



**Minority Languages Protection: between Reluctance and Enforceability in Croatia,
Austria and France**

by Sadović Kenan

LL.M in Human Rights, Long Thesis
Professor: Mathias Möschel
Legal Studies Department
Central European University
1051 Budapest, Nador utca 9.
Hungary

Contents

Abbreviations	ii
Executive summary	iii
Introduction	1
Chapter I.....	4
A) UN instruments.....	4
B) Council of Europe Instruments.....	7
C) The European Union.....	16
D) Jurisdictions	17
Austria	17
Croatia	20
France	24
Chapter II.....	27
A) Defining the right to education through international instruments.....	27
B) Case law.....	37
The Belgian case	38
The Moldovan case	42
The Cyprus case	44
C) The dwindling approach	45
Chapter III	47
A) Historical perspectives	47
Slovenes in Austria.....	47
Serbs in Croatia	48
France and autochthonous minorities.....	50
B) Linguistic rights in education between the comparators	51
Chapter IV Conclusion and recommendations.....	65
Bibliography.....	68

Abbreviations

CERD – Convention on Elimination of Racial Discrimination

CESCR – Convention on Economic, Social and Cultural Rights

CoE – Council of Europe

CRC – Convention on the Rights of the Child

CSCE – Commission on Security and Cooperation in Europe

ECHR – European Convention on Human Rights

ECMRL – European Charter on protecting Minority or Regional Languages

ECtHR – European Court on Human Rights

FCPNM – Framework Convention on the Protection of National Minorities

ICCPR – International Covenant on Civil and Political Rights

LoN – League of Nations

OECD – Organization for Economic Co-operation and Development

OSCE – Organization for Security and Co-operation in Europe

UDHR – Universal Declaration on Human Rights

UN – United Nations

Executive summary

Minority rights cover a large spectrum of rights that are specifically dedicated to protecting and enhance minorities. Throughout the last century with the general development of human rights, minority rights have found their place in the mechanisms of the League of Nations as they were defined and protected. The formation of international human rights with the Universal Declaration of Human Rights and the European Convention on Human Rights omitted minority rights. This can be explained with the general development of human rights being universal and not special.

Linguistic rights are a subset of minority rights and they are present throughout human rights documents and instruments but only in a small manner. They are not directly given to only minorities in the European Convention on Human Rights for example but are given a mention or interpreted in the right to fair trial or the right to education. An effort will be made to examine the right to be educated in one's mother tongue which technically does not exist under the European Convention but is nonetheless present in some shape or form. This very narrow reading and perspective of linguistic rights and minority rights is seen through the lens of educational rights because linguistic rights as such do not exist under that name.

The system put in place during the years is designed to favor a progressive realization through the United Nations and Council of Europe documents. Together with national legislation and Constitutional protection linguistic rights of minorities should technically be protected.

Historical perspectives are analyzed because of their importance in providing context to the comparators' behavior and stance towards the minorities.

Minorities in these three countries have been living for centuries and have been a part of the culture, history and development even though their mother tongue is different. As minorities they have faced discrimination and were victims of damaging policies, especially in the area

of language and linguistic rights. Even though the three comparators have moved away from subjugating minorities and trying to assimilate them, their current efforts to secure minority rights that are guaranteed by the States themselves is not enough. The exact actions of the comparators are to grant minorities linguistic rights in education, but they are not completely followed through and the minorities are facing obstacles. These actions and barriers consist of territorial application of minority rights, only providing for non-compulsory language education or outright denial of school registration.

Without a strong system of supervision and without support from the European Court of Human Rights, the reluctance of the comparators to follow through their obligations creates a weak system of protection for these minorities.

