ukrainians accounted for more than 60 percent of the population), and Odesa three (54 percent of Ukrainians in population).

2. LANGUAGE AND EDUCATION IN INDEPENDENT UKRAINE

Once Ukraine gained its independence, it faced the task of carrying out a standard nation-building project: Ukraine had been created; now it was time to “create Ukrainians.” Quite naturally, the educational system was to play a central role in that process, and the creation
of a nation was regarded by the authorities and by much of society as restitution of the titular nationality’s cultural and educational rights. Accordingly, the reform of the educational system began with Ukrainisation. The centralized, hierarchical educational system inherited from the Soviet Union presented excellent opportunities for the rapid administrative Ukrainisation of education by initiative from the top. In carrying out this programme, the state had to take account of the multiethnic character of Ukraine, which has 130 various ethnic and national groups, of which the Russians are the most numerous (17.3 percent). The proportion of other ethnic and national groups that might require or demand education in their own languages (Belarusians, Crimean Tatars, Romanians, Moldavians, Jews, Poles, Hungarians, and Greeks) ranges from 0.1 to 0.6 percent of the population of Ukraine. For their own languages (Belarusians, Crimean Tatars, Romanians, Moldavians, Jews, Poles, Hungarians, and Greeks) ranges from 0.1 to 0.6 percent of the population of Ukraine. For the most part, the cultural and educational needs of these groups in their areas of compact settlement could be satisfied without arousing serious problems or conflicts, with the exception of the Russians and the Crimean Tatars.

The question of language of instruction in Ukraine is part of a larger problem, mainly involving the (sometimes hidden, sometimes open) conflict between the task of building a nation-state and the status of the Russian and Russian-speaking population, which was no longer a culturally privileged part of society after 1991 and found itself in the position of a “national minority.” Furthermore, according to most objective analysts, the Russian and Russian-speaking population, which is concentrated mainly in eastern and southern Ukraine and in the Crimea, does not constitute a culturally mobilised and politically organised community capable of aspiring to political separation. The periodic and sporadic conflicts over the status of the Russian language in contemporary Ukraine are mainly associated with political conjunctures, particularly election campaigns, in which certain political forces exploit the language question in their own interests. These conflicts are also incited by Russia’s vigorous cultural expansion, which, on the one hand, exploits Ukraine as a fairly sizable and profitable market for the productions of mass and media culture and, on the other, periodically exploits the question of the status of Russians in the “near abroad” to exercise political pressure as part of its geopolitics.

The Law on Education, adopted on the eve of independence (June 1991) and still in effect (over the past fourteen years, thirteen amendments and supplements have been introduced), assumed that the language of education and upbringing is determined by the Constitution of the Ukrainian SSR (1978) and the Law on Languages in the Ukrainian SSR (1989). That reference was confirmed by art. 7 of the Law on General Secondary Education (1999), but this time with reference to the Constitution of Ukraine (1996, Art. 10, Art. 53).

The Law on Languages in the Ukrainian SSR was adopted in the midst of acute political struggle between national-democratic forces and the communist nomenklatura on the eve of the disintegration of the USSR. Accordingly, its formulations on the language of instruction resulted from a particular compromise between those forces: on the one hand, the law raised the status of the Ukrainian language, especially in education; on the other hand, it comprised distinct rudiments of a privileged status for Russian. Articles 25-29 of the Law on Languages assert that instruction and upbringing in the Ukrainian educational system, from pre-school establishments to universities, is to be conducted in Ukrainian. The study of Ukrainian became obligatory in public schools, but Russian was also designated as obligatory. In compact settlements of citizens of other nationalities, the law permitted the establishment of educational institutions with other languages of instruction.

In October 1992 the Ministry of Education issued a decree according to which, by 1 September 1993, the proportion of first-grade pupils studying in Ukrainian in the schools of Ukraine was to correspond to the proportion of ethnic Ukrainians in any given region. For the most part, this decree was carried out according to methods of bureaucratic administration, with inadequate cadres of trained and retrained teachers and insufficient quantities of textbooks and instructional materials in the Ukrainian language. This, indeed, was the culmination of the process initiated by the Law on Languages (1989). The tempo of Ukrainisation of elementary schools was most rapid in 1989-91: if in 1987/88 an average of 15 percent of pupils in lower grades were studying in Ukrainian, by 1991 that percentage had risen to 53. At the beginning of the 1993/94 school year, 66 percent of pupils in lower grades were studying in Ukrainian across the country (while Ukrainians made up 72.7 percent of the population). At the same time, secondary education in general was being Ukrainised, also by means of decrees and administrative measures, under conditions of chronic lack of funds and technical resources and against the background of the economic decline that lasted until 2000 and greatly complicated the task of supplying the requisite material and financial wherewithal for the process. In many cases, there was a mere pretense of going over to the Ukrainian language, or the process was sabotaged, especially in regions where the proportion of Ukrainians in the population barely exceeded 50 percent (the Donbas; Odessa). Generally speaking, however, the Ukrainisation of schools met with a positive response from most of the population, including Russophones (with the exception of the Donbas and the Crimea, where the policy of Ukrainising schools was seen by the part of Soviet-nostalgic population as an encroachment on the cultural rights of the Russian and Russian-speaking population on the part of the state). The principal methods of Ukrainising the schools (aside from decrees) were: establishing Ukrainian classes in Russian schools; converting Russian schools into Ukrainian ones (with parental consent); going over to Ukrainian for subjects previously taught in Russian; publishing more textbooks and literature on instructional methods in the Ukrainian language; increasing the number of students in higher pedagogical training institutions specialising in Ukrainian language and literature; and modifying plans and programs of instruction so as to increase the number of “Ukrainian studies subjects” (Ukrainian language and literature; geography and history of Ukraine; the introduction of the course “Ukraine and I” in elementary schools).

In 1999, at the behest of a group of parliamentarians (Case No. 1- 6/99), the Constitutional Court of Ukraine considered the question of how the Law on Languages was being implemented in accordance to Art. 10 of the Constitution of Ukraine. Formally, the appeal of MP group was to get on official comment on the legal grounds of use of Ukrainian in official communication and in education process at local level, implicitly - in the areas where non-Ukrainian population constituted a considerable share (up to 50%). Informally, the appeal was motivated (and formulated accordingly) by purely political reasons - 1999 was a year of presidential elections, ‘the language card’ had been always used in a big political game. In it’s decision the Constitutional Court has stressed the need for the obligatory introduction of Ukrainian in all government institutions, including local governments and educational establishments. One judge, however, has formulated a special opinion.
according to which the decision contradicted a number of other articles of the Constitution of Ukraine, and was taken based on purely normativist assumptions. Next year (February 2000) the Council on Language Policy was established as part of the presidential administration. It has developed a draft decree “On Supplementary Measures to Expand the Use of the Ukrainian Language as an Official Language,” which took effect in June of the same year. Once again, it pointed out that the educational system should be brought into line with the ethnic composition of the population. In 2003 the State program of development and functioning of Ukrainian language for the years of 2004 - 2010 was approved by the decree of the Cabinet of Ministers of Ukraine (Decree No. 1546). It has called to optimize the network of education establishments for continuous education and learning in Ukrainian.13

Regardless of numerous difficulties associated with lack of time, funds, and the markedly administrative and bureaucratic character of the Ukrainisation of education, the 1990s marked a clear turning point in the “nationalisation” of secondary education.

Official statistics are as follows:14

Table 1. Percentage of students in general secondary schools studying in Ukrainian across the country

<table>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Proportion of students studying in the Ukrainian language</td>
<td>47.5</td>
<td>49.3</td>
<td>56.5</td>
<td>62.8</td>
<td>69.8</td>
<td>76.8</td>
<td>80.4</td>
<td>82.1</td>
</tr>
</tbody>
</table>

If one considers the data through the prism of Ukraine’s regions, it becomes apparent that the greatest changes took place in the central and southern parts of the country and in the capital.

Table 2. Proportion of pupils in general secondary schools studying in Ukrainian (Central and Southern Ukraine)15

<table>
<thead>
<tr>
<th>Central oblasts</th>
<th>1991</th>
<th>2001 (rounded)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zhytomyr</td>
<td>76.7</td>
<td>96.3</td>
</tr>
<tr>
<td>Poltava</td>
<td>74.3</td>
<td>93.0</td>
</tr>
</tbody>
</table>

The biggest disproportion between share of Ukrainians in population and share of Ukrainian language schools is most obvious in the Autonomous Republic of the Crimea, where Ukrainians make up 24 percent of the population, a mere 8 percent of pupils have the opportunity to study in Ukrainian.16 In Eastern oblasts, particularly in Donetsk (share of Ukrainians - 56,9% and Luhansk - 58,0% - the share of pupils studied in Ukrainian did not reach the desired proportion, while in Kharkiv it has exceed the average (share of ethnic Ukrainians - 70%)17. It was in these regions, with a large proportion or a majority (as in the Crimea) of Russian or Russian-speaking residents, that the official policy of Ukrainisation, particularly in 2004 - 2009 aroused the most protest, both from the local bureaucracy and from a large part of the population. The complaint has usually been (and remains) that the cultural and educational rights of that part of the population are being violated, especially the right to study in one’s native language.

The government’s efforts to introduce Ukrainian as a language of instruction mechanistically, by means of decrees and the simple conversion of schools from one language to the other, affords grounds for such argumentation. At the same time, one cannot avoid noting that if the violation of the rights of Russian speakers in these regions is more in the nature of a projection, mainly a hypothetical danger, the violation of the right of Ukrainians to instruction in their own language is a fait accompli—a legacy of the Soviet period that has not yet been overcome. It is also worth noting that, according to analysts’ observations, opposition to the general policy of introducing Ukrainian as the official language has not spread to the sphere of education (with individual exceptions).18

If the rather dramatic change in the status of the Russian language since 1991 has periodically given rise to sporadic conflict (and continues to do so), changes in the status of languages of other national minorities have been mainly positive in nature. Until the late 1980s, Ukraine had no schools or classes with minority languages of instruction. In areas of compact settlement of national minorities, instruction took place in Russian. In the course of the 1990s, the cultural and educational needs of the basic national groups that demanded instruction in their own languages were generally satisfied. The greatest problem was that of creating appropriate conditions for the Crimean Tatars, who were repatriated to the Crimea en masse: in the first half of the 1990s, almost 250,000 returned, creating a certain amount of tension with regard to the provision of instructional facilities in the Crimean Tatar language, by the date the problem is partly solved.

Table 3. Dynamics of number of schools with the languages of national minorities in Ukraine19

<table>
<thead>
<tr>
<th>Year</th>
<th>Ukrainian</th>
<th>Russian</th>
<th>Romanian</th>
<th>Hungarian</th>
<th>Polish</th>
<th>Crimean Tatar</th>
<th>General number of schools (round off figures)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>16926</td>
<td>1594</td>
<td>94</td>
<td>69</td>
<td>4</td>
<td>14</td>
<td>21900</td>
</tr>
<tr>
<td>2004</td>
<td>16945</td>
<td>1411</td>
<td>95</td>
<td>70</td>
<td>4</td>
<td>14</td>
<td>21700</td>
</tr>
<tr>
<td>2008</td>
<td>16974</td>
<td>1253</td>
<td>89</td>
<td>70</td>
<td>5</td>
<td>14</td>
<td>21200</td>
</tr>
</tbody>
</table>
It will be safe to say that graduate decrease of the number of Russian schools in 2000s was mostly a result of general reduction of number of schools in Ukraine that was in turn caused either by so-called demographic gap. Number of pupils in secondary schools has dropped from 6 647 000 in 2001 to 4 228 000 in 201020. The most dramatic shift, however, occurred in 1990-s. In 1990 there 4663 schools with Russian as a language of instruction were registered in Ukraine. In 1990s majority of them were turned in to Ukrainian-speaking schools or into schools with mixed language of instruction (mostly Ukrainian and Russian).

Generally the demand for schools with teaching at the languages of national minorities in Ukraine is satisfied, however, recent discussion on the new Law on the Foundations of State Language Policies (July, 2012)21 has provoked a numerous tensions mostly around status of Ukrainian and Russian languages. The Law draft itself formally was adopted to match the requirements of the European Chart of Regional or Minority Languages (1992, signed by Ukraine in 1996, ratified in September 2005, came into force in January 2006). Informally it was drafted and promoted to win the sympathies of Russian-speaking electorate at the eve of upcoming parliamentary elections. Whatever reasons were taken into consideration, the decision of the parliament has immediately provoked protests of the Ukrainian language defenders: a massive public protest (including hunger strike) was organized in the very heart of the capital, at the Ukrainian House, several dozens of non-governmental organizations started different campaigns in defense of the Ukrainian, local councils in Western Ukraine have adopted resolutions denying the Law. Concurrently, local councils of different levels (oblast, city, rayon) in Southern and Eastern Ukraine hastened to pass their own resolutions to welcome Russian and other local languages as regional ones.

It is unclear what would be outcomes of the adoption of this law to education: some observers believe that it might result in imposed limitations on use of Ukrainian in schools at certain regions, mostly in the South and East. At the same time the law might be used by Ukrainians in Crimea, where they constitute a local minority (about 25%) - they might claim an expansion of Ukrainian schools and classes (at the moment, there are only 7 Ukrainian schools in Crimea which is inadequate to the number of Ukrainians at peninsula). Accordingly, Russian and Russian speaking population in Western regions might also raise their claims for more proportional representation of Russian in education. For instance, in some oblasts of Western and Central Ukraine, there is no schools with Russian as a major language of instruction (Lviv (without city of Lviv) Volhynian, Ivano-Frankivsk, Rivne, Vynnytska, Kyivska (without Kyiv), Ternopil, Chernihiv)22 - however, in some cases the demand is satisfied with the schools with mixed language of education (as a rule, Ukrainian and Russian) or by establishing of a separate classes. In 2003 - 2010, however, the number of schools with several languages of instruction has shrunk from 2183 to 149623. One is clear enough: the new Law has evoked a new range of controversies over language issue and it is easy to predict that the number of conflicts will grow, and the educational sphere will be affected.

Endnotes

1. Author expresses his deep gratitude to the former Deputy Minister of Education and Science (2008 - 2010), Mr. Pavlo Polianski for his assistance in preparation of this report.

2. According to conservative estimates, during the man-made famine of 1932-33 Soviet Ukraine lost close to three and one-half million people, or more than ten percent of its population.


5. Further includes data on state and communal secondary education establishments only. Private schools, pre-secondary and higher education establishments are out of analysis.


7. See http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=518-78-%EF


21. The Law was adopted by the pro-presidential factions (they constitute a majority) of the Ukrainian Parliament in the course of a bitter political controversies over future parliamentary elections. According to opposition statements, the Law has been passed with an outrageous violations of regulations and procedures.

22. Second regular public report on implementation of the European Chart of Regional or Minority Languages http://commongoal.org.ua (visited at 20 October, 2012)

Linguistic Rights in Education under Australian Law (2005)

Jim Jackson
1. INTRODUCTION

This paper examines rights to linguistic education under Australian law. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) does not apply in Australia so this cannot be a direct source of rights, but do other conventions or domestic laws assist in establishing a right to mother tongue education in Australia, and do these apply in Australia? This paper will provide general background on language education in Australia and includes a discussion on Indigenous languages and the law.

2. INDIGENOUS LANGUAGES IN AUSTRALIA

Upon colonisation in 1788, the British were to find many Indigenous nations and peoples speaking an estimated 250 languages many with 2 or more dialects. It has been estimated that there are now only 64 Indigenous languages spoken in Australia reflecting assimilationist policies up until the 1970s. Erebus describes the destruction of Aboriginal languages: “At the time of European colonisation, there were about 250 distinct Aboriginal languages and around 500 language varieties used across Australia. In little more than 200 years, 150 Australian Indigenous languages have been all but destroyed. While many Aboriginal languages continue to survive, all but a few are under threat. Most have fewer speakers than ever before. Language diversity and multilingualism are declining. Today, only about 20 are still transmitted from one generation to the next, naturally, as first languages of speakers than ever before.”

These languages are and were very diverse, with a range of styles. Very few of these languages now number more than a 1000 speakers. De Varennes suggests that this makes it difficult for a state to guarantee access to education at all levels in the context of Article 15 of the draft UN Declaration of the Rights of Indigenous Peoples. This Article would require equitable educational services and an attack on Aboriginal cultures.

Noting that the bilingual approach was not without its difficulties, Hoogenraad reports that because of Warlpiri community support in the Central Australian part of the Northern Territory a bilingual approach has survived as “two way education”: “The old Bilingual schools had some precedent, but not much. The models of Bilingual education they had worked under emphasised the learning of initial literacy in the vernacular and initial instruction in the vernacular, then transferring to English: the so-called Transfer model. And even initial literacy and instruction in the vernacular were often not attained in practice.” “Aboriginal teaching staff had always understood Bilingual to mean Two-Way, with the children learning both ways, local Aboriginal and English language and knowledge across the curriculum. They understood that education was not just about literacy and language development. They understood that children develop their language – and literacy – skills through learning about their world and their culture. And sometimes they managed to teach in this way, but there was no curriculum in place to ensure that this was achieved systematically.”

Hoogenraad stresses the importance for such Two Way language success of a regionally organised Indigenous Language and Culture Curriculum and training programs aimed at local Aboriginal people.

In other states some bilingual programmes have operated from time to time, including in the Kimberley in Western Australia, and in Aurakun in Queensland. One issue that arises in such programmes is the wider problem of having culturally appropriate qualified teachers. Thus, in the Pitjantjatjara region of South Australia, schools stopped bilingual programmes at the request of the Indigenous community because they did not want non Pitjantjatjara people teaching Pitjantjatjara. An Australian Parliamentary Committee found: “This opposition to bilingual education is not an isolated case. Some other areas with strong traditional language

Nakarra, Gorgonne, Kunbarlang, Dalabon, Djinang, Wurlaki. English is often spoken as a third or fourth language by Kunibidji. In per capita terms, Maningrida may be the most multilingual community in the world.”

Conscious of such issues, the Commonwealth Government in the early 1970s funded the establishment of bilingual programmes in schools in the Northern Territory. Claiming poor standards the bilingual program was controversially abandoned by the Northern Territory government in 1998, though Nicholls notes the lack of available hard data supporting this claim and suggests it was a cost cutting exercise. The decision was criticised by the Aboriginal and Torres Strait Islander Commission (ASTIC) to the United Nations Committee on Economic, Social and Cultural Rights as one which would “impact adversely on Indigenous Peoples.” ASTIC also saw it as “a denial of the right of Aboriginal people to equitable educational services and an attack on Aboriginal cultures.”

Citing the sad history of Australia’s relationship with its Indigenous peoples including, at times, the forbidding of children using their language and the forced removal of children from their parents, known in Australia as the Stolen Generation, Nicholls sees the removal of the bilingual program as an abuse of human rights.

The complexity and sophistication of Indigenous languages is noted in an example provided by Auld: “As a minority Indigenous language group, members of the Kunibidji community use Ndjébbana as their preferred language of communication. Nearly all Kunibidji community members live in Maningrida, a remote community in Arnhem Land in the Northern Territory. Members of the Kunibidji community are the traditional landowners of the lands and seas directly around Maningrida. Maningrida was developed as a trading post rather than a mission, therefore, the linguistic diversity in Maningrida is unique. Other languages that are spoken in Maningrida include Burarra, Gun-nartpa, eastern Kunwinjku, Rembarranga,
have expressed opposition to bilingual education. Parents want the best Western education for their children and for traditional language matters to be kept separate.\textsuperscript{14}

Amery reports that a national initiative, the \textit{Australian Indigenous Languages Framework}, has allowed the development of a truly innovative curriculum and the teaching of a number of accredited programmes at secondary level, but again the success of the programme has been limited by insufficient resources and teachers.\textsuperscript{15} Furthermore, criticism has been levelled at the educational authorities for not informing Indigenous communities of Commonwealth language funding because the "overwhelming priority set by the States has been to give priority to support for Asian and European languages, with little attempt made to even inform Aboriginal and Torres Strait Islander people of the availability of such funds."\textsuperscript{16}

In short, Australia has a very sad record regarding Indigenous language support.

3. NON INDIGENOUS LANGUAGES IN AUSTRALIA

Wave after wave of migration has brought many additional cultures and languages to Australia. English is the dominant language and this not only reflects the importance of English, Irish and Scottish migration but also deliberate language policies based upon assimilation,\textsuperscript{17} and immigration policies designed to exclude Asians in preference to Europeans. These included the infamous \textit{White Australia Policy} containing, \textit{inter alia}, language tests that could be administered by immigration officials in any language. The dominance of Cantonese, Mandarin and Vietnamese languages in the Tables below indicates that modern Australia has rejected that policy and has embraced Asia.

Table 1 provides an idea of languages in modern Australia, the number of language speakers and the variety of languages spoken.

<table>
<thead>
<tr>
<th>Language</th>
<th>2001</th>
<th>1996</th>
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<tbody>
<tr>
<td>Italian</td>
<td>353,606</td>
<td>375,834</td>
</tr>
<tr>
<td>Greek</td>
<td>263,718</td>
<td>269,831</td>
</tr>
<tr>
<td>Cantonese</td>
<td>225,307</td>
<td>202,194</td>
</tr>
<tr>
<td>Arabic (incl. Lebanese)</td>
<td>209,371</td>
<td>177,641</td>
</tr>
<tr>
<td>Vietnamese</td>
<td>174,236</td>
<td>146,192</td>
</tr>
<tr>
<td>Mandarin</td>
<td>139,288</td>
<td>92,065</td>
</tr>
<tr>
<td>Spanish</td>
<td>93,592</td>
<td>91,270</td>
</tr>
<tr>
<td>Tagalog (Filipino)</td>
<td>78,879</td>
<td>70,343</td>
</tr>
<tr>
<td>German</td>
<td>76,444</td>
<td>99,050</td>
</tr>
<tr>
<td>Macedonian</td>
<td>71,994</td>
<td>71,414</td>
</tr>
<tr>
<td>Croatian</td>
<td>69,850</td>
<td>69,152</td>
</tr>
<tr>
<td>Polish</td>
<td>59,056</td>
<td>62,774</td>
</tr>
<tr>
<td>Turkish</td>
<td>50,692</td>
<td>46,169</td>
</tr>
<tr>
<td>Serbian</td>
<td>49,202</td>
<td>37,238</td>
</tr>
<tr>
<td>Hindi</td>
<td>47,817</td>
<td>33,988</td>
</tr>
<tr>
<td>Maltese</td>
<td>41,392</td>
<td>45,179</td>
</tr>
<tr>
<td>Dutch</td>
<td>40,187</td>
<td>40,686</td>
</tr>
<tr>
<td>French</td>
<td>39,643</td>
<td>39,392</td>
</tr>
<tr>
<td>Korean</td>
<td>39,528</td>
<td>29,930</td>
</tr>
<tr>
<td>Indonesian</td>
<td>38,724</td>
<td>27,195</td>
</tr>
</tbody>
</table>

Table 2 examines enrolment in Languages other than English in year 12, the final year of secondary schooling in Australian schools.

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<tbody>
<tr>
<td>Japanese</td>
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<td>8</td>
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</tr>
<tr>
<td>Greek</td>
<td>7</td>
<td>6</td>
<td>5</td>
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It is interesting to compare Table 1 and 2. In the year 2000 none of the top 3 community languages, Italian, Greek and Cantonese, were the three main languages taught, even though there has been significant migration from those countries. However, Chinese and Italian are in the top 5 in both lists. The high number of Japanese enrolments represents national economic policies in the 1990's\textsuperscript{20} which had an influence on language teaching in schools, recognising the dominance of Japan as an Australian trading partner. Japanese migration to Australia has been low.

The dominance of French and German languages in schools represents long traditions in Australia favouring those languages and the existence of trained expertise to teach them. This is despite the fact that French is a lowly 17\textsuperscript{th} on the community language list and German 9\textsuperscript{th}. Read together the Tables suggest that express government policy seems to have a larger influence on what languages are taught rather than a desire among immigrants to maintain their mother tongue.

One constraining factor on language education in Australia has been the limited supply of qualified language teachers.\textsuperscript{21} In some parts of Australian society there is a rather narrow minded perception that there may not be the urgency to study another language given the
emerging dominance of English in international commerce, in aviation, and its official status in organisations such as the OECD, and the United Nations.26

On a more positive side it has been noted that: “Rather, there is an emerging consensus that the key rationale for learning a language other than English is to acquire and develop knowledge and skills for intercultural understanding and engagement. This consensus incorporates the belief that learning for the fullest possible economic, cultural and social participation should enable people to have greater understanding of and engagement with the wider global community and the many societies and cultures that constitute it.”

Despite these aspirations, Australian language instruction ranks well behind many other countries. At 40 hours per year devoted to foreign language instruction for 9 – 14 year olds the Australian hours per year are only half those of England, a quarter of Belgium and Greece, and one third of Japan.24

4. A SPECIAL MULTICULTURAL GROUP: LANGUAGE RIGHTS OF CHILDREN IN DETENTION

Australia has a policy of mandatory detention of people unlawfully entering Australia, and until very recently a significant number of those detained were children.25 The Australian Human Rights and Equal Opportunity Commission (HREOC) has made a number of findings in its Report of the National Inquiry into Children in Immigration Detention.

In relation to language, the Report found that children have not been denied the right to use their language, nor did it find any breaches of the Convention on the Rights of the Child, nevertheless there were “no measures in place to actively facilitate the maintenance and development of this language”. There was no access to written materials or language schools, and this was a particular problem for unaccompanied children and children from minority languages.26 Classes were conducted in English, not in the mother tongue. There was some use of detainees as teachers aides though this was “not applied as a uniform policy”.27

On non language matters HREOC found multiple breaches of the Convention especially of Articles 2 and 28.28 Immigration detention laws were “fundamentally inconsistent with the Convention on the Rights of the Child”29 not only placing them at “high risk of serious mental harm”,30 but also finding that they “were not in a position to enjoy….the right to an appropriate education on the basis of equal opportunity.”31

5. THE LAW ON LINGUISTIC RIGHTS IN AUSTRALIA

Australia is party to a number of international conventions of relevance to a right to linguistic education:

- United Nations Universal Declaration of Human Rights (1948)
- UNESCO Convention against Discrimination in Education (1962);
- International Convention on the Elimination of All Forms of Racial Discrimination (1965);
- International Covenant on Civil and Political Rights (1966);
- International Covenant on Economic, Social and Cultural Rights (1966);
- Convention on the Rights of the Child (1989);

Under Australian law a convention has to be given force in domestic law by Act of Parliament before it has direct effect.32 The executive government has the power to enter into treaties, but only parliament has the power to transform the treaty into domestic law. Accordingly the above treaties have not been incorporated into Australian law merely by their ratification or accession.33

Have they been incorporated by statute?


The Convention on the Rights of the Child (CoRC) and the International Covenant on Civil and Political Rights are included in a Schedule to the Human Rights and Equal Opportunity Commission Act 1986 (Cth). This does not technically implement the Conventions in Australian law though it does assist in the defining of human rights and makes these international instruments the subject of the functions of the Human Rights and Equal Opportunity Commission. Breaches of the Convention can be notified to the Commission.34

A ratified treaty has influence on Australian domestic law, even when not enacted in domestic law. It has been held that a minister of state, and those acting under his or her authority, is required to pay some attention to such treaties when exercising a discretion: Minister for Immigration and Ethnic Affairs v Teoh.35 Furthermore treaties and customary international law may impact on the common law of Australia36 though the extent to which decisions of courts such as the European Court of Human Rights will be persuasive on Australian courts in the future is not determined.37

Australia is a federation and school education is controlled at the State and Territory level. An analysis in Australia of linguistic rights in education requires an examination of a number of State and Territory Acts. These do not reveal any legal right to be instructed in a language other than English or any legal obligation on the state to do so.38 Linguistic rights are not addressed in these statutes, the closest is the Education Act 1990 (NSW) which requires every person concerned in the education of children of school-age to have regard (as far as is practicable or appropriate) to provision of an education for Aboriginal children and for
children from non-English speaking backgrounds that has regard to their special needs: s 6.

Accordingly it is not possible in Australia to point to express statutory linguistic rights though certain aspects of rights contained in the above conventions have been enacted. Would these ground a cause of action in Australia? The most likely remedy would be sought under the Racial Discrimination Act, relying on the International Convention on the Elimination of All Forms of Racial Discrimination. The argument would run that failure to provide language instruction and indeed education in the mother tongue generally would breach sections 9 or 10 because they failed to provide equality before the law, when compared to Australians whose mother tongue was English. If this argument was followed to its logical conclusion governments would be obliged to provide bilingual instruction to all ethnic minorities. This argument is unlikely to succeed:

(i) The Act refers to the International Convention on the Elimination of All Forms of Racial Discrimination for assistance in interpretation of rights as used in the section. That convention does not expressly guarantee the linguistic rights described above.

Relevant parts of sections 9 and 10 of the Racial Discrimination Act provide: “Section 9(1): It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life…. (2) A reference in this section to a human right or fundamental freedom in the political, economic, social, cultural or any other field of public life includes any right of a kind referred to in Article 5 of the Convention. Section 10(1) If, by reason of, or of a provision of, a law of the Commonwealth or of a State or Territory, persons of a particular race, colour or national or ethnic origin do not enjoy a right that is enjoyed by persons of another race, colour or national or ethnic origin, or enjoy a right to a more limited extent than persons of another race, colour or national or ethnic origin, then, notwithstanding anything in that law, persons of the first mentioned race, colour or national or ethnic origin shall, by force of this section, enjoy that right to the same extent as persons of that other race, colour or national or ethnic origin.”

(ii) The introduction of a full program of bilingual education in schools and educational providers at all levels in Australia across the range of ethnic groups in this country would be prohibitively expensive. Such a dramatic change in educational practice across the continent would need the clearest language in a statute. Strong evidence of such a principle under international law could assist domestic interpretation but this is not yet proven. The International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights do not provide express rights of bilingual education. Principle 7 of CoRC provides: “The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society…."

Article 27 of the International Covenant on Civil and Political Rights provides: “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.”

It is large step from requiring education to be provided or not preventing a language to be used to requiring schools to teach bilingually.

In the South African decision re Gauteng School Education Bill of 1995 Sachs J traces the history of Article 27. He notes that “Article 27 does not contain any explicit reference to positive measures to which the minority might be entitled. Proposals for including in Article 27 a list of concrete rights such as state supported schools for minorities or language rights, in fact failed.” Citing a number of authors strongly supporting minority rights, including special rapporteur Capotorti, Sachs J makes the point that Article 27, even on the authors’ strongest arguments is “a framework measure which has implicit in it an incipient or embryonic obligation on the State to pay regard to the needs of cultural, linguistic and religious minorities” which “falls far short of imposing a firm duty on the state to promote the separate development of minorities (as opposed to the duty of preventing discrimination against them, where there is a high level of responsibility).”

This absence of positive rights was also found in the ECHR in the Belgian languages case which held that Article 2 did not “safeguard the right of each person to receive an education in conformity with his cultural and linguistic preferences.”

6. INDIGENOUS LANGUAGES AND BILINGUALISM: A SPECIAL LEGAL CASE?

One issue which arises in a multicultural society such as Australia is whether Indigenous languages should have any special place in the fight for adequate linguistic resources. De Varennes convincingly argues that Indigenous languages around the world should, suggesting that international law and domestic law are moving towards increased recognition of their “special position”: “They are not simply another minority group, but would seem to deserve greater latitude, and also greater assistance, in the maintenance of their traditional customs, practices and languages than their demographic strength would normally warrant when applying the right to non-discrimination or the right to use their languages with other members of their communities. There is a visible trend at both levels signalling the unique relationship between a state and its indigenous peoples which would appear to require concrete government measures allowing the continued use of these languages, and even
correcting the results of previous assimilationist practices by public authorities. At the very least, it would appear that a state has the obligation to provide the resources for the use of indigenous languages as medium of instruction in education….”

A joint Australian parliamentary report has highlighted the disadvantage under which Australian Aboriginal children operate generally in the education system: “Concern was expressed that some Aboriginal children do not have access to education beyond primary school level and services for children with specific difficulties or disabilities are inadequate. Eleven per cent of Aboriginal and Torres Strait Islander children aged 15 years and over have never been to school. An Indigenous child has only a 17 per cent chance of completing school to year 12, compared with a 70 per cent chance for other children. In addition, an indigenous child has a one in eight chance of going to school between the ages of 5 and 9.”

HREOC has commented on other discriminatory features about Indigenous education especially in remote areas, including a lack of schools, teachers or tutors to supervise distance education and insufficient secondary schooling. Most importantly for our present discussion, HREOC commented on the access issues surrounding Indigenous children “whose only curriculum is in a language which they have never heard spoken at home – English.” HREOC provided some useful statistics on Indigenous languages in Australia. In the Northern Territory 61% of the Indigenous population speak an Indigenous language at home. In rural areas of Western Australia and South Australia it is 51% and 20% respectively. In Queensland it is 15% of Indigenous households. In New South Wales, Victoria and Tasmania the percentages are much lower: less than 1%, 1.1% and 0.2% respectively.

What is the legal position?
There are no cases specifically on Indigenous language rights in Australia. There are two cases on language rights in education which come from an unusual source, and that is disability law. In Catholic Education Office v Clarke the Full Federal Court dismissed an appeal brought by the Catholic Education Office against a decision of the lower court which had found that an offer of enrolment to a student with a profound hearing impairment excluding the provision of Auslan (described in another case as “the native language of the deaf community in Australia”) discriminated against the student. In Hurst and Devlin v Education Queensland a judge awarded $60,000 because of the failure of the school to offer Auslan to Devlin. On the facts he dismissed the case brought by Hurst. These two cases are significant in that they recognise a linguistic education right in the children. Technically they are of less use in the non disability cases because of significant differences in the wording of the Disability Discrimination Act (1992) when compared to the Racial Discrimination Act, but they are encouraging and represent movement into new ground.

Racial discrimination has been argued in Australia courts or tribunals in relation to Indigenous peoples and their education. In Aboriginal Students Support & Parents Awareness Committee v Minister for Education, Northern Territory of Australia HREOC did not find discrimination in a case where a decision had been made to close a school and transfer the students to another school in the town. It will be recalled that s 9(1) of the Racial Discrimination Act requires an “act”. Having found that the closure of the school was an act under s 9(1) Commissioner Carter continued: “…..finally, the sub-section strikes at acts based on race which in effect nullify or impair the exercise or enjoyment of the right. [to education] The human right to education and training is one thing; the form in which the right may be enjoyed or exercised is something different. If the “act” has the effect that the right to an education is recognised and maintained for the person’s “enjoyment”, but that the form in which the education is provided is different from that in which it was previously provided, that is not prima facie unlawful unless it can be established that the altered form in which the right to education is to be exercised or enjoyed is such as either to effectively nullify or impair the enjoyment or exercise of the right on an equal footing with others.”

Accordingly unlawful discrimination was not found because the children could attend another school in the same town.

Following on from this analysis it can be argued that denying an Indigenous child education in their mother tongue when their English skills are poor or not existent is clearly a denial or impairment of education, going not just to form but to substance. The situation is exacerbated for children in remote and rural areas; urban Indigenous children are more likely to have English as their first language and to have access to better language education support. In the former case there may well be evidence of denial or impairment, the element missing in the Traeger Park Primary School case. Yet on this occasion where would the evidence be of an act? Systemic failure to provide bilingual education is probably insufficient as such an act, and support from international law is not yet forthcoming. In summary, the element present in Traeger, the act, is missing and the element absent in that case, the impairment may be present. In either case the Indigenous community will not prevail.

The outcome could well be the different where a government moves to remove bilingual program, just as the Northern Territory did in 1998. In such a case there was a specific and identifiable act. Unfortunately this was not tested in the courts at the time.

7. CONCLUSIONS
Re Indigenous people
Conventions which expressly or impliedly create Indigenous bilingual rights have not been ratified by Australia or have not yet entered into international law. For example, Article 15 of the United Nation’s Draft Declaration on the Rights of Indigenous Peoples provides: “Indigenous children have the right to all levels and forms of education of the State. All indigenous peoples also have this right and the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children living outside their communities have the right to be provided access to education in their own
culture and language. States shall take effective measures to provide appropriate resources for these purposes.”

There remains the likelihood that Indigenous language rights may become stronger under customary international law. Recognising this possibility and the emerging conventions, Australian State and Federal Governments should take the initiative and revisit their policies on Indigenous languages to ensure that cultural rights are protected and languages allowed to grow. The loss of such languages is not a matter Australians can be proud of.

If Australian governments move to treat Indigenous languages separately (and like de Varennes this author argues that they should) amendments do not need to be made to the Racial Discrimination Act to avoid a possibility that differential treatment in favour of Aboriginal and Torres Strait Islander peoples could breach s 10. This is because such special treatment would fall within the exception in s 8(1) of the Act which in turn applies the special measures provisions in Article 1, paragraph 4 of the Convention. Special measures are contemplated in other legislation, for example, the New South Wales Education Act makes provision for children with special needs, including Aboriginal children: s 20.

It is submitted that the Australian Federal Government should examine the rights proposed in the draft UN Convention very carefully and give effect to them via amendment to the Racial Discrimination Act, to remedy previous injustices visited on our Australian Indigenous peoples. Australians should note the recommendations of HREOC in this regard which were designed to “dismantle language and cultural barriers in education for Indigenous students”. These recommendations included funding for expanded language education, and training of Indigenous teachers and workers who are critical to the success of language programs; the accreditation of Indigenous languages as part of the Australian LOTE (Languages other than English) program; and the funding of Indigenous organisations to teach, preserve and promote language. HREOC saw a number of fundamental principles behind this:

- self determination;
- the right of Indigenous children to an education in relation to their culture, language and history which prepares them for participation in wider Australian society, and
- the right of Indigenous people to transmit their culture, language and history.

Re non Indigenous peoples

In relation to non Indigenous peoples the Australian government proudly boasts on its website that it is providing $110 million from 2005 - 2008 to support teaching and learning in languages. This is part of the National Statement and Plan on Languages Development in Australian Schools 2005 – 2008. It is hoped that these efforts are a more successful than our past, or we will continue to lag well behind Europe in language education in Australia.