Introduction

The nature of linguistic rights is directly connected to minority rights. They are non-divisive as linguistic identity belongs to minority identity. Linguistic rights refer to the right to use one's language and its protection.¹ Linguistic rights do not garner attention of those who are not a minority, since the language of the majority is prevalent in society. It is further expanded in conjunction with minority rights as their usage of language is different from that of the state majority. Linguistic minority is the group that uses a language which differs from the native tongue of the action. In a pluralistic and ever-increasing population, there are very rare cases of homogenous population. Every country thus, has minorities present in their country. Be it from the neighboring country or from an indigenous people that stayed bound to the region they inhabited. Minorities can also nurture a different culture together with the different language. As for a definition of a minority, under the current Council of Europe framework for minorities, there is no explicit definition.² It is left to the member state to define who is deemed to be a minority is whilst adhering to good faith principles.³ The primary issue is not the usage of language per se, as anyone is free to speak the language they wish, it is the usage of language in an official setting that causes issues with recognition.⁴ As soon as a person uses another language in education or in trial proceedings, then it becomes a contested issue.⁵ The issue of contention is the way linguistic rights are being treated and positioned. As soft law mechanisms are in place, these do not provide for a concise and

¹ C Michael MacMillan, *The Practice of Language Rights in Canada* (University of Toronto Press, 1998) 11; Final Report of the Royal Commission on Bilingualism and Biculturalism—Book I: The Official Languages (1967), 41.

² Council of Europe – Framework Convention for the Protection of National Minorities factsheet, available on: <https://www.coe.int/en/web/minorities/fcnm-factsheet> accessed on November 25, 2018

³ *ibid*

⁴ Stephen May, "Language Rights: The 'Cinderella' Human Right," *Journal of Human Rights* 10, no. 3 (July 2011): p. 266.

⁵ *ibid*

enforceable legal framework upon which people could seek redress. This leads to reluctance of the countries to provide for equal treatment in the field of linguistic rights which goes against the minorities as a vulnerable group.

The question arises where the use of a language places in the context of the human rights realm. Using language means to communicate or express oneself which is an inseparable part of human identity. It is the complex system of communication that has evolved into languages which construct our views of the world. Not to dwell into non-verbal communication, verbal communication occurs every day and it is the building block of society. Since languages are directly tied to our identity, they are a part of human dignity which falls under the scope of human rights protection.⁶ Language creates cultural identity on the individual level and as people are more free to use their language, the societal aspect of it is pluralism which in itself is inherent for democratic societies.⁷ In the words of Rosseau reason is inseparable from language and thus it is the primary reason for the creation of civilization and evolution of society.⁸ Johann Herder establishes that language is what constitutes a nation or a group and that without it, the group cannot be differentiated from another.⁹ There are many aspects and positions one can take over language from various spheres of social sciences and its importance is undisputed. The legal context of language shall be further analyzed as it is lacking in a human rights mechanism which could enforce these rights. If minorities are groups, then the perspective of minority protection is to be understood as group rights. For group rights to come into play a group must be identified narrowly as identity needs to be

⁶ M. Paz, "The Tower of Babel: Human Rights and the Paradox of Language," *European Journal of International Law* 25, no. 2 (May 1, 2014): p. 474

⁷ *ibidem*

⁸ Michael Davis, "The Music of Reason in Rousseau's Essay on the Origin of Languages," *The Review of Politics* 74, no. 03 (June 2012): p. 389

⁹ Nathaniel Berman, "Nationalism Legal and Linguistic: The Teachings of European Jurisprudence," *NYUJ Int'l L. & Pol.* 24 (1991): p. 1520.

established to be protected.¹⁰ This raises more questions as when looking at minorities we need to answer the question of the nature of minority rights in lieu of them being either collective or individual. The contemporary definition is that minority rights are litigable by individuals collectively.¹¹ This tells us that the use of language is a human right which should be defined properly and upheld as it is the part of our culture and dignity. Pluralism implies existence of more social entities and minority inclusion presumes coexistence with the majority. As minorities are usually established as the vulnerable group, it is in this context that we observe how the linguistic rights come into play when a minority is precluded from being able to exercise these rights. Thus, the conclusion arises that to be a minority one must constitute a separate identity based on language, which warrants legal protection to ensure existence.

This reasoning provides us with a strong basis on how to approach the topic of linguistic rights in education specifically as these are at the intersection between cultural and minority rights. In addition, their justiciability is also a matter of contention, as we will analyze the jurisprudence of the ECtHR together with the recent developments in linguistic rights made by the Council of Europe.