Endnotes

1. Though there may be an indirect effect through the United Kingdom courts because English


3. Erebos Consulting Partners (December 2002), Review of the Commonwealth Languages Other Than English Programme: A Report to the Commonwealth, Department of Education Science and Training, Canberra, at 6

4. Erebos Consulting Partners (December 2002), Review of the Commonwealth Languages Other Than English Programme: A Report to the Commonwealth, Department of Education Science and Training, Canberra, at 111. (footnotes removed)


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18. Adapted from Erebus Consulting Partners (December 2002), at 8.
19. Reproduced from Erebus Consulting Partners (December 2002), at x.
20. Erebus Consulting Partners (December 2002), at ix.
22. Erebus Consulting Partners (December 2002), at x.
23. Erebus Consulting Partners (December 2002), at xvi.
25. 2,184 children were held in detention between 1999 and 2003.
38. Education Act 1972 (SA), Education (General Provisions) Act 2006 (Qld); Education and Training Reform Act 2006 (Vic); School Education Act 1999 (WA); Education Act 2004 (ACT); Education Act 2003 (NT); Education Act 1994 (Tas); Education Act 1990 (NSW).
43. Case "Relating To Certain Aspects Of The Laws On The Use Of Languages In Education In Belgium" v Belgium [1967] ECHR 1; (1474/62) (9 February 1967).
44. de Varennes, F. (1995), Indigenous Peoples and Language, 2 Murdoch University Electronic Journal of Law, see also de Varennes, F. (1995), To Speak or not to Speak, The Rights of Persons Belonging to Linguistic Minorities, http://www.unesco.org/most/in2pol3.htm, date accessed 12 August, 2005 where the author lists many examples of states enshrining linguistic rights in domestic legislation. He cites a number of treaties and international instruments, such as the Declaration on the Rights of Persons belonging to National, or Ethnic, Religious and Linguistic Minorities which do contain an entitlement to education in a minority language. He notes however that even that Declaration is “surprisingly timid in its wording” because a state might maintain they are meeting the obligation by just allowing the teaching of a minority language (at footnote 40).
49. Hurst and Devlin v Education Queensland [2005]FCA 405 at para 125, and see especially paras 728 - 760.
50. Hurst and Devlin v Education Queensland [2005]FCA 405 at para 125, and see especially paras 728 - 760.
Language Rights of National Minorities in Education in Belarus

Iryna Ulasiuk
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1. INTRODUCTION

The dissolution of the Soviet Union brought to the fore claims of linguistic minorities which had been ignored for too long. In almost all of the former Soviet republics language became an impetus to national revival and an important instrument in consolidating the newly independent states. At times excessively accentuated and overly politicized, the language issue demanded immediate reaction. It was not, therefore, surprising, that almost all of the former Soviet republics rejected to various degree the legal dogmas which had been created in the Soviet Union and moved towards the weakening of the bonds within the former USSR, the lowering of the status of the Russian language as a symbol of long-term oppression and, as a consequence, the strengthening of the position of the titular language. Belarus has somewhat stood aloof in the process. The most de-nationalised of the non-Russian successor states, with its language subjected to the greatest degree of russification, Belarus was reluctant to draw away from the Soviet Union and so far it has been “the least successful in shifting towards the titular language”. This is despite the fact that Belarusians in the Republic of Belarus made up 81.2% of the population in 1999. The main minority groups, as recorded in the 1999 census, included Russians 1,142,000 (11.4%), Poles 396,000 (3.9%), Ukrainians 237,000 (2.4%) and Jews 28,000 (0.2%). The most recent 2009 census indicated a sharp decline in the number of ethnic minorities. The number of Russians fell by a third, by 31.3% (from 1.1 million to 785 thousand), Polish – by 25.5% (from 396 to 295 thousand), Ukrainians – by 33% (from 237 to 159 thousand), Jewish – by 54.6% (from 28 to 13 thousand). Yet another remarking finding concerns a dramatic decrease in numbers of people claiming Belarusian language as a mother tongue. Among general population of the country this number fell from 73.6% in 1999 to 53.2% today. Among the ethnic Belarusians this number now amounts to 60%.

Statistics also reveal that Russian, and not Belarusian, is the dominant language in Belarus, spoken normally at home by a vast majority of the population. Among other languages in Belarus, the most important are the neighboring ones - Polish, Ukrainian, and Lithuanian. With Russian being the de facto main language, and Belarusian playing largely a symbolic function, the position of other languages spoken by minority groups residing within the territory of Belarus seems indeed precarious. The present paper seeks to identify the main tendencies in the development of language legislation in the area of education, which has traditionally been considered as determinant for the survival of the language, in Belarus. It investigates the place the Belarusian legislation in the field of education reserves for the language rights of the titular nation and those of national minorities.

2. THE DEVELOPMENT OF LANGUAGE POLICIES AND LAW IN EDUCATION IN BELARUS SINCE 1990

In order to understand the current debates surrounding the language issue in education in Belarus, it is instructive to consider the most important changes that occurred in Belarusian state language policies and law following 1990 and see how these policies and law have been applied in the field of education since then.

It should be recalled that the parliament of the republic declared the sovereignty of Belarus on 27 July 1990, and following the collapse of the Soviet Union, Belarus proclaimed independence on 25 August 1991. Prior to that, on 26 January 1990, when Belarus was still part of the Soviet Union, a law was passed according to which the Belarusian language was proclaimed to be the only state language in Belarus. The law was a reaction to the situation that emerged in Belarus in the 1980s when less than a quarter of all Belarusian schoolchildren studied in the native language and none at the higher educational level. Even in kindergartens it was very rare to find children being given any instruction in Belarusian or languages other than Russian. Over 95% of all literary publications were in Russian, there were no Belarusian films or television stations and only three out of the Republic’s fifteen theaters performed in Belarusian. Through Article 2 of the newly adopted language law, Russian and Belarusian were expected to switch the roles prescribed to them during the Soviet times. The law envisaged a much broader use of the Belarusian language to enable it to become a majority language rather than a minority one as it was the case under the Soviet rule. Forseeing that the change could not come overnight, the Supreme Soviet of the Republic adopted an accommodative approach towards language acquisition in its Resolution of 26 January 1990. It reasonably determined that the implementation of the law shall be a gradual process over the course of the 1990s. It was anticipated that Belarusian would become the language of science, culture, and the media within three years; the language of congresses, conferences, and state decrees within three to five years; of business within five years, and for legal matters within a decade.

On 20 September 1990 the Law on Languages was strengthened by a detailed National Programme, committing the government to the long-term aim of restoring the Belarusian language in education and public life by the end of the century. The Law on Culture adopted on 4 June of 1991 among other things guaranteed in Article 10(1) cultural rights to all ethnic groups on Belarusian territory while stressing that ‘the preservation, development and spread of the Belarusian culture and language’ shall constitute one of the priority objectives of the state cultural policy (Article 10 (3.1)). On 29 October, the government adopted the Law on Education (discussed in detail below), which also guaranteed support to the spread of the Belarusian language in education.

The new constitution adopted in March 1994 affirmed the official status of the Belarusian language; however, Russian acquired the status of a language of inter-ethnic communication. The text was basically copied from the 1990 Law on Languages, with the difference that, in the 1990 law, Russian did not have the status of a communication medium between different ethnic groups in Belarus.

The implementation of the language law, however, “proved to be dependent greatly on the political situation in Belarus.” Initially, this situation appeared to be favourable towards the Belarusian and languages other than Russian. Thus, at the beginning of the 1990s, the educational system was the most receptive to implementing the law on languages, and during 1990-1994 the situation in secondary schools radically changed to the benefit of the
Belarusian language. More than 3,500 schools (66.7 percent) were using Belarusian as the language of instruction. There were 140 schools with intensive study of Belarusian. In 1,600 schools the teaching was done in Russian, and 140 schools (mostly in the Grodno region) introduced Polish into their curricula. Teachers of Belarusian enjoyed a 10% salary bonus. Higher educational establishments also started to introduce Belarusian as a medium of instruction. In the period of 1991-94, as Konushkevich reports, it was not unusual to come across often unrealistic resolutions requiring, for example, the transition of all higher educational institutions to Belarusian language medium instruction already in the 1993-94 school year.

Gradually, as Avlasevich writes, 'the process of 'belarusification' acquired a political character, provoked a flow of complaints of parents and created an unhealthy atmosphere in the society'. Very quickly, the linguistic and cultural issues became superseded by the ambitions of Belarusian politicians, and in the period of 1992-1994 the language issue, primarily the position of the Belarusian language vis-a-vis Russian, once again became at the heart of the political debate.

The climax came on 14 May 1995 when the question Do you agree to give the Russian and Belarusian languages equal status? was posed before Belarusian citizens in the national referendum. The majority of the respondents answered in the positive. What practical implications could the results of the referendum have? As some author put it, the acknowledgment of Russian as an official language in Belarus 'largely meant "squeezing" Belarusian out of the public sphere', and leaving Belarusians 'little opportunity to identify with their mother tongue in a conflict-free process'. Kuzio summarizes the potential effect of the referendum in the following words:

To make Russian the second 'state language', together with the titular, may seem to be in line with liberal policy. But the continued dominance of the Russian language in many non-Russian successor states means that this would not promote equality. In Belarus although Russian was elevated to the status of a second state language in the May 1995 referendum this has not made Belarusian and Russian equal languages.

In fact, the obvious change in the political discourse with regard to language issues led to a distinct redistribution of the use of the different languages in Belarus, with Belarusian receding and Russian advancing.

The results of the referendum found their reflection in the subsequent development of the language legislation which will be analyzed in the rest of the paper. First and foremost, the 1994 Constitution was amended in 1996. In June 1998, a revision of the language legislature took place. In the amended constitution and the new language law, two languages, Belarusian and Russian, were declared to be the state languages of the republic.

In general terms, the constitutional text provided for very few rather broad entitlements for persons belonging to national minorities to be applied in all circumstances. By national minorities the legislation means 'persons permanently residing on the territory of the Republic of Belarus and having citizenship of the Republic of Belarus whose origin, language, culture or traditions are different from those of titular population of the republic'. The Constitution guaranteed in Article 22 the equality of all citizens, presumably also those belonging to national minorities, before law; Article 15 required that the State 'shall bear responsibility for preserving the ... cultural ... heritage, and the free development of the cultures of all the ethnic communities that live in the Republic of Belarus', which presupposes inter alia the linguistic heritage; finally, Article 21 proclaimed that safeguarding the rights and liberties of the citizens of the Republic of Belarus enshrined in the Constitution and the laws, and specified in the state's international obligations, shall be the supreme goal of the State.

More specifically, the reference to educational rights of Belarusian citizens, including those belonging to national minorities, is made in Articles 49 and 50. Article 49 guarantees every Belarusian citizen, including minority representatives, the right to a free general secondary education and vocational training. Secondary specialized and higher education can also be obtained without prejudice to one's linguistic and ethnic affiliation free of charge in state educational institutions, however, on a competitive basis. Article 50 further specifies in which language this right can be exercised. It generally provides that everyone shall have the right to preserve one's ethnic affiliation, and as part of it 'to use one's native language', 'to choose the language of communication' and to choose the language of education and teaching.

The choice of the language of education is, however, conditioned by Article 17 of the Constitution which following the referendum constitutionalized bilingualism in Belarus by designating both the Belarusian and Russian languages as the state languages of the Republic of Belarus.

More detailed principles and functions of education, including with respect to linguistic aspirations of national minorities are defined in the following laws: 'On Education in the Republic of Belarus', 'On Languages', 'On National Minorities', 'On Child's Rights', as well as a number of regulations.

The Law on Child's Rights stipulated a general principle of equality in receiving education for all children regardless among other things of their ethnic belonging and linguistic affiliation (Article 6(1)). It then went further and envisaged two important guarantees, namely the right of a child to receive free education in his or her mother tongue and the right to choose an educational institution in which to study (Article 23(1). The 2008 amendments to the law resulted in the omission of these important guarantees and modestly and vaguely mentioned in part 3 that 'the state encourages the development of talent and improvement of education'.

Several legal principles that bear on language policies in education are outlined in the Law "On Education in the Republic of Belarus". Thus, in accordance with Article 1 the 'national-cultural basis' is the principle upon which the state educational policy is grounded. This means, as Article 3 reads, that the right of citizens to education can be fulfilled by 'the creation of conditions for receiving education taking into consideration national traditions'. Article 4 of the Law on National Minorities specifies that any direct or indirect limitation of the right to education of citizens of the Republic of Belarus because of their belonging to national minority as well as attempts of assimilation against their will are prohibited.

Under the heading "Languages of Education and Upbringing" Article 5 of the Law on Education envisages that the main languages of education and upbringing in educational institutions of the Republic of Belarus are Belarusian and Russian, the acquisition of the knowledge of which by the schoolchildren is among the primary aims of general secondary education (Article 22). This is in line with Article 2 of the Law on Languages which
guarantees 'comprehensive development and functioning of the Belarusian and Russian languages in all spheres of public life', including in education. However, both the Law on Education and the Law on Languages make an important reservation that education in the state languages should be carried out without prejudice to linguistic rights of the minorities to whom the state guarantees the right to choose the language of education and upbringing; the state takes care of the free development and use of all national languages, which are used by the population of the republic and guarantees to the persons of other nationalities living in the republic the right to upbringing and education in mother tongue.

The state further undertakes in Article 5 of the Law on Education to create appropriate conditions for the realization of the forenamed rights. In accordance with the wishes of the students and their parents there may be created groups in pre-school institutions, classes in general educational institutions or pre-school general educational institutions in which the teaching and upbringing is carried out in the language of a national minority or the language of a national minority is studied as a subject. The creation of such schools or groups within a school is subject to the decision of local authorities who in their turn have to obtain the appropriate authorisation of the Ministry of education of the Republic of Belarus. The right to create educational institutions and form classes with instruction in a minority language is also formulated in Articles 22-23 of the Law on Languages. Furthermore, Article 8 of the Law on National Minorities stipulates that the state undertakes 'in order established by the legislation of the Republic of Belarus' to assist in 'creating the conditions for development of education and cultures of national minorities by giving necessary money assets from republican and local budgets'.

Special mention is given by the legislator to the Belarusian language on several occasions. Article 5 of the Law on Education proclaims that education in Belarusian, publication of literature, school books and teaching materials in Belarusian are supported by the state. Article 24(2) of the Law on Languages provides that the Belarusian language in all educational institutions of the Republic of Belarus shall be studied. This being the legal basis of language policies in education in Belarus focus will now be shifted to how the described theoretical foundations have been implemented in practice and what practical problems persons belonging to both the titular, Belarusian nation and national minorities encounter in the realization of their constitutionally guaranteed language rights.

Education in Belarus is offered nowadays in the two state languages, Belarusian and Russian, and two minority languages, Lithuanian and Polish. However, the dominance of the Russian-language medium education is apparent. While the years immediately following the proclamation of independence were characterized by the process of 'belarusification' of the educational sphere with the result that in the 1993/94 academic year around 75% of first-graders started their schooling in Belarusian, the results of the 1995 referendum granting the equal status to Russian and Belarusian led to a quite predictable shift towards Russian-language medium education. On May 30, 1995 the Ministry of Education ordered the Russian language and literature to be added to the list of entrance exams of higher and special secondary educational establishments, which basically freed the students from an obligation to take the Belarusian language and literature examination. This measure was followed by the guidelines issued by the same Ministry concerning the enrollment of first graders. This was now to be conducted extensively on the basis of the parental decision. School administrations were instructed to hold parental meetings, during which parents were to submit applications in which they specified the desired language of their children's education. As Zaprudski reports, aware of the new trend, many parents began to choose Russian as the language of instruction for their children. In 1995, 62% of first grade pupils studied in Russian, compared to 25% during the previous year. As a consequence, the percentage of those studying in Belarusian fell from 75% to 38%. In 1996, this tendency continued with 68% of first-graders opting for Russian language instruction and only 32% of first graders choosing Belarusian as a medium of instruction. Interestingly, the number of pupils studying in the Belarusian language also decreased in the upper grades. In the school year 2005-2006, approximately 76% of children going to pre-school educational institutions, attended Russian-language establishments, 13% Belarusian-language ones and 11% establishments with Russian- and Belarusian-language (or other-language) groups. About 77% of children attending secondary school received instruction in Russian and 23% in Belarusian.

As regards Polish, there are two Polish language medium schools. In Grodno there is a Polish school providing general education. This institution receives financial support for the provision of special technical equipment (including computers) from local regional authorities. In 1999 a Polish gymnasium was established in Vilkovissk. Unfortunately, subsequent requests for Polish language schools have been denied. No permission has been given by local authorities to construct schools in Grodno and Novogrudok. The reasons behind these decisions are indeed unclear especially with a view to the fact that the money for the construction of the two schools was to be provided by the Polish diaspora.

With regard to Lithuanian, in the western part of Belarus, in the Ostrovets and Voronovo districts where most of the Belarusian Lithuanians live, two secondary schools with Lithuanian language teaching were built by the Lithuanian Government in the villages of Pelyasa and Rimdyuny, in which 76 students studied in 2005-2006. Requests have also been voiced by the Roma community in Belarus to open a school with the Roma language as a medium of instruction. While the authorities have explicitly claimed that they are not going to discriminate against the Roma community and encouraged them to apply in the order established by the legislation, they have also been quite clear that no positive discrimination could be expected either.

In view of the vulnerable position of the Roma community in Belarus such a laissez-faire approach adopted by the authorities and a passive position of the Roma community itself have yielded a predictable result - no school has been opened so far.

With regard to teaching languages as subjects, Russian and Belarusian are obligatory for all schools. Until 2006 such subjects as Belarusian language and literature, Belarusian history and geography had been taught exclusively in Belarusian even in Russian language medium schools. The situation changed in 2006 following the instructions of the Ministry of Education which allowed the teaching of the mentioned subjects in Russian language schools in Russian. The decision was viewed as an act of discrimination against Belarusian speaking students and provoked heated debates in the media. The Ministry justified this step using the 'parents' requests' argument, as well as the argument that the teaching of these subjects exclusively in Belarusian contradicts the 1996 revision of the Constitution. After several appeals to the Ministry of Education it issued an instructive letter in which it underlined that the language of the teaching of Belarusian history and geography is a matter of choice of the students.

Several minority languages are also taught as subjects in mainstream schools but most of them are taught as extra-curriculum courses not integrated into the main curriculum, mostly...
in Sunday schools. Thus, Polish classes are open in secondary schools in Minsk, Brest secondary and some Grodno oblast schools. The Polish language and culture are studied in over 20 Sunday schools and clubs managed by the Union of Poles in Lida, Grodno and Minsk. There are 12 weekend and Sunday schools, and open classrooms for those wishing to study the Lithuanian language, culture and history in the cities of Lida and Grodno.52 The Latvian association Daugava has a Sunday school in Vitebsk, which teaches the Latvian language, history and culture to children under 18.53 Minsk, Bobruisk and Mogilev have opened Sunday schools for Armenian children to learn the Armenian language, history and culture.54 Sunday schools are also available in Minsk and Mogilev for those interested in studying the Georgian language, history, culture and traditions.55 The Ukrainian language is studied as a subject in several secondary schools in Brest and Gomel and at Sunday schools in the Vitebsk region and in Minsk.51 The Jewish language (Hebrew), culture and traditions are studied in one secondary school in Minsk and at the pre-school level in the state owned kindergartens in Gomel and in Bitebsk, in two groups of one Minsk kindergarten, and in Pinsk private boarding school BeisAragon as well as in 17 Sunday schools all over the country.52

With regard to higher educational institutions, in the school year 2005-2006, 54% out of approximately 325,000 students studied in Russian, 2% in Belarusian, and 44% in both languages. Notably, there is not a single higher education institution in Belarus where instruction is carried out exclusively in the Belarusian language. This accounts, among other reasons, for the decrease in the number of Belarusian language medium schools and a rather small number of schools with a language of instruction other than Russian. It becomes just impracticable to instruct children, especially in upper grades, in a language other than Russian because as one parent put it: 'How will my child be able to take exams in physics or chemistry in Russian if he has studied all the terminology in Belarusian for seven years?'.53 Time and again the need for such an institution with Belarusian as a language of instruction is voiced.54 Thus, attempts have been made by the students of the faculty of history and culture of Grodno State University to introduce Belarusian as a medium of instruction. However, they failed, and, the initiators were, reportedly, punished by the administration on the grounds of nationalism.55 There also have been efforts to develop the idea of the creation of Belarusian National University where the teaching would be carried out exclusively in Belarusian. However, the idea has not been supported so far by the Ministry of Education, which instead advocates the organisation of the so-called streams within universities: Russian language and Belarusian language streams which provide education in the two languages.56 Notwithstanding that, as one report states, the administration of higher educational institutions makes little effort to accommodate students wishing to study in Belarusian-language classes.58 Concerning languages other than Russian and Belarusian, their use at a higher educational level is scarce and is limited to subject teaching. Thus, the Ukrainian language is studied at the Belarusian State University and Brest State Pedagogical University,59 Grodno State University, as well as the pedagogical institutes of Grodno and Vilkovisk, train teachers in Polish language and literature.60 In Minsk State Pedagogical University a division of Lithuanian language was created within the framework of the Program of Cooperation signed by the two state in 2005.61

3. CONCLUSION

As the discussion in the article has shown, education and the language of instruction has been a highly politicized issue in the country since it became independent - education was used by Belarusian leaders to form group identity as well as to support the regime. Consequently, the first two years of independence in Belarus were characterized by a policy aimed at revitalizing the Belarusian language and culture. Education became one of the fields where the ‘belarusification’ campaign was most evident. Very quickly, however, the linguistic and cultural issues became superseded by the changes in the political course of Belarus and we witnessed a distinct redistribution of the use of languages in education with Belarusian receding, Russian advancing and other languages being in the shadow and primarily ignored.