¹⁰ Philip Vuciri Ramaga, "The Group Concept in Minority Protection," *Human Rights Quarterly* 15, no. 3 (August 1993): p. 575–76

¹¹ *Ibidem*, p 585

Chapter I

A) UN instruments

The League of Nations¹² is the first international organization that incorporated obligations towards minorities in the aftermath of the First World War.¹³ It was held that minorities could be endangered by the emergence of new independent States that have been freed by another power and to ensure protection, the League of Nations would provide guarantees.¹⁴ Through the accession to the League of Nations, the newly formed countries accepted obligations of protection towards minorities through peace treaties or bilateral treaties.¹⁵ The language provisions in these minority treaties were given in the same manner they are mentioned today, minorities have a right to use their language in public and in private.¹⁶ Minority protection went so far as to provide direct mechanisms or guarantees as they are called, through which infractions could be brought to the Council.¹⁷ Upon deliberation the Council would issue action plans and direction on how to mend the problem and the Permanent Court of International Justice¹⁸ could answer any questions of law or fact regarding the minority provisions.¹⁹ The legacy of the LoN can be summed up in the view purported by the PCIJ where a minority is “a group persons living in a given country or locality and united by [their] identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving the identity, whose existence was a question of fact, not of law.”²⁰ Yet today's context would change as minorities aren't strictly placed in a locality and in a region only,

¹² Office of the Historian -The League of Nations, 1920, <https://history.state.gov/milestones/1914-1920/league> accessed January 25, 2018

¹³ Peter Hilpold, “The League of Nations and the Protection of Minorities–Rediscovering a Great Experiment,” *Max Planck Yearbook of United Nations Law Online* 17, no. 1 (2013): p. 89–90.

¹⁴ “The League and the Minorities Treaties,” *Bulletin of International News* 5, no. 18 (1929): p. 4–6.

¹⁵ *Ibidem*, p. 92

¹⁶ Peter Hilpold, “The League of Nations and the Protection of Minorities–Rediscovering a Great Experiment” (2013) 17 *Max Planck Yearbook of United Nations Law Online* 87, p. 99.

¹⁷ *Ibidem*, p. 100

¹⁸ International Court of Justice – Permanent Court of International Justice, <http://www.icj-cij.org/en/pcij>, accessed October 5, 2017

¹⁹ *Supra* 11

²⁰ *Supra* 10, p. 576 - 577

they move, seek work in other cities and regions and thus scatter. The PCIJ offered the ability to petition to some minorities and this must be observed from the realm of international law and interstate relations.²¹ The system did not prove efficient in the end as the primary mission of upholding peace by the League of Nations (LoN) brought down the whole organization with its failure with the outbreak of World War II.

In the post WW II realm of minority rights nothing has occurred until the OSCE has put in effort to address minority rights. The Copenhagen meeting of 1990 was an OSCE meeting on the Human Dimension of the CSCE which produced a highly important document addressing minority rights.²² It preceded all the Council of Europe mechanisms of minority protection as well as the UN's. The reluctance of minority protection or the lack of concrete mechanisms for their protection was not changed in this document. It is a nonbinding declaration, a standard to which the countries shall adhere to. Article 34 specifically mentions that national minorities in countries shall be protected by the state and ensured to have instructions in their mother tongue in addition to the language of the majority population.²³ It is a document primarily centered around minority protection and definition of State responsibilities in a declaratory form. Even though this document is nonbinding, its importance has weight in the context of future instruments. The Copenhagen meeting a year after the fall of the Berlin wall and it was attended by the liberated countries such as Poland, Hungary and Czechoslovakia. It established some criteria of minority protection a declaration for the new countries in which they shall follow the needs of a democratic and pluralistic society. Pluralism does not only imply the plurality of opinions, but a heterogenous population which includes minority presence and participation.