The described situation evidences several issues of concern. First and foremost, there seems to be a problem receiving education in the language of the titular nation, the Belarusian language. No continuity between educational institutions of different educational levels is insured for the Belarusian language in Belarus. While theoretically, the decision of administrative organs, as well as the request of citizens, can initiate the establishment of programs with full or partial instruction in the language of a national minority, the practical implementation is jeopardized by a burdensome bureaucracy, according to which representatives of a national minority would have to seek authorization of the Ministry of Education, as local executive authorities won't be able to adopt a corresponding decision without such an approval. Finally, while the Belarusian legislation envisages the protection of educational rights of linguistic minorities, it lacks concrete mechanisms of the implementation of these rights. The declaratory nature of officially formulated language policy, the dependence of the implementation of various adjustments on the willingness of people in power in many cases nullify the object and the purpose of the guaranteed rights.

Endnotes

1. Robert Schuman Center for Advanced Studies, European University Institute, Florence, Italy
7. ‘While in accordance with the census results 5 058, thousand people claim that Belarusian is their mother tongue and only 3948,1 thousand claim that Russian is their mother tongue when it comes to the language used at home only 2227,2 thousand name Belarusian and 6673,0 thousand name Russian as the language used at home.
27. Article 5, Law on Education
28. Article 2(3), Law on Languages
29. Article 21(2) Law on Languages
31. Order of the Ministry of Education of the Republic of Belarus of 30 may 1995 No.197 [Приказ Министерства образования Республики Беларусь от 30 мая 1995 г. №197 "Об изменениях н.п. Типовых правил приему у въехавших навчальних установ Республіки Беларусь на 1995 год, заочердних завдань працю # 23.12.94 г. № 420 и п.11 Правилу приему у середньої навчальних установ Республіки Беларусь, заочердних завдань працю # 27.01.95 г. № 369]
42. ‘The Language of the Roma Diaspora is Against Opening of the Roma School’, 19.05.2010, [Глава цыганской диаспоры против открытия в Беларуси цыганской школы], http://naviny.by/rubrics/society/2010/05/19/ic_news_116_331457; 'Belarusian Roma do not Need a National School, but a Cultural Center', 20.05.2010, [Белорусскими цыганами нужна не национальная школа, а культурный центр], http://naviny.by/rubrics/society/2010/05/20/ic_articles_116_167885

Society Urges the Ministry of Education to Teach the History of Belarus in Belarusian, 07.06.2007 [Общественность требует от Минобразования вести изучение истории Беларуси на белорусском языке], http://naviny.by/rubrics/society/2007/06/07/ic_articles_116_271898/


The Geography and History of Belarus will be studied by schoolchildren in Belarusian', 12.09.2007 [Географію і історію Беларусі стареklassники будут изучать на белорусском языке], http://naviny.by/rubrics/society/2007/09/12/ic_news_116_276835/


Pagonia [Пагоня], 18.05.2000

http://spring96.org/ru/news/29173/

Nasha Niva [Наша Нива], 05.03.2000

Zviazda [Звездя], 19.02.2000; Regionalnaia Gazeta [Рэгіёнальная газета], 22.03.2000

Nasha Svaboda [Наша свабода], 01.09.2000


http://www.urn.lt/index.php?-2057774104

Sally Varnham

Sally Varnham

1. BACKGROUND

1.1. The importance of language in nation building in Aotearoa New Zealand

... The language is the core of our Maori culture and mana. Ko te reo te mauri te mana Maori (The language is the life force of the mana Maori). If the language dies, as some predict, what do we have left to us? Then, I ask our own people who are we? ... 'Language', according to Oliver Wendell Holmes, 'is a solemn thing, it grows out of life, out of its agonies and its ecstasies, its wants and its weariness. Every language is a temple in which the soul of those who speak it are enshrined.' Therefore the taonga, our Maori language, as far as our people are concerned, is the very soul of the Maori people. What does it profit a man to gain the whole world but suffer the loss of his own soul? What profit to the Maori if we lose our language and lose our soul? Even if we gain the world.²

Maori are the indigenous peoples of Aotearoa New Zealand. The late eighteenth century saw the colonization of New Zealand by European, largely British, settlers. From that time until the latter part of the twentieth century New Zealand society was comprised of largely Maori, those of British descent, and Pasifika³ peoples, with smaller minorities of settlers from other countries, such as China and the Netherlands. In the last decades New Zealand has seen a significant increase in immigration, particularly from China, the Middle East and other countries, such as China and the Netherlands. In the last decades New Zealand has seen a significant increase in immigration, particularly from China, the Middle East and European countries and the population now comprises a vast number of different cultures, nationalities, and language and ethnic groups. In the context of language and culture, there have been two significant developments.

First, the latter part of the twentieth century saw a much wider recognition of the importance of Maori language and culture to Maori people and to New Zealand's identity. There was an accompanying renaissance of the Maori language. There are many factors credited for this rebirth with the most significant contributing factor being the rapid and highly successful emergence of Maori-medium education.⁴

Secondly, and over roughly the same period, there has been an increasing focus on the vastly divergent minority groups now in New Zealand, and their argument for greater public recognition and representation of their ethnic, cultural and linguistic identities.⁵

It is argued that while it is important to celebrate New Zealand's new cultural diversity, the danger is that it may cause us to lose sight of the foremost place of the cultural and language rights of Maori as the indigenous people of New Zealand. The view which is held by many is that to advance a case for the language rights of all minority groups is to disadvantage Maori in two ways:⁶ “It denies Maori people their equality as members of one among two (sets of) peoples, and it also tends to deny the divisions of Maoridom their separate status while exaggerating the status of other immigrant groups. In the end, Maori interests become peripheral, combined with other ‘special problem’ areas.”

Biculturalism recognizes the special and equal status of Maori culture and language as promised by the Treaty of Waitangi.

The current debate therefore centres on the reconciliation of biculturalism and bilingualism and multiculturalism and multilingualism in education, and in society generally, in the New Zealand of today.

1.2. The Treaty of Waitangi/Te Tiriti o Waitangi and the right to language

In 1840 the Treaty of Waitangi (Te Tiriti O Waitangi) was signed between approximately 512 Maori chiefs and William Hobson as representative of the British Crown. The Treaty is now commonly regarded as the founding constitutional document of New Zealand.⁷ This has not always been the case however and a body of Treaty jurisprudence is constantly developing. Essentially the Treaty attempted to formalize the rights and responsibilities of the Crown and British colonizers and the Maori people. It set out three Articles. By the First Article, Maori chiefs ceded sovereignty over New Zealand to the British Crown thus giving the Crown the authority to govern and making New Zealand a part of the British Empire.⁸

The Second Article guaranteed the Maori chiefs and tribes and individuals of New Zealand: ‘... the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties [taonga which may be translated as ‘valued possessions or treasures] which they may collectively or individually possess...’⁹ By the Third Article the Queen extended to the ‘Natives of New Zealand’ the protection of the Crown and imparted to them the rights and privileges of British citizens. The Human Rights Commission in its New Zealand Action Plan for Human Rights Mana ki te Tangata describes the two elements of the Treaty as first, the right to live as citizens of Aotearoa New Zealand under one law, and secondly, the affirmation for Maori of the right to live as Maori with the protection and development of those things treasured by Maori. Turangawaewae, or the right of all peoples to belong, binds these two elements together.¹⁰ For Maori people, the preservation and promotion of the Maori language is essential to this belonging.

The Treaty was drafted in both Maori and English and discrepancies in the wording between the two languages has been at the root of many of the allegations of injustices which have arisen. Conflict has been concentrated largely in two areas. One is with the concept and definition of ‘sovereignty' in the First Article. The second area of conflict relates to alleged breaches by the Crown of Article Two in respect of land and taonga. Such an allegation was that the Maori language (te reo) was taonga which had not been accorded ‘exclusive and undisturbed possession' as the Crown had guaranteed in Article Two. The decision of the Waitangi Tribunal in this matter is central to a discussion of the recognition of the Maori right to language and is discussed below.

1.3. The Maori Language [Te Reo] — its decline and near-extinction

Mana ki te Tangata — its decline and near-extinction

 Mana ki te Tangata describes the two elements of the Treaty of Waitangi. The language is the core of our Maori culture and mana. Ko te reo te mauri te mana Maori (The language is the life force of the mana Maori). If the language dies, as some predict, what do we have left to us? Then, I ask our own people who are we? ... 'Language', according to Oliver Wendell Holmes, 'is a solemn thing, it grows out of life, out of its agonies and its ecstasies, its wants and its weariness. Every language is a temple in which the soul of those who speak it are enshrined.' Therefore the taonga, our Maori language, as far as our people are concerned, is the very soul of the Maori people. What does it profit a man to gain the whole world but suffer the loss of his own soul? What profit to the Maori if we lose our language and lose our soul? Even if we gain the world.²

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1.3. The Maori Language [Te Reo] — its decline and near-extinction
It is important to outline the history of the Maori language within the development of New Zealand as an independent nation. The Maori language, intersected with New Zealand's national identity, has travelled along two pathways. The first is the transition of the language from being a spoken-only language to its having a written form. This early development is credited largely to the work of missionaries and early settlers. The second path is the decline of the language to its almost extinction at the middle of the 20th century and then its renaissance at the end of that century which continues today.

In 1800 the Maori language was the predominant language spoken in Aotearoa New Zealand. However, despite a script of carving signs, the Maori language was essentially spoken-only and there was no written communication through language. With the arrival of English-speaking missionaries and settlers early in the 19th century came the first attempts, generally by missionaries, to commit the language to written form. Maori enthusiastically embraced the concept of written language although history records that this was generally in the form of their learning to read, write and speak in the English, not Maori language. Seemingly this was despite the fact that it was reasonably common for government officials who were representatives of the British Crown, missionaries and Pakeha11 (white anglo-saxon) settlers to speak in the Maori language. There was much interaction between Maori and Pakeha on all levels and as Pakeha children grew up with Maori children they were among the first fluent European speakers of the Maori language. However, evidence shows that there was a widespread perception that the English language was the language of economic advancement and access to a higher standard of living.12 This is an argument which is still widely used today by opponents of majority language rights, that it is vital for speakers of minority languages to learn the majority language in order to have greater economic and social mobility.13

At the time of the Treaty, Maori outnumbered Europeans in New Zealand by 100 to 1 but by the second half of the 19th century, Pakeha had come to comprise the majority of the population of New Zealand. This change was due largely to the fact that large numbers of Europeans had migrated to New Zealand, and that the Maori population had been severely reduced by sickness and disease introduced by these settlers. A school system based on that of England was introduced and tuition was solely in the English-language only was the single largest contributing factor to the decline in use of the Maori language. Schoolchildren could speak their native tongue. In 1986 the results of surveys carried out by the Maori Unit of the Council for Educational Research were presented to the Waitangi Tribunal by the Council's acting Director, Dr Richard Benton. He said as follows:18 ‘... there were very few communities where Maori was still spoken by nearly everyone, from preschoolers to superannuitants ... There were a handful of places where practically everyone still understood Maori ... but where most young children were more comfortable in English than they were in Maori, and a rather larger group where Maori was still widely used among adults when talking with each other but had ceased to be the main language for the community as a whole ...’

In his view:19 ‘... There are many reasons why the language has declined so rapidly over the last two or three decades but the major causes stem from the fact that language is first and foremost a social phenomenon. Languages do not flourish in a social vacuum and they are learned an established most effectively through use in a wide variety of contexts. Social changes in recent New Zealand history have greatly reduced the contexts in which Maori people can use their language: urbanisation, improved communications, industrialisation, consolidation of rural schools and internal migration [particularly Maori moving from rural communities into the cities] have all taken their toll.”

Added to those factors could also be racism, or the perception that English culture was superior and a failure to understand that the language was an essential expression of Maori culture and for Maori to maintain pride in their identity.

1.4. The recognition of the right to protection of the Maori Language by the Waitangi Tribunal – the Te Reo Maori Claim

The Waitangi Tribunal was established pursuant to the Treaty of Waitangi Act 1975(NZ) to make recommendations on claims relating to the practical application of the Treaty. In 1986 the Tribunal heard and reported on the Te Reo Maori Claim. Essentially, this claim was based on the allegation that the Crown had failed to protect the Maori language and this was a breach of the promise contained in Article Two of the Treaty to protect Maori ‘taonga’ or treasures. The recommendations of the Tribunal signified a major turning point in the right to Maori language in general and in education. Its findings recognised Maori culture as part of the heritage of New Zealand and the Maori language as being at the heart of that culture. In its report the Tribunal stated:20 "The evidence and argument has made it clear to us that by the Treaty the Crown did promise to recognise and protect the language and that that promise has not been kept. The ‘guarantee’ in the Treaty requires affirmative action to protect and sustain the language, not a passive obligation to tolerate its existence and certainly not a right to deny its use in any place. It is, after all, the first language of the country, the language of its original inhabitants and the language in which the first signed copy of the Treaty was written. But educational policy over many years and the effect of the media in using almost nothing but English has swamped the Maori language and done it great harm. We have recorded much of what we were told of the effect upon Maori children of our educational policy and it makes dismal reading. It seems that many Maori children leave school uneducated by normal standards, and that disability bedevils their progress for the rest of their lives.”
Importantly, the term ‘treasures’ was taken by the Waitangi Tribunal to include the Maori language Te Reo and therefore a guaranteed right to its protection exists under Article Two. Furthermore, in relation to the Crown’s obligations contained within the term ‘guarantee’ the Tribunal embraced the view that this involved affirmative action rather than passive acceptance, that it extended further than merely leaving Maori people unhindered in their enjoyment of the language and culture. It requires active steps to be taken to ensure that the Maori people have and retain the full exclusive and undisturbed possession of their language and culture...

The word guarantee imposes an obligation to take active steps within the power of the guarantor if it appears that the Maori people do not have or are losing, the full, exclusive and undisturbed possession of the Taonga...

In the context of education, the Tribunal recommended that the Maori language should be widely taught from an early stage and that instruction in Maori should be available as of right to the children of parents who seek it. In an omission considered by many to be regrettable, the Tribunal stopped short of recommending bilingualism or of making Maori a compulsory language in schools.

As a result of the Tribunal’s recommendations, the Maori Language Act 1987 (NZ) declared the Maori language to be ‘an official language of New Zealand’. The Maori Language Commission was established to actively promote Maori as a living language.

In the education context the path towards the revival of the Maori language had already begun in the form of full immersion Maori pre-schools. From 1982 a number of te kohanga reo, or Maori language ‘nests’ were established. These were run independently by parents. Full immersion Maori language education has now been incorporated by statute within the state education system as the kohanga reo students move upwards through the education system, to state-funded Maori medium primary schools (years 1-8), kura kaupapa Maori, and secondary schools (years 9-13), wharekura. There is now also a New Zealand-wide Maori tertiary institution or wananga. There has also been a related expansion of predominantly English-speaking state schools which incorporate partial-immersion Maori language programmes.

Statistics published in 2000 by the Ministry of Maori Affairs (Te Puni Kokiri) show that, in 1998,

- 87 per cent of Maori children enrolled in pre-school education were learning some Maori language;
- Just over 40 per cent of Maori children were enrolled in kohanga reo;
- 36 per cent of Maori students in schools were learning Maori language through immersion or bilingual programmes or as a school subject; and
- 3 per cent of all Maori students in schools were enrolled in kura kaupapa Maori

Recent statistics show that the latter number, though still very small is continuing to rise, and in 2003 7.7 per cent of Maori students, or 5,793 students, were enrolled in kura kaupapa Maori.

2. LANGUAGE RIGHTS IN COMPULSORY EDUCATION – BILINGUAL AND MULTILINGUAL

In a discussion of the tension between bilingualism and multilingualism, the research of Professor Stephen May plays a significant role. Professor May is the Foundation and Chair of Language and Literacy Education at the University of Waikato, and he is at the forefront of research in language and literacy rights. He adopts the differentiation applied in international law between two broad types of minority groups: national minorities as people who have historically been associated with a particular territory including indigenous peoples, and ethnic minorities as peoples who have migrated from their country of origin. In using these definitions Professor May then points to the distinction between two types of rights: promotion-oriented rights and tolerance-oriented rights. The former rights entail the positive promotion of the right through state-funded educational support; and the latter means the right to use language and thus preserve one’s language within the community, family and such like. In respect of promotion-oriented rights, May asks the question: “Taking the realm of education as an example, promotion-oriented language rights thus raise the inevitable question about what obligation, if any, the state has to promote or foster minority languages within state schools? And if the state does become involved in this, how can it set reasonable limits on who might be eligible for such language education?”

In his view, in the case of national minorities such as indigenous people, the principle is increasingly being adopted worldwide that the state has an obligation to actively promote by providing such language education as of right. It follows then that Maori have a right to expect state language instruction. In the case of ethnic minorities, in May’s view, there is an argument for applying the international law criterion of ‘where numbers warrant’ to the positive promotion of language. If this benchmark were to be applied, significant ethnic minorities would have a reasonable expectation of a positive promotion of language through state-supported educational instruction in their first language.

Thus, in examining language rights in education it is proposed first to consider the promotion-oriented rights of Maori as a national minority. These are largely the right to culture and language, in terms of recognition and state-funding, as are contained in the Education Act 1989 (NZ) and the charter provisions in the National Education Framework. In May’s suggestion, such rights could be extended to ethnic minorities on a ‘where numbers warrant’ basis. Secondly, the tolerance-oriented rights, accorded to both national and ethnic minorities, will be considered.

2.1. Promotion-oriented rights within the Education Act 1989 (NZ) and the New Zealand Education Framework
Schools authorities owe obligations pursuant to the principles of the Treaty and to the extent that the Treaty is incorporated within the Education Act 1989 (NZ) and the National Administration Guidelines (NAGS) and the National Educational Guidelines (NEGS). While not directly enforceable at law the Treaty of Waitangi has become a powerful source of moral rights and obligations. In the context of language this responsibility is reinforced by the report of the Waitangi Tribunal in the Te Reo Maori Claim. The educational reforms embodied in the Education Act 1989 (NZ) reflect the Crown’s awareness of these Treaty obligations in respect of Maori language and culture. There is a strong argument that the recognition of Maori as an official language carries with it a legal obligation to promote the language in all areas of public life, including education. It is not a big stretch to suggest that inadequate allocation of resources for the purpose of bilingual education amounts to a breach by the state of that obligation.

There are a number of provisions in the Education Act 1989 (NZ), the regulations made pursuant to that Act, and in the National Administration Guidelines (NAGS) and the National Educational Guidelines (NEGS), which recognize obligations to Maori under the Treaty of Waitangi and a concern for Maori language and culture. Before it formulates its charter, a board of trustees of each state school is required, pursuant to Section 62, to take all reasonable steps to discover and consider the views and concerns of the Maori communities of the area. Under Section 63 every school charter is deemed to contain:

(a) The aim of developing for the school concerned policies and practices that reflect New Zealand’s cultural diversity, and the unique position of the Maori culture: and
(b) The aim of taking all reasonable steps to ensure that instruction in tikanga Maori (Maori culture) and te reo Maori (the Maori language) are provided for the full-time students whose parents ask for it.

It is important to note that that this section is framed with reference to all, not only Maori, children. The view to be taken from this is that Maori language and culture is integral to all New Zealanders and should be reflected in the actions of schools accordingly.

There is provision in Section 64(2) of the Education Act 1989 (NZ) for the Secretary of Education to take proceedings against a board of trustees to enforce a school charter or constraining them from taking any action contrary to a charter. While the term ‘proceedings’ are not defined it is perhaps a conceivable avenue for enforcement of Maori language rights in education, in the situation where it could be shown that a school board was not taking reasonable steps to provide instruction in language and culture for those who were asking for it.

The New Zealand Curriculum Framework recognizes that Maori is the language of the tangata whenuṣ36 of New Zealand, that it is a taonga under the terms of the Treaty of Waitangi, and as it is an official language of New Zealand, “students will have the opportunity to become proficient in Maori”.37

All these provisions however stop short of a positive requirement for state-funded Maori language instruction.

### 2.2. Tolerance-orientated rights

Article 30 of the United Nations Convention on the Rights of the Child states that: “In those states in which ethnic, religious or linguistic minorities or persons of Indigenous origin exist, a child belonging to such a minority or who is Indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her religion, or to use his or her own language.”

The specific rights legislation which applies to all people in New Zealand is the Human Rights Act 1993 (NZ) and the New Zealand Bill of Rights Act 1990.

- The Human Rights Act 1993 (NZ)

Section 57 of that Act provides non-discrimination rights specifically in relation to education: “(1) It shall be unlawful for an educational establishment, or the authority responsible for the control of an educational establishment, or any person concerned in the management of an educational establishment or in teaching at an educational establishment,— (a) To refuse or fail to admit a person as a pupil or student; or (b) To admit a person as a pupil or a student on less favourable terms and conditions than would otherwise be made available; or (c) To deny or restrict access to any benefits or services provided by the establishment; or (d) To exclude a person as a pupil or a student or subject him or her to any other detriment,— by reason of any of the prohibited grounds of discrimination.”

The prohibited grounds of discrimination are contained in Section 21 and while ‘language’ is not specifically included therein it has been taken to be included by inference within the grounds of race and ethnic origin. The Action Plan for Human Rights: Priorities for Action 2005-2010 formulated by the New Zealand Human Rights Commission, states that its status report, Human Rights in New Zealand Today, identified a call for ‘language’ to be added as a prohibited ground for discrimination for the purposes of clarity.

A complaint under Section 57 could be of direct discrimination, in that a person was treated differently because of their language or culture. Or it may be of indirect discrimination, as the allegation made in 1992 against the Board of Trustees of Waitara High School in 1992. The actions of the school were the subject of a complaint relating to the bicultural provisions of the Education Act 1989 (NZ) above. The complaint was under Section 26 of the Human Rights Commission Act 1977 (NZ), the forerunner of Section 57 of the Human Rights Act 1993 (NZ). The argument of the complainant, Te Whanau Whanui Ki Waitara, was essentially that Maori in the school were offered an educational environment in which they were treated differently. The complainants argued that their language and culture were not affirmed in the same way as was the language and culture of the English-speaking majority for a number of reasons. These reasons were given as: the inability of the school to appoint a Maori teacher to replace the teacher who had resigned; the inconvenient situation of the room used for Maori activities in the school; not allowing Maori students to have time out of school for Maori events and not taking up of offers of visits from local Maori. The Human Rights Commission decided that the complaint had substance. In its reasoning, an
appropriate and proper education for Maori was necessarily provided in an environment in which their culture was affirmed and in which they felt comfortable, such as was provided for non-Maori students. The Commission therefore concluded that on the facts, the Waitara board of trustees admitted Maori students on less favourable terms and conditions. It had denied them or restricted access to benefits or services provided by the school and had subjected them to a detriment by reason of their race. Whether this was a correct application of the provisions of the human rights legislation has been doubted. It seems that the Commission was influenced to a significant extent by the educational policy, reflected in the Education Act and in the National Educational Guidelines, that Maori have access to an educational environment where they can learn their language and culture. The finding of the Commission is significant as it reflects a readiness and even enthusiasm, in a rights climate coupled with a resurgence of emphasis on Maoritangi and Treaty obligations, to bend the provisions of human rights legislation to fit the circumstances. A settlement was negotiated with the school. In short, the school agreed as follows: to allocate the same time as other core subjects to Te Tari Maori (Maori language and culture); to put in place affirmative action programmes to raise the achievement level of Maori students; to form a Maori student council; to institute disciplinary procedures which reflected Maori culture and values; and to require all staff to attend a Treaty of Waitangi programme.

The issue of the teaching of and access to Maori language and culture in schools arose conversely in the Broadwood Area School Case in 1991. The Broadwood School Board of Trustees had formulated a curriculum, after the community consultation required by the charter under Section 62 of the Education Act 1989 (NZ), which included compulsory Maori language instruction for all pupils. A parent of a student at the school unsuccessfully sought an exemption from the school board. In the publicity which followed the issue became the legitimacy of the board's policy and the parents' threat to test this by legal action. The matter did not reach court and it was resolved by the passing of an amendment to the Education Act 1989 (NZ), incorporated into the Act as Section 25A. This enabled the school to lawfully grant a release to the student, on cultural grounds, from tuition. On the face of it however the board, in requiring compulsory language tuition for all students, had acted legitimately in accordance with the spirit reflected in the Maori Language Act 1987 (NZ).

• The New Zealand Bill of Rights Act 1990 (The Bill of Rights)

As bodies performing a public function pursuant to statute, state schools in New Zealand are bound by the guarantees and rights contained in The Bill of Rights. It follows that the rights therein apply to school teachers, as delegates of the state, school principals and school boards of trustees. The Bill of Rights is on the same footing as the UK Human Rights Act 1998 in that it does not share the supreme law status of the US Constitution or the Canadian Charter of Rights and Freedoms. Section 4 provides that in cases of conflict between this and other statutes, the other statutory provision must prevail, and Section 5 provides that the rights contained therein are subject to such reasonable limits as prescribed by law or as may be justified in a free and democratic society. Significantly however, Section 6 provides that all other statutes are to be interpreted in a manner which is consistent wherever possible with the Bill of Rights. The affect of these provisions in the context of education is that the Education Act and other related Acts must be interpreted in a way so as to best give effect to the rights guaranteed by the Bill of Rights. A school however may curtail a right contained therein where it is able to demonstrate a justification. The effect of this may be, if a person complained of an infringement of a right and the school could show that it was not unreasonable judged by the standards of a free and democratic society, the school’s action may be held to be reasonable and therefore not an infringement of the Bill of Rights. The rights with specific application to language are Section 19 which provides: “Freedom from discrimination — (1) Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993.”

And Section 20, which is based on Article 27 of the International Covenant on Civil and Political Rights, provides: “Rights of Minorities — A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practice the religion, or to use the language, of that minority.”

The question arises whether a school syllabus may be challenged on the basis that infringes the above rights in respect of language. Could a Maori parent or a parent of another significant ethnic minority require, under Section 20, a greater recognition of their language in schools, and greater allocation of resources for that purpose?

Pursuant to Section 60A of the Education Act 1989 (NZ) the Minister of Education prescribes National Education Guidelines which include national educational goals, national curriculum objectives, which are phrased in broad general terms, and national administration guidelines (referred to above). The charter of each school is statutorily deemed to contain these National Education Guidelines. In addition, as set out above, each charter is deemed to contain the aims of developing policies and procedures in respect of language and culture. The board of trustees must consult with the Maori community in respect of the content of the school charter.

However, the setting of the syllabus for the teaching content of each subject within those aims and guidelines is, in the case of primary and intermediate schools, prescribed by the Minister. In the case of secondary schools, while it is the New Zealand Qualifications Authority (NZQA) which has the power to prescribe syllabi, the scope and treatment of the material prescribed in the syllabus may, with the approval of NZQA be freely decided by the school principal. In any event, all those involved with deciding what it is to be taught in state schools, and how it is to be taught, are subject to the Bill of Rights. While the educational objectives in the National Education Guidelines are broadly stated so as to make grounds for a challenge unlikely, complaints of breach against individual schools such as in the Waitara case are more likely. It is to be assumed that a complaint would be made in the first instance to the school teacher, principal or board of trustees. Failing resolution, the next question becomes: what is the role of the courts in considering allegations of a breach of the Bill of Rights by a school? If a parent were to invoke court processes to challenge a school course or activity on the basis that it infringed the right to culture and language contained in Section 19 or Section 20 of the Bill of Rights the first question would be whether the right applies in that situation. In this context this would be whether there was discrimination on the grounds of culture or ethnic or national origin, or whether the action involved a restriction on the rights
of a minority to use their language. The question then returns to whether the right is actually infringed and this involves a consideration of whether the action is a ‘justified limitation’ on the right in terms of Section 5. The test which has been applied here is whether the importance of the overall objective of the action may be justified, balanced against the alleged rights invasion. Finally, the consideration becomes the extent to which the courts, as bodies charged with ensuring that rights are not infringed, would be prepared to question pedagogical decisions. Thus far, this has not been tested.

2.3. Maori Language in Tertiary Education

Maori language programmes and qualifications are offered at most universities and polytechnics in New Zealand. As with the compulsory school system, while those tertiary institutes which are public bodies are subject to the non-discrimination provisions of the Human Rights Act 1993 and the Bill of Rights, no specific right exists for tuition in higher education in the Maori language.

There are however tertiary education institutes known as wananga which are state-accredited to provide polytechnic and university type programmes with an emphasis on Maori language, customs and culture. Te Wananga o Aotearoa (wananga) was started in 1983 by a group of Maori with a vision of improving Maori education and skills and it was granted status as a tertiary education institute in 1993. While the wananga throughout New Zealand have played, and continue to play, a significant part in the revitalization of Maori language and culture, their path has not been easy and issues relating to their management and governance continue to attract much media coverage. The controversy which now surrounds wananga is seen to relate substantially to the differing perceptions held by the Crown and by Maori as to its true role in the provision of tertiary education.

In 1997 a claim on behalf of wananga was lodged with the Waitangi Tribunal. This claim was based on the alleged failure of the Crown in its responsibility under the Treaty to provide proper funding for the education of Maori in an appropriate educational environment. The Wananga Capital Establishment Report was presented to the Minister of Maori Affairs in 1999. Fundamental to the recommendations of the Waitangi Tribunal were the following words: “Wananga is an ancient process of learning that encompasses te reo [language] and maaturanga Maori [studying from a Maori perspective]. Wananga embodies a set of standards and values. As a verb, ‘to wananga’ is to make use of maaturanga Maori in all its forms in order to teach and learn. It is clear that te reo Maori and maaturanga Maori are taonga [treasures]. Wananga is given life by these taonga and in the reciprocal nature of the Maori world, wananga also serves to give life to te reo and maaturanga. Each is dependent on the others to nurture, sustain and develop.”

The tribunal found that the wananga had been disadvantaged by the Crown’s tertiary education policies. Specifically it found the Crown to be in breach of its Treaty obligations of biculturalism, as an integral part of the Treaty partnership, and its guarantee of rangitiratanga or Maori self-management. Importantly, in light of subsequent developments set out below, the Tribunal found:

Two of the principal reasons for the development of modern wananga by Maori were to address the current underachievement of Maori in tertiary education and to help in the development of New Zealand society generally. Another primary objective of wananga is to help revitalise te reo Maori [Maori language] and maaturanga Maori.

The Tribunal recommended certain payments to be made by the Crown to wananga on a comparable basis to the funding of other tertiary institutes. This recommendation was incorporated in a Deed of Settlement dated 6 November 2001. A partnership agreement which was to be created between wananga and the Crown which would set out the goals, principles and commitments of the relationship was drafted but never concluded.

By 2003 the wananga had a large number of campuses throughout particularly the North Island of New Zealand and it was one of the country’s largest providers of tertiary education, with 59% of its students being Maori.

However, in 2005, the Crown, in return for continued funding, required wananga to implement a new charter and profile which would significantly change its vision and future. In short, the Crown proposed that wananga, in return for receiving payment of the suspensory loan provided for in the 2001 Deed of Settlement, work progressively towards full Maori enrolment. This is in contravention of what wananga sees as its true role which is to provide quality Maori-centred tertiary teaching and learning to all learners, not only Maori, and to encourage research undertaken in accordance with Maori custom and tradition. This view is reinforced by the definition of a wananga, as contained in the Education Act 1989 (NZ) (as amended by section 36 of the Education Amendment Act 1990 (NZ)), which is:

A wananga is characterised by teaching and research that maintains, advances, and disseminates knowledge and develops intellectual independence, and assists the application of knowledge regarding ahuatanga Maori (Maori tradition according to tikanga Maori (Maori custom)).

The government’s attempt to impose its narrow view of the role of wananga, which is essentially to deliver Maori courses to Maori, led to a further claim to the Waitangi Tribunal. On behalf of wananga, the claimants’ case was again based on the argument that the Crown's intervention raised significant issues relating to the rangitiratanga or self-determination of the governing Maori. The Tribunal heard the claim under urgency and reported to the Government in December 2005. While accepting the responsibility of the Crown (by virtue of its kawanatanga or governorship) to ensure that all tertiary institutes comply with statutory requirements and ensure adequate standards in terms of course quality, governance and financial management, the Tribunal found that the Crown’s actions had breached the principles of the Treaty in failing to protect the rangitiratanga of wananga. The recommendations of the Tribunal were that the Crown uses its best efforts to conclude the partnership agreement as drafted following the 2001 Deed of Settlement. It also recommended that the proposed charter be renegotiated to correctly reflect the nature of the wananga and to set up a structure which best enables mutual engagement and understanding. Significantly the Tribunal recommended that the Crown acknowledges
Language and culture are central to the belonging or *turangawaewae* of the indigenous people of Aotearoa New Zealand. There is a strong argument that it is through language that the imbalance in Maori educational achievement may be redressed. The benefit from this is clear, not only for Maori but also for the future of the nation as a whole.

### Endnotes

1. Aotearoa (land of the long white cloud) is the indigenous Maori name for New Zealand. The use of both names together recognizes the bicultural nature of New Zealand and is now common usage.
3. From Pacific islands predominantly Samoa, Tonga, Fiji and Nuie.
8. Much of the controversy relates to the use of the word *kawanatanga* in the Maori version which has the much more limited meaning of government rather than sovereignty. It is contended that this was the intention of the Maori chiefs, believing that they would maintain their sovereignty and *rangitiratanga* or chieftainship under the protection of Queen Victoria.
9. The Maori version states that chiefs, tribes, families and individuals would maintain: ‘the full chieftainship [rangitiratanga] of their lands their homes and all their treasured things’.
11. The Maori term for New Zealanders of European origin.
14. Maori tribal community meeting areas.
17. A major turning point in the revival of the Maori language *Te Reo* (see below).

**Formally** ‘the invaluable and innovative contribution made by the Aotearoa Institute and the founders of Te Wananga o Aotearoa to education in Aotearoa/New Zealand’.

At the time of writing, these recommendations await the Government’s response.

### 3. CONCLUSION

The Human Rights Commission has stated that its goal is a bilingual New Zealand by 2040, or 200 years on from the signing of the Treaty of Waitangi. For that aim to come anywhere close to realisation, a policy shift on the part of central government is required, relating to all levels of education. At the very least there needs to be a substantial appropriation of funds towards the training of teachers in the Maori language and for the provision of all school resources to be printed in the Maori language.

New Zealand is almost unique in the world in recognizing the language of the indigenous peoples as a national language. However, as noted by Stephen May (referring to Benton, 1988), this recognition is limited in that it does not extend the right to use or to demand the use of Maori in the public domain beyond its oral use in courts and tribunals. Nevertheless, such recognition arguably carries with it more than just a tolerance of its use. The status as a national language imposes a responsibility on the part of the state. If such status is to be taken seriously, and to have practical effect, the state must actively promote the use of the language within the community and particularly within the education system. It could be said that failing to appropriate sufficient resources to work towards the reality of a bilingual New Zealand amounts to a breach of the requirements imposed on schools by the *Education Act 1989* (NZ) and the *National Educational Guidelines*. It also brings into question the commitment to the right not to be discriminated against on the grounds of culture and ethnicity and the rights of minorities contained internationally in the *Universal Declaration on Human Rights*, the *International Convention on Civil and Political Rights*, the *International Convention on the Rights of the Child* and nationally embedded in the *Human Rights Act 1993*(NZ) and the *Bill of Rights*.

The failure of the state to positively promote bilingualism through compulsory Maori language instruction in state schools is high among the reasons advanced for the poor record of Maori in achievement in compulsory education and the low participation of Maori in tertiary education. In the words of Roslyn Noonan, the New Zealand Human Rights Commissioner:38 “Maori whanau, hapu and iwi are calling for greater autonomy in shaping and determining educational success for Maori. Debates are ongoing about whether educational success for Maori can be achieved through partnerships with the State, independence from the State, or both. What is clear from educational achievement indicators is that a disproportionate percentage of Maori are failing within current education structures. It is also clear that Maori, as a people, do not have access to the kind of education that enables the full development of their personality and sense of dignity, and their participation as adults in meaningful and rewarding employment.”
22. Te Reo Maori Claim, Wai 11 (1986), at p 29, the Tribunal quoted with approval from the submission made on behalf of the New Zealand Section of the International Commission of Jurists.
23. Section 155 of the Education Act 1989 (NZ) provides that the Minister may designate a state school Kura Kaupapa Maori in which Maori is the principal language of instruction.
24. See below for a full discussion of wananga.
30. n 28, at p 22.
31. n 28, at p 22. May uses the examples of Canada for its Inuit peoples in the new province of Nunavut, Quebecois in Quebec, Norway for its Sami people in the Northern Province of Finnmark; Catalan and Welsh medium education in Catalonia and Wales.
32. n 28, at p 23. May uses the example of the Indian Constitution (Article 350A) which directs every state and local authority to provide adequate ‘educational facilities’ for first language instruction for ethnic minorities ‘where numbers warrant’.
34. s 61 Education Act 1989(NZ).
35. People of the land.
39. This finding then triggered the power to mediate under the Human Rights Commission Act 1977 (NZ).
42. Pursuant to s 3.
43. Who have the power respectively, pursuant to ss 75 & 76 to manage and to control management of a state school, subject to any enactment or the general law of New Zealand.
44. This section was substituted for the original section from 1 February 1994 by the Human Rights Act 1993 (NZ).
45. s 61 Education Act 1989 (NZ), referred to above.
46. ss 62 & 63 Education Act 1989 (NZ).
47. s 75 (1A) Education Act 1964 (NZ).
50. With the exception of some Private Training Establishments established and accredited under the Education Act 1989 (NZ).
Linguistic Rights in Compulsory Education in South Africa

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Linguistic Rights in Compulsory Education in South Africa
Rika Joubert and Jean van Rooyen

1. HISTORY OF LANGUAGE IN EDUCATION IN SOUTH AFRICA

Conflict around the issue of language informs just about every stage of South Africa’s history. The language issues began after the South African War (1899-1902) when Britain introduced English as the sole official language of South Africa. At that time the conflict was between Dutch and English. In 1920 big business and the civil service were dominated by English speakers. During the rise of Afrikaner nationalism in late 1920s and early 1930s political pressure for single-medium education started to surface.