²¹ Supra 10, p. 586

²² OSCE – Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen 1990

²³ OSCE – Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen 1990, Article 34

The closest direct mention of language rights is mentioned in the ICCPR under Article 27:” *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 practice their own religion, or to use their own language.*²⁴ The “shall” in the text confers a negative obligation on the state, that is a state must not interfere with the right of a minority to use their language, or enjoy their culture.²⁵ This provision has numerous implications. The Human Rights Committee, the body which supervises the implementation of the ICCPR, provided in its General Comment No. 23 that Article 27 also imposes positive obligations on State parties to ensure that minorities can in fact, practice their language, religion or culture unhindered.²⁶ It is no longer just a non-interference by the country but an active duty to protect and uphold the right. Another remark by the HRC is that this right is to be differentiated from other rights related to language which brings us to another viewpoint.

The implied right to language can also be interpreted from other human rights treaties. The ICCPR recognizes the freedom of expression²⁷ and the right to a fair and impartial tribunal.²⁸ Under these articles, a right to use language can be construed as part of other rights which are not specifically tailored towards minorities. Freedom of expression is a right conferred to all and the usage of another language does not eliminate it. As there are limitations to the right these cannot be focused on the language used. The right to a fair and impartial tribunal contains a minor provision regarding language, it is the right to an interpreter if one does not understand the language of the court.

²⁴ UN General Assembly, *International Covenant on Civil and Political Rights* Article 27

²⁵ UN Human Rights Committee (HRC), *CCPR General Comment No. 23: Article 27 (Rights of Minorities)*, 8 April 1994

²⁶ *ibidem*

²⁷ UN General Assembly, *International Covenant on Civil and Political Rights*, Article 19

²⁸ UN General Assembly, *International Covenant on Civil and Political Rights*, Article 14

The UN used the Copenhagen meeting as an inspiration amongst other documents such as the ICCPR²⁹, when drafting their Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.³⁰ It is an extension of other treaties, mentioned specifically in the document.³¹ Whereas the ICCPR dedicated a single provision which would encompass the right to language, culture and religion of a minority, the UNMD sought to establish a whole declaration that could stand on its own and properly define the obligations of the state towards minorities. Article 2 especially provides for identification and protection of linguistic minorities.³² The build up from the ICCPR and other documents mentioned takes a turn as it does not properly form a binding document. Indeed it is a declaration and as such it only serves as a guideline for those who sign it. By itself it does not provide a degree of lawful and enforceable protection towards minorities.

In the legal realm, linguistic rights are not present in an all-inclusive international law framework.³³ As other fundamental human rights are written in Constitutions and human rights treaties, an equivalent is missing for linguistic rights. They are a part of minority rights and are not separately defined which means language rights are mostly implied.³⁴

B) Council of Europe Instruments

The same argument can be extrapolated from the European Convention on the Human Rights which lacks the equivalent of the ICCPR Article 27.³⁵ The right to language or general

²⁹ Pentassuglia, Gaetano. n.d. *Mechanisms for the implementation of minority rights*. n.p. 2004, p 10-11.

³⁰ UN General Assembly, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 3 February 1992, A/RES/47/135

³¹ Ibidem, Preamble

³² Ibidem, Article 2

³³ Sadhana Abayasekara, "A Dog without a Bark: A Critical Assessment of the International Law on Language Rights," *Austl. Int'l LJ* 17 (2010): 90.

³⁴ ibidem

³⁵ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*

minority protection is omitted from the convention. But the context of freedom of expression³⁶ and right to a fair trial³⁷ also extends there.

With only the ICCPR as a binding document mentioning the right to language in some capacity, there is the argument of prohibition of discrimination. The lack of a fundamental human rights which is embodied in many treaties and defined can be explained by the simple prohibition of discrimination. This shift from advantageous minority protection in the form of documents to human rights which are guaranteed to all with a focus on a general ban on discrimination produces a similar effect. Article 26 of the ICCPR³⁸ and Article 14 of the ECHR³⁹ put embody this principle of anti-discrimination. Under the ECHR it is an accessory right. It does not function on its own. Under Protocol 12 Article 1, we find the clause, *General prohibition of discrimination* and language is included in the prohibition.⁴⁰ This is a standalone Article unlike Article 14, which means it can be the basis of the complaint without an accompanying provision. Under the Protocol 1, Article 2 we also find the issue of minority language protection.⁴¹ The right to education does not mention language in its phrasing. It was interpreted afterwards together with the positive obligation on the state to ensure that the language of education is fully regulated and financed in the context of public schools.⁴²