The Dutch Reformed Church and members of civil society placed increasing pressure on provincial governments to make Afrikaans, rather than Dutch the medium of instruction for Afrikaans speaking children. Between 1932 and 1958, single-medium Afrikaans grew from 28 percent to 62 percent.

After the outbreak of Second World War, the United Party in South Africa articulated a vision of a unified white South Africa through a policy of compulsory bilingual education. The National Party opposed this vision and aimed for a policy segregating Afrikaans-speaking children in order to foster Afrikaner nationalism. Both political parties wanted to use the education system to achieve their political ends.

Apartheid ushered in a new set of linguistic, cultural and political imperatives. By 1970 the national party achieved its aim. Most primary school students were initially educated in their mother tongue. African students switched to either Afrikaans or English in the high schools.

The final result of the constitutional negotiations compromised by formulating section 29(2) of the Constitution:

2. LEGAL FRAMEWORK

The Convention on the Rights of the Child confirmed the right to education of the child (CRC, art. 28(1)), and called on States Parties to “[m]ake primary education compulsory and free to all” (CRC, art. 28(1)(a)); to “[e]ncourage the development of different forms of secondary education,” to make such education “available and accessible to every child,” and to this end to “take appropriate measures such as the introduction of free education and offering financial assistance in case of need” (CRC, art. 28(1)(b)). Education must be directed towards “development of the child’s personality, talents and mental and physical abilities to their fullest potential” (CRC, art. 29(1)(a)); “development of respect for human rights and fundamental freedoms” (CRC, art. 29(1)(b)); “development of respect for the child’s parents, his or her cultural identity, language and values, for the national values” of his or her home country or country of origin, and for “civilizations different from his or her own” (CRC, art. 29(1)(c)). Education must prepare the child “for responsible life in a free society, in the spirit of understanding peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin” (CRC, art. 29(1)(d)).

This section does not support the continuation of single-medium public schools, nor does it eliminate entitlement for single-medium schools. This section however, raises the extent to which the demands of linguistic communities can be accommodated in South African public schools.

2. LEGAL FRAMEWORK

The Bill of Rights contained in Chapter 2 of the Constitution has a profound influence on the complex education environment in which there are a myriad of relationships between institutions exercising authority and individual stakeholders, for example between educators,
learners and their parents, between governing bodies, educators and parents, between education departments and staff members of educational institutions, etc. The Bill of Rights is involved in each of these relationships. In addition, the Bill of Rights guarantees particular education rights.

The rights guaranteed in the Bill of Rights cover a wide spectrum of human interests and activities. Each right protects certain interests and conduct of those persons protected under the Bill of Rights. The state has the obligation to respect, protect, promote and fulfill the rights in the Bill of Rights but, indeed, everybody has the duty to respect the rights of others. The rights mentioned in the Bill of Rights may be limited only in accordance with the general and specific limitation provisions in the Bill.6

Section 29(2): Education in one’s preferred language

This was the clause that nearly derailed the constitutional negotiations of the nineties and on which an uncomfortable compromise was reached. The essence of the crisis was that some parties tried to protect the existing separate schools for the different language groups by means of a constitutional right to single-medium schools, as opposed to the ANC’s ideal of equal, non-racial education that would eradicate the injustices and disparities of the past. On the one hand, in other words, there was the fear that existing white schools would be overcrowded by pupils from other language and cultural groups. On the other hand, there was the suspicion that this fear was inspired by racism, and that a right to single-medium institutions would perpetuate existing inequalities and would frustrate the redress of inequalities and the transformation of the education system. What does section 29(2) provide?

It is significant against the above background that the necessity of multilingual education has been recognised and that everyone does have the right to education in the official language or languages of their choice in public educational institutions where it is reasonably practicable,7 in other words, when it is reasonable to expect the state to provide such education. In the heated atmosphere generated by the dispute over single-medium institutions, the recognition of this basic right in our multilingual situation was overlooked sometimes. Note that the right goes further than Article 2 of Protocol I of the European Convention on Human Rights and Fundamental Freedoms as it was interpreted and applied in the Belgian Linguistic Cases.8 It is not confined to existing facilities either.

The right applies to all education and is not restricted to basic education. Even institutions of higher education are therefore required to provide instruction in the languages preferred by students. However, the right extends only to the official languages and not to all languages used in South Africa. In this sense, although it would accommodate most South Africans, it does not strictly speaking provide for a right to mother tongue education.

Section 29(2) contains an important specific limitation provision in that the right is subject to the condition that provision of education in the preferred language must be reasonably practicable. The state must fulfill this right, unless it is not reasonably practicable or the state can establish on other grounds that its refusal or inability to provide such education complies with the general limitation provision.9 In respect of the practicability requirement learner numbers, costs, availability of facilities and educators, the distance to the nearest similar institution that is able to provide education in the chosen language, and the chosen medium of instruction in the case of universities, can be relevant factors that may determine whether, in a particular case, it is reasonably practicable to provide such education. However, the Gauteng High Court held that the Department of Education’s failure to deliver textbooks for half of the academic year is an unlawful violation of a constitutionally enshrined right10.

Section 29(2) further provides, and this is the actual compromise, that in order to ensure effective access to and implementation of this right, the state must consider all reasonable alternatives, including single medium institutions, taking into account equity, practicability and the need to redress the results of past discrimination. Although this provision does not provide for a right to single-medium institutions, it imposes a duty on the state and on any applicable organ of state.11 In choosing the appropriate institution in general or in a particular case, they must consider all reasonable alternatives in a bona fide way, taking into account what is educationally appropriate and the listed factors of equity, practicability and the need for redress.12 The factors carry equal weight and must be balanced. What may be equitable to everybody concerned may not be practicable or educationally appropriate, and what may be practicable may not serve to redress historical inequalities. This duty applies in the case of existing institutions as well. It means, therefore, that when an education department or school authority takes decisions regarding the medium of instruction, it must comply with the provisions of section 29(2).

A few implications of section 29(2) should be emphasised.13

- The phrase “in order to provide effective access to and implementation of the right” requires the state to be able to demonstrate that it in fact provides the right to education in one’s preferred language effectively.
- The right to education in one’s preferred language is primarily subject to the practicability test, and not to the factors mentioned later in the subsection in respect of the best alternative to provide the right effectively. The latter factors apply only to the determination of the best alternative to give effect to the right.
- The fact that the provision expressly refers to single-medium institutions means that at least this alternative must always be considered. Whenever single-medium institutions are found to provide the most effective way to fulfill the right to education in one’s preferred language, this should be the first option to follow.
- The perception that single-medium institutions obstruct the redress of past discrimination is unfounded. Mother-tongue education is, as a matter of fact, the most powerful tool to extend educational opportunities to all South Africans.14 Furthermore, as pointed out earlier, equal access to educational facilities is guaranteed by the equality principle and any abuse of single-medium institutions to deny anyone equal access to education would be inconsistent with section 9.

By way of summarising this issue, it should be emphasised that the right to education in one’s preferred language is guaranteed unequivocally in the South African Bill of Rights. Single-medium educational institutions are not a guaranteed right, but must be considered whenever the best alternative to provide the right to education in one’s preferred language...
must be chosen. Even when a single-medium institution proves not to be the best alternative, the onus remains on the state to provide education in one’s preferred language effectively. This may yet prove to be the most feasible and just way in which this delicate matter could have been handled.

Compulsory education is still not part of the right to education, although the South African Schools Act, 1996 provides that learners are compelled to attend school from the age of seven years until the age of 15 years, or the ninth grade, whichever comes first. Unlike the international norm, section 29 also does not guarantee a right to free education. No general freedom of choice is recognised, but the right to choose between public and private education is provided for, as well as the right to be educated in a preferred language. There is no express right to equal access to educational institutions, but it is assumed that this right is implicitly covered by the equality principle guaranteed in section 9. In South Africa, the equality rights sanction affirmative action and programmes instituted by educational authorities that give preference to the admission of pupils disadvantaged by past discriminatory laws and practices enjoy constitutional protection.

3. CASE LAW PERTAINING TO LINGUISTIC RIGHTS

There exists, after some 16 years of jurisprudence, a sizable body of case law that engages with issues of language and culture and their place in public schools in South Africa. The primary driver of this body of education litigation is the state’s and the Afrikaans-speaking community’s concern about the existence of single-medium Afrikaans public schools. Cases in the High Court and Constitutional Court suggest that the powers given to school governing bodies to determine the admissions policies and language policies are under threat. These cases also suggest that single-medium Afrikaans public schools are fighting a rear-guard and potentially losing the battle with the state over transformation. Legal analysis also shows that communities that wish to preserve their linguistic and cultural ways will find themselves on more solid legal ground when they create and fund their own independent schools.

Mother tongue instruction has been commended as “the foremost and the most effective medium of imparting education” (Hoërskool Ermelo, par. 50, and as “the most powerful instrument of extending educational opportunities to all South Africans” (Malherbe (2007) 97). However, the Constitution does not compel a person to undergo education in his or her mother tongue, but permits education in the official language or languages of the student’s own choice, and it so happens that a vast majority of African learners prefer education through the medium of a language other than their own — notably in South Africa, through the medium of English. This has rendered exclusively Afrikaans medium schools in South Africa at risk (See, for example, Matukane & Others v. Hoërskool Potgietersrus, 1996 (3) SA 223 (T); Hoërskool Middelburg; Minister of Education (Western Cape) v. Mikro Primary School Governing Body, 3 All SA 436 (SCA); Hoërskool Ermelo), and, as noted by Justice Johan Kriegler, “Language — and more precisely the maintenance of Afrikaans — provoke deep-rooted emotion”

If education in the official languages of South Africa had been freely and adequately accessible throughout the country, implementation of language rights in education would not have been a problem. But that is not the case. Consequently, the right to education in any particular official language — say, Afrikaans — can only be insisted upon where provision of education through the medium of Afrikaans is “reasonably practicable”. Public educational authorities have been given a wide discretion to consider their options in the allocation of (linguistically) scarce resources: it must consider all educational alternatives, including single medium institutions, taking into account equity, practicality and considerations of remedial actions.

The Schools Act (section 6(1)) stipulates that the Minister of Education determine norms and standards for language policy in public schools. The Norms and Standards for Language Policy in Public Schools were published on 19 December 1997.

Section 6(2) of the Schools Act provides for the following:

The governing body of a public school may determine the language policy of the school, subject to the Constitution, this Act and any other applicable provincial law

The provisions of the Schools Act must be read against the background of the preamble to the Schools Act. It refers specifically to the necessity to protect and promote the variety of cultures and languages of the people of South Africa.

In terms of Schedule 4 of the Constitution of South Africa the responsibility for the provision of education in each province is seated in the provincial sphere of government. Therefore, each Provincial Government must execute the responsibility to provide public education to eligible learners in the respective provinces. All provinces have their own legislation regulating education. If there is a conflict between the national and provincial language policies, then the national policy will prevail.

The theme of equality balanced with diversity (i.e. minority rights) runs like a golden thread through all matters concerning language rights and equal access to schools. It follows therefore, that to ensure equality of opportunities whilst promoting diversity, it is necessary to simultaneously consider the best interest of children requiring equal opportunities as well as the best interest of children requiring their minority language rights to be protected.

In South Africa education officials often claim the right to amend the language policy at a school unilaterally by “declaring” that a school has become a double medium or parallel medium institution. The term “double medium” is used to define a school that uses two or more languages of instruction. Learners are accommodated in a single class room and the educator uses the different languages of instruction at the school alternately during the period of instruction to convey information on the subject matter. The term “parallel medium” is used to define a situation where the school uses two or more languages of instruction, but the learners that fall within the respective language groups are accommodated in separate class rooms. A single language of instruction is used per period of instruction. Learners in the same grade receive instruction in the language of their choice, but in separate class rooms.
Approximately fourteen percent of all Afrikaans first language learners now receive education in English. This turn of events came about as a result of the direct policy decisions and concerted efforts by Provincial Education Departments (Middelburg Primary School v Head of Department, Mpumalanga Department of Education; Western Cape Minister of Education v Mikro Primary School; Seodin Primary School and others v MEC Education Northern Cape) to impose changes of languages policies onto Afrikaans schools. The trend from government departments to favour the establishment and promotion of bilingual language policies for schools inevitably promotes the dominance of English. This trend clearly contradicts the constitutional imperatives to promote and enhance language diversity, because the dominance of English encroaches on the minority languages to such an extent that the less established languages face an ever diminishing prospect as languages of instruction in education. Section 6 of the Constitution of South Africa provides for eleven official languages. All official languages must enjoy parity of esteem and must be treated equitably.

In Hoërskool Ermelo, the Constitutional Court had the final say in interpreting the constitutional principles relating to single medium education in “the new” South Africa. The Ermelo High School has been an Afrikaans medium school of high standing for many years. In recent times, though, there was a dramatic decline in its student enrolment. At the same time, the demand of basic education through the medium of English increased dramatically and to an extent not fully accommodated by the English language schools in the area. In 2006 the Department of Education approached the school to admit 27 English speaking black learners to the High School of Ermelo and to provide tuition to these learners through the medium of English. They were refused admission on the basis that Afrikaans was the only medium of instruction of the school.

In terms of Section 6(2) of the School’s Act “the governing body of a public school may determine the language policy of the school subject to the Constitution.” Section 22(1) of the Act authorises the head of the education department to withdraw a function of the governing body, and may do so, in terms of Section 22(3), in cases of emergency without prior communication to the governing body. In cases where the department of education has determined on reasonable grounds that a governing body ceased to perform functions allocated to it by the Act or has failed to perform one or more of those functions, the head of the education department, acting pursuant to Section 25(1) of the Act, “must appoint sufficient persons to perform all such functions or one or more of such functions, as the case may be, for a period not exceeding three months.” Acting pursuant to these provisions, the head of department terminated the existing governing body of the Ermelo High School and replaced it with an interim committee, which then amended the language policy of the school to make provision for instruction through the medium of Afrikaans and English. The action of the head of department was upheld in the North Gauteng High Court, Pretoria (High School Ermelo v Head of Department of Education, Mpumalanga & Others, Case No. 3062/07, 17 October 2007 (unreported), overruled by the Supreme Court of Appeal (Hoërskool Ermelo & Another v Head, Department of Education, Mpumalanga & Others, 2009(3) SA 422 (SCA)), and finally came before the Constitutional Court, which upheld the decision of the Supreme Court of Appeal but on partially different grounds (Hoërskool Ermelo).

The Constitutional Court decided that Section 29(2) read with Section 22, of the Schools Act does give the head of the education department the power to withdraw on reasonable grounds the function of the governing body to determine the language policy of the school. Once the power has been properly withdrawn, such power vested in the head of department and could be exercised by him or her for a specific remedial purpose. The appointment of an interim committee in terms of Section 25 of the Schools Act to determine the school’s language policy was therefore ultra vires the head of department. The withdrawal of the function from the governing body of the school, the appointment of the interim committee, and the subsequent amendment of the school’s language policy by the interim committee, were therefore unlawful and were consequently set aside.

The Constitutional Court, acting pursuant to Section 172(1)(b) of the Constitution, further decided that the governing body revisits its language policy for at least two reasons. First, the governing body assumed that its decision regarding the school’s language policy was to be determined by the interests of the school and its learners only, whereas the interests of the community in which the school is located and the needs of other learners in the region have to be taken into account also. Secondly, even though the decision of the interim committee was unlawful, the scarcity of classroom spaces for learners preferring education through the medium of English remains a reasonable certainty in the future. The Department of Education furthermore bears a constitutional and statutory duty to provide basic education in the official language of the learners’ choice in cases where this is reasonably practical and just.

The Constitutional Court therefore made an order requiring the school’s governing body and the school to report to the Court within a specified period of time on the reasonable steps it has taken in reviewing the school’s language policy and on the outcome of their review process. The end result was that the Ermelo High School is now a double medium school offering education through the medium of Afrikaans and English. The High School of Nelspruit is the only remaining Afrikaans medium high school in the Mpumalanga province.

4. CONCLUSION

The right to education protects a number of freedoms, such as the freedom to choose between public and private education, the freedom to choose between different public educational institutions, and the freedom of home education. Freedom of choice also extends to the freedom of parents to have their children educated according to their own religious and philosophical convictions and in the official language of their choice.

It must be emphasised that most rights, including the other education rights, require positive action by the state for their protection, promotion and fulfillment, and one cannot on this basis begin to deny the existence of rights. In his judgment Judge Kollapan stated very clearly that unlike some other socio-economic rights, the right to education is immediately realisable. There is no internal limitation requiring that the right be progressively realized within available resources subject to reasonable legislative measures.
The Constitution neither provides a guaranteed right to single-medium public schools nor does it prohibit the existence of such institutions. However, the Constitutional norms that bracket language policy do not entail some ideological pre-commitment to any particular language preference. The state or departmental officials must be in a position to offer a compelling evidentiary basis for its decision regarding the change or the maintenance of a single-medium public school's language policy. In the absence of such reasons, the courts will view state-sponsored changes in policy as arbitrary exercises of state authority and violations of the opposite constitutional and statutory provisions.

Endnotes

1. Prof Dr Rika Joubert and Dr Jean van Rooyen, University of Pretoria and the Interuniversity Centre for Education Law and Policy (CELP).
4. Ibid 48
5. S 7(2).
6. S 36
7. S 29(2).
8. 1 EHHR 241. See the comments by Van Dijk and Van Hooft (n 130) 467.
10. Case 24565/2012 par 20
11. All organs of state as defined in section 239 of the Constitution are bound by the Bill of Rights – s 8(1).
12. S 29(2)
15. S 3(1) of Act 94 of 1996.
17. S 9(2). See Motala v University of Natal 1995 3 BCLR 374 (D).
18. Woolman & Fleisch, 52
19. Under Section 172(1)(b) the Court may suspend a decision of unconstitutionality for a fixed period of time to allow the competent authority to correct the default.
20. Of course, it does not include a right not to receive education (Van Dijk and Van Hooft (n 100) 469).
21. Section 27 and two Others v Minister of Education and Another, Case 24565/2012 par. 20
22. Woolman & Fleisch 80
23. Ibid 81
The Rise and Decline of ‘Bilingual Education’ in the United States

Charles Glenn
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1. INTRODUCTION

In the 1970s, a number of American states adopted the requirement that pupils whose first language was not English and who were unable to perform ordinary classwork in English be provided instruction in all the usual subjects through their home language until – typically after three or more years – they had achieved academic proficiency in English at a level comparable to that of native speakers of the language. In recent years, this instructional approach has come under increasing criticism, and referenda in California, Arizona, and Massachusetts have required that schools instead provide shorter-term transitional classes with a focus upon developing proficiency in English and with only supportive assistance in the home language. The author was the official responsible for implementing the first state-mandated ‘bilingual education’ (BE) program, and in 1996 published a book reviewing policies and practices in 12 countries for educating language-minority pupils. His paper asks why BE became so popular with American policy-makers, and why it later lost support.

2. LANGUAGE MINORITY PUPILS IN THE UNITED STATES

A report from the National Center for Education Statistics informs us that “the number of Americans speaking a language other than English at home has more than doubled since 1979” (Klein and others, 1). This increase is largely through not entirely attributable to immigration: apart from those in the country illegally (estimated in the millions), more than 680,000 immigrants were granted permanent residence in 1998, of whom only four percent were from countries where English is the primary language (2). Between 1979 and 1999, the number of persons aged 5 to 24 who spoke a language other than English at home increased from 6.3 to 13.7 million, from 9 percent to 17 percent of that age group. This represented about three out of four youths of Latin American origin and three out of five youths of Asian origin; in 1999, there were 9.8 million children and young adults in the United States who spoke Spanish (7-10).

The growth in numbers has been accompanied by a dispersion from the major metropolitan centers, with the result that 54 percent of all public schools, in 1999-2000, enrolled pupils who were not proficient in English (4). Of Spanish-speakers aged 5 to 24, 36 percent reported that they had difficulty speaking English; taking all language groups together, there were about two million children and young adults who spoke English “not at all” or “not well” (12).

As mentioned, the language-minority population is not made up entirely of immigrants; in fact, “in 1999, language minority youths (5- to 17-year-olds) were more likely to be native-born than foreign-born,” and, of youth speaking another language at home, 22 percent of the native-born reported difficulty speaking English, compared with 51 percent of the foreign-born (14).

Predictably, 51 percent of those aged 18 to 24 who speak another language at home and report difficulty with English had not completed secondary school, compared with 18 percent of those proficient in English. This was much more characteristic of Spanish-speakers than of speakers of Asian languages; it is extraordinary that 92.6 percent of the speakers of Asian languages who reported difficulty with English had completed secondary school, compared with only 39.1 percent of the Spanish-speakers (21-22).

Although there are very many pupils in the United States for whom English is a second language, and many for whom proficiency in English is limited, it should be noted that many of the problems faced by language-minority – and especially Hispanic – pupils go well beyond language. There is a rich literature seeking to explain why hundreds of thousands of Hispanic youth for whom English is the dominant language, like hundreds of thousands of African-American youth, experience more difficulty in school than do Asian youth with limited proficiency in English. Obviously, issues of social capital, teacher and peer expectations, and a wide range of other factors have an impact. These questions cannot be explored in this brief paper.

Unfortunately, as Lorraine McDonnell and Paul Hill have pointed out, policymakers at the state and federal levels have tended to define the needs of immigrant and other language minority pupils almost exclusively in terms of language acquisition. Arguably, this has often obscured the need for a more comprehensive approach. Over the last 30 years, the debate has largely been about whether or not to provide “bilingual education,” and it is that debate which we will be considering here.

3. ‘BILINGUAL EDUCATION’ – VARIATIONS ON A THEME

There has been a certain amount of confusion about what is meant by ‘bilingual education’ as it is practiced in the United States. The most obvious meaning would be an education which makes use of two languages for purposes of instruction, as is often the case in elite international schools, with the intention that pupils develop a high level of proficiency in both, in order to make use of both in their future careers or for cultural purposes.

This is not the most common use of the phrase in American education, however. Ordinarily, it is used to describe an approach to the instruction of immigrant children and also native-born children from families which use a language other than English for communication in the home; the implication is that it is a form of remedial education for children and youth who are at risk of failure in school. It was conceived of initially as an alternative to simply placing children or youth with limited English-proficiency (LEP) into regular classrooms to “sink or swim.”

There are several forms of such ‘bilingual education,’ of which the first described is much the most common:
transitional bilingual education: a full-time program for pupils unable to perform ordinary
classwork in English, in which they are provided instruction through their home language
(typically Spanish) in all the subjects appropriate for their grade, while learning English in
preparation for ‘mainstreaming’ into a regular class. It was initially assumed that this would
require no more than three years, but many advocates have been urging that five to seven
years are required to acquire sufficient proficiency in English to participate adequately in a
class taught through English.

maintenance bilingual education: a full-time program in which a language other than English
(typically Spanish) is used for instruction much or most of the time, without intention of
‘mainstreaming’ at any point. It is generally assumed that, given the cultural dominance of
English in the US, language-minority pupils require a strongly-alternative program in order to
develop full proficiency in their home language as well as to maintain ethnic identity and self-
esteem.

two-way or integrated bilingual education: a full-time program in which are enrolled both
pupils whose first language is English and also pupils with another first language (typically
Spanish); instruction is provided through both languages in a structured way with the
intention of developing in all pupils a proficiency in both languages. This is the model closest
to that found in many international schools around the world, where local elites seek to have
their children become proficient in English without sacrificing academic proficiency in the
national language.

There are also several alternatives to bilingual education employed in the United States:

English as a second language: a part-time program designed to promote proficiency in
English for pupils who are enrolled in regular classes where instruction is provided through
English (though sometimes the term is used for the component of a bilingual program that
teaches English). Typically, pupils are pulled out of their regular classes for regular
supplemental instruction, and instructional groups may include pupils of different home
languages.

Structured English immersion: a full-time program for a limited time (typically one year)
through which language-minority pupils are given intensive instruction in English and other
preparation for ‘mainstreaming’ into a regular class at the appropriate grade level. This
model is similar to the transitional classes which are commonly provided in other
industrialized nations with significant numbers of immigrant children to educate.

4. THE THEORETICAL DEBATE OVER HOME-LANGUAGE INSTRUCTION

From a comparative perspective, providing the children of immigrants with instruction
through their home language has been rather rare, despite a position taken by UNESCO, in
1953, that “we take it as axiomatic . . . that the best medium for teaching is the mother
tongue of the child.” This general statement – note that it is ‘axiomatic’ and makes no claim
to be based upon research – reflects a concern for early schooling in developing nations still
ruled at the time by colonial powers, and seeks to make a place for the inclusion of the
indigenous language and culture in what was commonly a form of schooling imported from
Europe with little adaptation. The Convention Against Discrimination in Education, adopted
by UNESCO in December 1960, takes a somewhat different position in Article 5:

It is essential to recognize the right of members of national minorities to carry on their own
educational activities, including the maintenance of schools and, depending on the
educational policy of each State, the use or the teaching of their own language, provided
however:
(i) That this right is not exercised in a manner which prevents the members of these
minorities from understanding the culture and language of the community as a whole and
from participating in its activities, or which prejudices national sovereignty;
(ii) That the standard of education is not lower than the general standard laid down or
approved by the competent authorities; and
(iii) That attendance at such schools is optional.

The logic of this statement is quite distinct from that of the 1953 policy and is concerned to
assert the group rights of national minorities, such as for example Basques and Catalans in
Spain, rather than to assert any special rights for immigrants. And, in fact, most countries
have made that distinction. Thus, for example, Welsh may be chosen as the language of
instruction in Wales, Navajo on the reservation in New Mexico and Arizona, and Maori in
New Zealand. French is the language of instruction in Quebec, German in a small section of
Belgium.

In some cases, however, the languages of immigrants have been used for instruction. This
was notably the case in Bavaria, during the 1950s and 1960s, when the children of some
“guest workers” were taught in Greek or Italian in anticipation that they would return to the
homelands of their parents (and, perhaps, to discourage them from remaining in Germany),
and it had also been the case in some American cities during the 19th century, when public
schools provided instruction through German in part to lure the children of immigrants away
from Lutheran and Catholic parochial schools.

While the Bavarian programs were, arguably, concerned to isolate rather than to integrate
immigrant children, and were not imitated in North Rhine-Westphalia and other Länder
dominated by the Left, there were a few experimental programs – for example, in Enschede
and Leiden in the Netherlands – which in the 1970s used home languages for the instruction
of small numbers of immigrant children. The most aggressive promotion of such instruction,
however, was in Sweden, where it came to have a strongly ideological justification.
Language activists like Tove Skutnabb-Kangas played a major role in a so-called “school
strike” in Rinkeby, a workingclass suburb of Stockholm, demanding “first of all, to stop the
so-called integration model. We wanted all the new concepts in subject matter teaching to
be introduced through the medium of Finnish, during the first six years. . . . We wanted
Swedish to be taught as a second language (not a mother tongue), and we wanted it taught
by bilingual teachers.” The “we” included Finnish school directors and bilingual teachers
(described as “some of the most active participants”) who objected to the integration of
Finnish with Swedish pupils starting in the fourth grade; these specialists and teachers were
obviously not disinterested participants in the demand for their services.
Like the Hispanic population of the United States, the Finnish population of Sweden is caught between societal pressures toward assimilation and the desire of many – perhaps especially among the educated elite – to maintain a separate identity, language, and culture. A slogan in these controversies has been “without Finnish we are not Finns.” There was thus considerable demand on the part of Finnish organizations for all-Finnish home language classes. If the minority group language were not used as the primary vehicle for social, affective, and cognitive development, it was argued, these aspects of the child’s growth would be damaged, bringing great harm to the child’s educational potential.

The language activists claimed that a failure to teach through the home language until strong academic competencies in that language had been developed would result in “semi-lingualism,” a failure to become proficient in either language. Some asserted, in fact, that this was intentional, designed to create a permanent underclass. Skutnabb-Kangas, for example, referred darkly to “very substantial economic-political rationales and goals, regardless of whether those who choose the programmes admit it or not.” Although Ekstrand, Paulston, and other linguists who studied the research on Finnish pupils in Sweden insisted that the concept of semi-lingualism had no basis, it has had a lasting influence.

5. FACTORS IN THE ADOPTION OF TRANSITIONAL BILINGUAL EDUCATION IN THE UNITED STATES

That influence was most notable in the United States, where it lent support to those activists who argued that the effect – and indeed the intention – of the public education system was to rob Latino children of their identity and their group solidarity along with their language and culture. At a time when the integrationist demands of the African-American Freedom Movement were being abandoned by some of the most vocal elements, in favor of “Black is beautiful” and “Ourselves alone,” it was not surprising that a parallel impulse developed among the more radical Hispanic leadership.

Calling for “a concerned political struggle that encompasses all segments of the Chicano [Mexican-American] people and other linguistic minorities and that is based on a solid ideological foundation,” Eduardo Hernández-Chávez and other activists insisted that school through the minority language was necessary even for minority children who were dominant in English when they entered school, since “the minority language in these circumstances remains an extremely important determinant of socio-cultural identity.”

A sound educational approach for minority children . . . must have as one of its highest priorities the first establishment of a deep sense of social and cultural identity that is grounded in the ethnic community. A central component of this goal is the development of a strong sense of social and cultural identity. If the minority group language were not used as the primary vehicle for social, affective, and cognitive development, it was argued, these aspects of the child’s growth would be damaged, bringing great harm to the child’s educational potential.

Because of the salience of these considerations of strengthening identification with the ethnic group as a means of political mobilization in opposition to the existing social and economic system, Hernández-Chávez was not entirely satisfied even with school programs which used only Spanish in the initial instruction of pupils, and which had “a long-term commitment to the native tongue as the principal medium of instruction.” Despite this gratifying emphasis on Spanish, “there is no emphasis on the development of socio-cultural identity.” As a result, such programs did not satisfy the central criterion of promising “to revitalize ethno-linguistic communities in the United States and, ultimately, to build the capacity of these communities for self-sufficiency” (Hernández-Chávez, 171-9), whatever that could possibly mean for individual or group opportunity in a highly-integrated economy.

As a result of such reasoning, the rationale for bilingual education as the preferred strategy for the instruction of immigrant and other language minority pupils was from the start a mix of political and linguistic arguments, invoked for different audiences with little consistency. Reports of successful instruction through Finnish in Sweden led to the elaboration of linguistic theories based on the distinction between ‘communicative’ and ‘academic’ proficiency, the so-called “threshold hypothesis,” and the assertion that premature instruction in a second language would lead to a permanent intellectual deficit.

A further impulse to the use of home language for instruction was given by the efforts of middle-class Cuban refugees in Miami to ensure their children would be bilingual. An elementary school was developed whose entire curriculum – what is described above as two-way or integrated bilingual education – was intended to lead to proficiency in both Spanish and English; given the motivation and the family characteristics of the parents, this school was a notable success and served to promote the idea that bilingual education offered special advantages.

In 1971, Massachusetts adopted the first state law requiring that pupils with limited proficiency in English be provided academic instruction through their home language for up to three years, while learning English. This Transitional Bilingual Education (TBE) Act applied to any local school district in which there were at least twenty such pupils, of any age, from a language group. As a result, dozens of districts were required to provide TBE in Spanish, and the larger cities to do so in a range of languages. In some cases, as with Cape Verdean Criolo, this required developing instructional materials that were not available in the homeland.

Over the next several years, several other states, including Illinois and New Jersey, adopted laws closely modeled upon that in Massachusetts.

In 1974, the United States Supreme Court ruled in Lau v. Nichols that San Francisco was required to provide an instructional program that met the educational needs of Chinese pupils who could not benefit from simply being placed in regular classrooms. “There is no equality of treatment,” the Court ruled, “merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are clearly foreclosed from any meaningful education” (411 U.S. 563). The Court did not, however,
require any specific remedy, writing that “Teaching English to the students of Chinese ancestry who do not speak the language is one choice. Giving instruction to this group in Chinese is another. There may be others.”

As we have seen, however, there was increasing support among advocates and educators especially concerned with language minority pupils for instruction through home languages. The U. S. Office of Education developed so-called “Lau remedies” that called for this approach, stating, significantly, that “since an ESL [English as a second language] program does not consider the affective nor cognitive development of the students . . . an ESL program [by itself] is not appropriate.” Although this position – strongly influenced by the bilingual education specialists who helped to draft it – was never given the force of regulations, it had a significant impact, especially in states that had not adopted their own laws, upon school districts that wished to shield themselves from litigation and also to qualify for federal government funding under Title VII of the Elementary and Secondary Education Act.

The United States Supreme Court ruled again, in 1982 (Plyler v. Doe) that states had an obligation to provide for the education of school-aged children and youth in the country illegally.

Through a combination, then, of state legislation, federal government influence, the threat of litigation, and a consensus among specialists, bilingual education was adopted as the treatment of choice in hundreds – perhaps more than a thousand – of school districts around the country.

6. CRITICISMS OF BILINGUAL EDUCATION

By the mid-1990s, however, there was a growing number of criticisms of bilingual education, though the consensus among specialists continued to be strongly in support, as indeed one would expect. Despite thousands of evaluations and studies, the evidence supplied by research was unclear. In a very extensive review of thirty years of research on programs for language minority pupils, a distinguished panel appointed by the National Research Council took a refreshingly agnostic position on one of the central articles of faith of bilingual-education advocates, that children must be taught to read first in the language which they speak at home. “It is clear,” they noted, that many children first learn to read in a second language without serious negative consequences. These include children in early-immersion, two-way, and English as a second language (ESL)-based programs in North America, as well as those in formerly colonial countries that have maintained the official language of the colonizer as the medium of instruction, immigrant children in Israel, children whose parents opt for elite international schools, and many others. . . The high literacy achievement of Spanish-speaking children in English-medium Success for All schools . . . that feature carefully-designed direct literacy instruction suggests that even children from low-literacy homes can learn to read in a second language if the risk associated with poor instruction is eliminated (page 60).

Later in the report, indeed, the authors conclude candidly that “We do not yet know whether there will be long-term advantages or disadvantages to initial literacy instruction in the primary language versus English, given a very high-quality program of known effectiveness in both cases” (page 179).

It should be noted that, in February 2004, the designer of the “Success for All” program, cited above, modified his position somewhat, recommending that language minority children be taught to read in their home language at the same time they are learning to read in English, at different times in a single day. This is a departure from the practice urged by bilingual education advocates, that reading in English not be introduced until academic skills are solidly established in the home language, but it represents a compromise position that could find broad acceptance.

The authors of the National Research Council study suggest, sensibly, that effective bilingual programs and effective structured English immersion programs may be quite similar, characterized in both cases by some native-language instruction, especially initially for most students, a relatively early phasing in of English instruction teachers specially trained in instructing English-language learners

I would add only the importance of early and consistent integration with native speakers of English, and the expectation that language minority pupils will, in a reasonable time, be expected to achieve to the same high standard as their classmates. In addition, I have frequently called for the adoption by American schools of the practice in many other Western democracies of offering supplemental home language classes, not as a remedial or transitional measure, but as an enrichment of the instructional program.

The primary objections to bilingual education – apart from the quarrels among specialists over what the research ‘proves’ – have been the following:

that the long-term (three and often more years) isolation of pupils learning English from classmates proficient in English is educationally unsound that instruction through other languages often fails to follow the curriculum objectives of the school system that teachers employed because of their language proficiency are often inadequate in content knowledge and in pedagogical training that pupils in bilingual programs are often excluded from external assessments and there is thus a lack of accountability for their academic progress that the emphasis on the language and culture of origin is likely to retard the adaptation of language minority pupils to life in the United States that the academic results of bilingual programs – despite the linguistic theory – have often been disappointing
In these criticisms there may in some cases be an element of xenophobia or of ignorance about the reality of these programs, but each of them is at least partially accurate. In some ways even more damaging, however, is the lack of enthusiasm among immigrants for instruction through their home languages. The most recent survey, consistent with earlier ones, was released in November 2002 by the widely-respected organization Public Agenda. Asked “Should public schools teach new immigrants English as quickly as possible even if they fall behind in other subjects or teach them other subjects in their native language even if it takes them longer to learn English?” 73 percent of the immigrants opted for the former and only 20 percent for the latter. It is interesting that this clear preference was more marked among immigrants than among the general public, for whom the responses were 67 and 27 percent, suggesting that xenophobia is not the primary factor in such reservations.

On the other hand, advocates for bilingual education have countered that bilingual education programs have not been adequately implemented in most communities despite hundreds of millions of dollars over 30 years. The criticisms reflect xenophobia and intolerance of other languages and cultures. States and school districts have not done enough to recruit and train competent teachers who are also bilingual.

They continue to insist that research has demonstrated the necessity of bilingual education.

7. RECENT DEVELOPMENTS

Over recent years, the ground has shifted under bilingual education in its usual form. Voters in referenda in California, then in Arizona, then in Massachusetts, enacted laws requiring short-term (typically one year) structured English immersion in place of bilingual education. Evaluations from California seem to indicate that achievement of Latino pupils has improved; bilingual education advocates argue that this is a short-term effect and that long-term impact on the language and conceptual development of these pupils will be negative. The federal government has clarified that Title VII funds may be used for non-bilingual approaches to educating language-minority pupils.

It is too soon to predict whether these recent developments, and especially the powerful example of California, will sweep away bilingual education programs nationwide as a failed experiment, or whether they will be modified along the lines proposed above, or in other ways. What seems clear, however, is that the protected status of such programs (a protection resulting largely from indifference on the part of the wider educational world) is gone, and that they will increasingly be challenged to produce results.

8. BIBLIOGRAPHY


Linguistic Rights in Albania

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Linguistic Rights in Albania
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1. BACKGROUND

1.1. The Importance of Language in Nation-Building in Albania

Linguistic rights in Albania have a long history. This history began with the fight to recognize and use Albanian as an official language during the period of the formation of the Albanian state and it continues today with the treatment of the issues of the linguistic rights of the national and linguistic minorities. The development of the national language and the advancement of linguistic right have occurred contemporaneously and have always been part of the major national agenda of the Albanian State.