³⁶ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 10

³⁷ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 6

³⁸ UN General Assembly, *International Covenant on Civil and Political Rights*, Article 26 ICCPR

³⁹ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 14 ECHR

⁴⁰ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Protocol 12, Article 1

⁴¹ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Protocol 1, Article 2

⁴² Publication of the European Court of Human Rights, Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights, 2015

A certain session of the Parliamentary Assembly of the Council of Europe in 1981 would pave the way for future talks of protecting languages in the European scope.⁴³ This is the Recommendation 928 titled *Educational and cultural problems of minority languages and dialects in Europe*, which calls upon the Committee of Ministers to eventually adopt a measure which would result in a protection of languages in education and in official capacity.⁴⁴ This is a document which predates the Council of Europe documents and the CSCE meeting as well. A progenitor of defining the need to protect languages would later on serve in the drafting of the actual instruments. There we have the first mention of how linguistic identities are important for European development and the idea of Europe in general.⁴⁵

At the end of the century where minority rights including language rights did not manage to garner the full protection as other rights, the Council of Europe produced two documents. The first is the European Charter for Regional or Minority Languages which was adopted in 1992 by the Committee of Ministers of the Council of Europe.⁴⁶ Ratified in 1998 it is designed to offer protection for regional and minority language as well as ensure their promotion.⁴⁷ The Council of Europe is the supervising body and monitors the application of the ECRML. There are 25 State parties that have ratified the Charter.⁴⁸ Among them are Croatia and Austria, whilst France signed but did not ratify the Charter yet. As the CoE counts 47 members, it seems that almost half of the Member States did not wish to participate in the Charter. There

⁴³ European Parliamentary Research Service, Magdalena Pasikowska-Schnass, Regional and Minority Languages in the European Union, 2016, p.3, available on: <http://www.europarl.europa.eu/EPRS/EPRS-Briefing-589794-Regional-minority-languages-EU-FINAL.pdf> accessed August 10, 2018

⁴⁴ Parliamentary Assembly of the Council of Europe. Recommendation 928, 1981. "Educational And Cultural Problems Of Minority Languages And Dialects In Europe."

⁴⁵ *ibidem*, Article 1

⁴⁶ Council of Europe, About the European Charter for Regional or Minority Languages, available on: <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/about-the-charter> accessed on November 25, 2017

⁴⁷ Council of Europe, Objectives of the Charter, available on: <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/the-objectives-of-the-charter-> accessed on October 15, 2017

⁴⁸ Council of Europe, Signatures and ratifications, available on: <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/signatures-and-ratifications> accessed on October 15, 2017

is an effort by the CoE to promote ratification amongst States which is ongoing.⁴⁹ The Preamble of the Charter states that: “Considering that the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms”⁵⁰, requires further analysis. Stating that the right to use a regional or minority language is an inalienable right under the ICCPR and the ECHR provides a standing point in the final definition of the right to use a language. There was never a question if there was such a right, but there is a question of how enforceable it is. Under the Article 14 of the ECHR as well as the Protocol 12, Article 2, there is a general ban on language discrimination which is not an accessory right as it can be claimed as a violation by itself. The Preamble is expanded as it tells us that the aim is to protect regional and minority languages we can ascertain the importance of such an objective as it nurtures the greater unity and cultural wealth.

What the ECMRL primarily deals with is the promotional passive-based system of protecting minority languages without a binding obligation but a mere encouragement of linguistic rights.⁵¹ The name of the Charter might imply a higher degree of protection as it is centered around the regional and minority languages, but it is in fact the opposite from a hard law document. The provisions in the Charter are thus framed as obligations or possibilities and not as litigable legal rights in front of some judicial body.⁵² Minorities are not defined under the ECMRL but the definition of regional or minority languages is laid out as the language that is

⁴⁹ Council of Europe, Promoting ratification of the European Charter for Regional or Minority Languages, available on: <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/promoting-ratification> accessed on October 16, 2017

⁵⁰ Council of Europe: Committee of Ministers, *European Charter for Regional or Minority Languages*, Preamble