The official language in the Republic of Albania is Albanian. Albanian is the official language also in Kosovo, FYR of Macedonia, and Montenegro. Albanian is currently spoken by over six million people in the Republic of Albania, in Kosovo, by the Albanians of FYR of Macedonia, Serbia (Preshevë, Bujanovë, Medvegjë), and Montenegro (Krajë, Uçqin, Tivar) as well as in the territory of Çamëri and in some old settlements in Greece. Albanian is also spoken in the linguistic isles of the Albanian settlements in Italy, Bulgaria, Turkey, Rumania, Egypt and Ukraine. Additionally, the Albanian language is spoken by the Albanians who have migrated to various parts of the world prior to Second World War and over the last decade, in the USA, France, Germany, United Kingdom, Norway, Switzerland, Denmark, Australia, Argentina, and so on. The Albanian language is being taught and studied in several universities and Albanological centres in the world such as in Paris, Rome, Naples, Cosenza, Palermo, Petersburg, Peking, Munich, Bucharest, Thessalonica, Sophia, and so on.

Albanian Language belongs to the family of Indo-European Languages, alongside with Indian, Armenian, Iranian, Germanic, Balto-Slavic, Celtic, Hellenic and Italic languages. It constitutes a separate branch in this family of languages and is not originally associated to any of the modern Indo-European languages. The origin of the Albanian language is one of the most debatable issues in the linguistic field. Two main theories have circulated in the linguistic literature with regard to the Albanian language: its origin from the Illyrian language and the one from the Thracian language. The Illyrian theory has had a broader historical and linguistic support. It took shape in the 18th century among the historians of the time and is well recognized today with the treatment of the issues of the linguistic rights of the national and linguistic minorities. The development of the national language and the advancement of linguistic right have occurred contemporaneously and have always been part of the major national agenda of the Albanian State.

The establishment of the independent Albanian state in 1912, created new circumstances that facilitated the development of national education. The Vlora Government (1912) proclaimed Albanian as the official language of the country.

Meanwhile, many Albanians continued to write in their native language in secrecy using the Latin alphabet, the Greek alphabet, the Cyrillic alphabet as well as the Ottoman Turkish version of the Arabic alphabet. The choice of the alphabet was an expression of the different political and religious orientations. The most significant factor uniting the Albanians, the spoken language, lacked a standard alphabet and even a literary standard form. It was for this reason that the linguistic rights and the development of the Albanian language became an important part of the agenda of the movement for national liberation during the Albanian National Renaissance in the second part of the 19th century and the beginning of the 20th century. The campaign for the recognition of Albanian as an official language was part of the struggle for the recognition of the Albanian identity. During this period, an important event in the history of the Albanian language is the Manastiri Congress, which, after discussing the versions of the Albanian alphabet submitted to it, decided on the general use of the Latin alphabet.

In the Middle Ages, the population of the territories inhabited by Illyrian tribes was called Albanoi and their territory was called Albanon, which is the source of 'Arbër', 'Arbëresh' or 'Arbëri' (words used to refer to the people of Albanon by the Albanians) and 'Arbëri', 'Arbani', 'Albania' (words used to refer to the territory) the 'Albanian' (the word used to refer to the language spoken by residents of that territory). By the end of the 17th century, the Albanians themselves started referring to their language as "shqip" (pronounced shchip).

The process of the formation of Albanian as a national language has gone through two major periods: the pre-nation and the nation period. The former extends over the 16th, 17th, 18th century and begins with the recognition of Albanian as an official language. During the Slav and Ottoman rule, Albanians were generally denied the right to use Albanian. The Ottoman Empire implemented repressive policies against the development of the Albanian language. Writing in Albanian was prohibited by law. As a rule, the Albanian students in Albania received their instruction in Turkish or Greek. In addition, there were a few religious Italian schools, where the language of instruction was Italian. The efforts to open Albanian schools by the Albanian patriots were often nipped in the bud.

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The Albanian language has two dialects, the northern dialect or "Gheg" and the southern dialect or "Tosk" that are used by two major ethnic subgroups, "Ghegs" that live in the north of the country and "Tosks" that live in the south of the country. There are no great differences between Albanian dialects and people can understand each other without difficulty. At the beginning, the Albanian language was written in two major literary variants formed on the bases of the two dialects, although in 1920, the concept of the unified national literary language was accepted. The work on the unification of the national literary language continued after the Second World War and in 1972, the National Congress on the Orthography of the Albanian language was held in Tirana. It adopted a resolution on the unified literary (standard) language. The unified national literary language (standard language) is mostly based on the literary variant of the "Tosk" dialect of the south, especially with regard to the phonetic system, but it also encompasses elements from the literary variant of the "Gheg" dialect of the north.
1.2. Formal Recognition of the Various Languages and Their Status in Albania

Besides Albanian, other languages are also used for informal daily communication within the territory of the Republic of Albania. The three national minorities, Greek, Macedonian and Montenegrin use their respective languages (Greek, Macedonian and Montenegrin) and so do the two linguistic minorities of Roma and Aromanians. In addition, temporary foreign residents or those that have received asylum use their native languages (Chinese, English, etc.). People with hearing impairments use the newly created Albanian Sign Language and the blind use Braille as their written version of Albanian.

Additionally, many Albanians speak foreign languages (English, French, Italian, Greek, Russian, German, and so on). All students in Albania study at least one foreign language as part of the school curriculum, starting from the primary school (generally third grade) and up to the university level. Some private kindergartens and elementary schools start the teaching of a foreign language even earlier. In the secondary and higher education students may learn two foreign languages or more. During the communist regime, the foreign languages taught in Albanian schools were Russian, English, French, German and Latin (the last one in the university level only). At the university level were taught for a short time: German, Serbo-Croatian, Romanian, Turkish, Greek and Spanish. Since the fall of communism, there has been an obvious change in the preferences of Albanians regarding foreign languages, and other European languages. Currently, in the primary schools students learn one or more of the following: English, French, Italian, Greek and Turkish. In the secondary school they may choose to learn between English, French, Italian, Russian, German, Spanish, Greek and Turkish. English, French, Italian, Russian, German, Greek, Macedonian, Turkish, Bulgarian, Serbo-Croatian, and Latin are taught at the university (undergraduate) level. The foreign language curricula offer the students also insights into the history, literature, society and culture of the respective countries.

1.3. An Overview of Current Debates

The current language-related debates cover the following issues:

a. There is a widespread difference of opinions on the use of the “Tosk” dialect as the basis of the modern normative literary Albanian. The supporters of “Gheg” have presented many arguments in favour of using “Gheg” as the basis of the normative literary language.

b. Some members of the Roma and Vlach/Aromanian minorities would like to be considered national rather than linguistic minorities. In addition, Egyptians (gypsies) have not been yet recognized as either a national or linguistic minority, and some members of this group, which faces poverty and marginalization, would like to be recognized as a national minority. They have asked for the creation of opportunities for their children to take classes in their mother tongue.

c. People with hearing impairments have asked for more opportunities for the use of sign language on TV and blind people have asked for increased possibilities of Braille prints.

d. Many Albanian children, whose families return from temporary emigration, are immersed in Albanian public schools with very little knowledge of Albanian and with no language instruction support. This creates problems in their education. Parents have asked from the Ministry of Education and the Regional Departments of Education to provide this support.

2. LANGUAGE RIGHTS IN COMPELLSORY EDUCATION

2.1. General Legal Principles

Albanian state has first recognized linguistic rights upon its admission to the League of Nations in 1920. In October 1921, Albania made a declaration in which it pledged its commitment to respect the rights of the minorities in compliance with the peace treaties. Currently, the linguistic right, as an important human right in the Republic of Albania, has been legislated in these main documents:

- Law No. 88 72, for “Vocational Education and Training in the Republic of Albania”, approved on 29.03.2002.

The Republic of Albania has ratified the following international documents that contain rules on education right, on linguistic right, and on the rights of minorities:

- International Covenant on Economic, Social and Cultural Rights;
- Convention against Discrimination in Education;
- Convention on the Rights of the Child;
- European Convention on Human Rights;
- Convention for the Protection of Human Rights and Fundamental Freedoms;
- Statute of the Council of Europe;

All these documents are directly applicable in the domestic legal order and they have been invoked in the domestic courts. The Constitution of the Republic of Albania gives a special status to the international instruments Albania is party to. According to the Constitution, every ratified act becomes part of the domestic law and is implemented directly with the exception of the acts that are not self-implemented and require the approval of special legislation. The
Constitution recognizes that the conventions have a dependant status but super juridical power. This status of the international conventions constitutes another warranty that secures their implementation even in regard to linguistic rights.

The Albanian Constitution has articles which directly or indirectly sanction rules and regulations that guarantee, protect and assist the exercise of the linguistic rights. The principles that are at the foundation of the legislation that guarantees linguistic rights are non-discrimination, equality, and promotion of conditions that favour the protection of language, freedom of the use of the language, education in the mother tongue and freedom of the creation of the educational institutions in the mother tongue.

The Constitution of Albania proclaims that the rights and freedoms of the individual, national identity, coexistence and mutual understanding of the Albanians with the minorities are part of the foundations of the state. According to the Constitution, Albanian citizens, foreigners and people without a citizenship living in the territory of the Republic of Albania are entitled to the same fundamental freedoms and rights as well as obligations. This document guarantees that no one may be unjustly discriminated against for reasons such as language.

2.2. Domestic Legislation on the Linguistic Rights in Education of the Minorities

Giving priority to the political orientation of the protection of human rights and fundamental freedoms of the individual, including linguistic rights and the protection of the rights of minorities, the Albanian parliament and government have prepared a juridical packet which provides support for action. The need for rapid and qualitative change for the recognition and protection of all educational rights as well as the demand to meet the accepted international standards has dictated the improvement of the Albanian legislation in regard to linguistic rights.

Three laws approved by the Albanian Parliament that regulate pre-college, college and vocational education, followed by a series of amendments and improvements, constitute the bases of educational legislation in Albania. The issue of the linguistic rights is part of this legislation. In addition, linguistic rights have been object of special bylaws (like Decisions of the Council of Ministers or Guidelines by the Ministry of Education and Science).

All laws that regulate the pre-university educational system secure equal rights for all and guarantee the right of the individuals belonging to national minorities "to have the opportunity for instruction in their mother tongue, and study their history and culture in the curriculum.

The state also creates all conditions for the minorities to learn Albanian, and study the Albanian history and culture. The curricula as well as the proportion of the use of the mother tongue in regards to the official language in instruction are determined by special acts of the Ministry of Education and Science. Education for members of minorities is conducted in special educational units and institutions. Their opening and closing of the educational institutions of the minorities is decided by the Council of Ministers based on the Minister proposal. Private schools, that offer instruction in foreign languages as well, or issue a foreign degree or similar to, can be opened and closed by the decision of the Council of Ministers upon the proposal of the minister. Criteria and procedures for their opening are defined by the Council of Ministers.

The following are the fundamental criteria that regulate education in the mother tongue for national minorities: First, education in the mother tongue is non-obligatory. The decision does not foresee or guarantee the mandatory bilingual education. However, it defines as a general criterion a minimum number of 20 students necessary to start a class in the mother tongue. Second, opening a bilingual class or school depends on the will of the community of the minorities and it is initiated as a response to its request. The request is written by the students’ parents or wards and it is addressed to the respective Regional Education Department. The request must include the students’ enrollment list. Upon verification of the list and the satisfaction of all regulations of the request, the Director of the Regional Education Department submits the latter to the Prefect, attaching his opinion.

Although the acts of the Council of Ministers charge the Ministry of Education and Science with the responsibility of overseeing the education of bilingual students and the curricula of their educational units, the bylaws do not clarify the procedures for starting or terminating these educational units. Including the institution of the prefect in the decision-making and charging it with the coordination of the local and central government only complicates matters unnecessarily. The local government should be given the right to make the decision in regards to opening bilingual educational units, based on Law No 8652, date 31.7.2000 “On the Organization and Functioning of Local Governance”.

We are of the opinion that the legal framework that guarantees the education of the minorities in their mother tongue requires improvements and additional acts. For example, Decision No. 502, of 5.8.1996, which is an addendum to the Decision of the Council of Ministers No. 396, of 22.8.1994 “On the Elementary Education in the Mother Tongue of the Students of Minorities” defines the exclusionary practice of opening bilingual education in Greek only in the cities of Sarandë, Delvinë e Gjirokastër. An act that regulates the opening of all bilingual schools nationally, irrespective of the languages involved, would be more functional.

The new Law “On Pre-university Education System in the Republic of Albania” regulates the bilingual education. According to the Article 12 of this law, bilingual education in upper secondary education carried out under bilateral agreements between the Republic of Albania and other countries.
Based on the language policy of the Government, the foreign language will be a compulsory exam for the Matura diploma.19

2.3. Domestic Legislation on the Linguistic Rights in the Education of Foreigners

As an implementation Act of the Constitution of Albania, the Law “On the Integration and Family Reunification of Individuals Who Have Been Granted Asylum in the Republic of Albania” regulates all the procedures that guarantee the right to education of foreigners that have acquired asylum or have applied for it. In addition to recognizing the right to education of this population, this law guarantees its implementation through positive actions of the Albanian state. The Refugee Office organizes courses for Albanian, Civic Education and vocational education. It also covers the expenses of college education for the foreigners that have been admitted to public universities and have met all the respective requirements.

2.4. Special Categories

2.4.1. Ethnic Minorities

Historical tradition in Albania has followed the way of recognizing as national minorities those minorities which have their own motherlands with which they have common characteristics such as the spiritual constitution, the language, culture, customs and traditions, religious belief, etc. Such conditions are met by the Greek, Macedonian and Montenegrin national minorities.

Albania has a population of 2,831,741 inhabitants.20 From the ethnic point of view, 98% of the population is Albanian and 2 percent consist of national minorities. According to the census of 1989, the total number of the minority population was 64,816. The number of the Greek population was 58,758 inhabitants; the Macedonian population was 4,878 inhabitants, whereas statistical data on the number of Montenegrin minority were not specifically and accurately defined.

There is reason to believe that during the nineties of the last century the number of people belonging to the ethnic minorities in Albania has decreased due to migratory movements. For example, according to a survey of the Albanian Helsinki Committee that was conducted in 2000, the number of the Montenegrin population that lived in Albania was 600 people. However, the publication of a new demographic atlas, greatly disputed by the scholars of the field, claims that the actual number of the minority population is higher than the official one.21

The Greek and Macedonian minorities have their schools. The students study in their mother tongue in these schools with the curricula approved by the Ministry of Education and Science. The proportions between the subjects in the lower cycle of elementary school (grades 1-4) is 90 percent in the mother tongue and 10 percent in the Albanian language whereas in the higher cycle (grades 5-9) 60 percent in the national minority native language and 40 percent in the Albanian language. The students also study the History of the Greek and Macedonian People, respectively.

2.4.2. Linguistic Minorities

The Roma and Aromanians are recognized and respected as linguistic minorities. There are no official data on Roma population; they have never been registered as a separate population. According to a report of a survey published by the Albanian Helsinki Committee in September 2000, it is estimated that about 30,000 Roma live in Albania. The data for the number of the Aromanian minority in Albania appeared for the first time in the 1950 census. In this census, the Aromanian population counted 2381 inhabitants. While in the 1955 census, the number of the Aromanian population was put at 4249. In the later censuses no data were produced regarding the number of the Aromanians in Albania.22 The Roma and the Aromanians maintain their mother tongue as a means of communication in their social environment, but they rarely write it. There are no special schools where the Roma and Aromanian children can learn in their mother tongue.

2.5. People with Special Needs

Sign Language as the main oral form of communication for hearing-impaired people and Braille as the main form of written communication for blind people have been recognized the status of minority languages in recent international documents23 and the granting of opportunities for instruction in these languages for students of respective populations has been considered a human rights issue.24

According to the most recent statistics there are 8929 blind people of all ages in Albania (0.29% of the population of the country). There are no accurate statistics on the number of people with differing degrees of hearing impairments. However, extrapolated statistics from international organizations estimate the number to be 286,712 individuals (8% of the population of the country).25 A pilot study of people who receive disability benefit in Tirana regional office gave a much lower statistic. According to the report, the number of people with recognized hearing impairment was 100 times lower than that of the blind people (respectively 27 and 2703).26

Special education for students with hearing impairments was first introduced in 1965, with the opening of a special school in Tirana. Until recently, students were taught the lip-reading technique and efforts to develop an Albanian sign language were discouraged. However, with support from international experts, Albanian Sign Language has been created and it has been included in the curriculum of the Institute for Students with Visual Impairments. It will be difficult, however, for graduating students to continue to use the sign language as a language of instruction in the high school and university as there are no support services for the integration of students with special needs in any of the Regional Education Departments or in any of the universities in the country. The Mid-Term National Strategy of People with Disabilities (2005)27 has not provided any measures to be taken in this regard, although it encourages the use of sign language in the visual media and support with interpreters during communication with employees of public administration.

Blind students study in the 9-year Institute for the Blind Students in Tirana which opened as a school in 1965. Braille is the main form of written code used in instruction and all the schools books are prepared in Braille for the students of the Institute. However, because of
the inadequacy of printing resources in Braille, the students who continue high school university are not supported. They use recorded tapes as their main form of instruction. The Mid-Term National Strategy of People with Disabilities has a special provision in the increase of printing resources for Braille.

The solution for the education of students with hearing and visual impairments through special education boarding school has created two issues in regards to the human rights of these students. First, many parents choose not to send their young children away from home. Consequently, some of the latter may not receive any education at all because many schools are not welcoming for students who communicate differently as there do not exist any special supports for them. Others, especially students with hearing impairments, experience many difficulties as they struggle to learn through the written medium only. Females seem to be affected more than males as they are underrepresented in both institutions. Secondly, all students attending the special institutions are educated in segregated social and educational environments, which is a violation of their human right for inclusive education.

In summary, although the newly created Albanian Sign Language, and Braille are recognized as means of communication for the education of students with hearing and visual impairments respectively, more needs to be done to ensure that they achieve the status of minority languages. Additionally, the inclusive educational needs of the students with these special needs require more attention by the Ministry of Education and Science and Regional Education.

3. CONCLUSION

The Republic of Albania has demonstrated positive policies for linguistic rights and conscious efforts have been made to ensure coexistence, tolerance, collaboration and understanding among people of diverse linguistic backgrounds. The democratic changes have brought new dimensions to the linguistic rights of Albanians and the members of the minorities living in the country. This has been reflected in the adherence of Albania to international bodies and the ratification of international documents as well as in the creation of special institutional capacities to meet the obligations which the Albanian state and its government have undertaken in regards to minority rights in general and minority educational rights in particular.

However more needs to be done. There is a need for the updated statistical data on the minority population in Albania. Special populations like the Roma and the Aromanians need to be granted the right to learn their mother tongue through public schools, and the Egyptians need to be recognized as linguistic minority. Additionally, the students with visual and hearing impairments need the creation of the necessary educational communicative support to enjoy their human right for inclusive education and the linguistic right for a broader use of their respective systems of communication.

Endnotes

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8. Ibid.
9. Ibid.
10. The Council of Europe Framework Convention for the Protection of National Minorities was signed by the Republic of Albania on 29.06.1995. It was ratified by the Assembly of the Republic of Albania with the Law 8496, dated 03.06.1999 and, after the instruments of ratification were deposited on 28.09.2000, it came into effect on 01.01.2000.
20. INSTAT, 2012, see: http://www.instat.gov.al The last census was realized in 2011. This census did not include the declaration of the nationality, while the declaration of the ethno-cultural group and religion was optional.
21. The cause of the debate are the different data on minority population published by the same authors in the interval of two years (below 2 % in the school textbook and 8% in the atlas).