⁵¹ Tatjana Soldat-Jaffe, “The European Charter for Regional or Minority Languages: A *Magnum Opus* or an Incomplete *Modus Vivendi* ?,” *Journal of Multilingual and Multicultural Development* 36, no. 4 (June 7, 2015): p. 375

⁵² *ibidem*

used traditionally within a territory by nationals of the State who form a smaller numerical group, basically constituting a minority.⁵³ It does not acknowledge under this definition dialects of languages of migrants. Under Article 3 a State party must recognize and define their obligations towards a regional or minority language, which basically amounts to a recognition of a language they wish to protect under the Charter.⁵⁴ The part where obligations are listed and defined is in the second part of the Charter after Article 7. Under this part a State party should follow objectives and principles which in turn means again, that these are guidelines and not legal rights. Article 7 establishes the State and its “obligations” towards regional or minority languages so that they are recognized, promoted, their users not discriminated and that in general, a State party should aim to foster these languages under the Charter and not take steps which could undermine these “rights”.⁵⁵ Article 8 is based on education as it is a vital aspect of protection of linguistic rights where children have the chance to learn their language with the support of the Government and to preserve their identity.⁵⁶ Linguistic rights are not the only part of this provision as there is a large focus on being taught history and culture as these form a strong bond in the concept of identity. The way education and the linguistic rights are being defined is in the following substance. It follows a distinct formula under the Charter. A State party must, under the Charter, make available education in a regional or minority language in the pre-school level or to make a substantial part of it available. This system should also be available to those children whose parents request this and whose numbers are deemed sufficient. If the Government for any reason, cannot regulate the pre-school level of education, it must encourage these principles. For the primary education it follows the same laid out formula as well as for secondary education. For the university level of education, the State should make available education in

⁵³ Council of Europe: Committee of Ministers, *European Charter for Regional or Minority Languages*, Article 1

⁵⁴ Council of Europe: Committee of Ministers, *European Charter for Regional or Minority Languages*, Article 3

⁵⁵ Council of Europe: Committee of Ministers, *European Charter for Regional or Minority Languages*, Article 7

⁵⁶ Council of Europe: Committee of Ministers, *European Charter for Regional or Minority Languages*, Article 8

regional or minority languages and provide facilities in which the teaching of such languages could be undertaken with a caveat that if it is not possible to do so, promotion of principles should be followed. The State must also provide for the staff and facilities to uphold these notions together with a supervisory body which shall monitor the regional or minority language education. Other provisions focus on the need for translators and interpreters in criminal, civil and administrative proceedings to be available in the regional or minority language and that the languages can be used without an additional expense in the judicial sphere.⁵⁷ Yet, there is a limitation clause in the start of the provision as it says that these rights should be made available if the judge does not think that their use shall hamper proceedings amounting again to a guideline and not for a right per se. Under Article 10 the areas where there is a large number of the regional or minority language speakers the State is obliged to promote the usage of these languages in the administrative level.⁵⁸ This means that the Government should employ the people who can speak the language, that the persons can write to the Governments in the protected language and expect an answer in the same language. If the number is very large, then the language should be incorporated in the framework of administrative functioning. As an example, the names of places could be bilingually displayed, and official documents could be issued in the regional or minority language. Media access and its role is regulated under Article 11 of the Charter.⁵⁹ There we find that a State can use the radio and television medium for the promotion of regional or minority languages by offering programs or stations that will operate under these languages insofar this is possible as there are limitations like in the previous provisions. Article 12 tasks the State to foster cultural activities and to create and maintain cultural facilities that are to archive and

⁵⁷ Council of Europe: Committee of Ministers, *European Charter for Regional or Minority Languages*, Article 9

⁵⁸ Council of Europe: Committee of Ministers, *European Charter for Regional or Minority Languages*, Article 10

⁵⁹ Council of Europe: Committee of Ministers, *European Charter for Regional or Minority Languages*, Article 11

encourage the usage of regional or minority languages.⁶⁰ Article 13 deals with the economic and social life and prohibits the State from excluding or hindering regional or minority languages and obliges them to eliminate legislation and practices which do so currently.⁶¹ In addition, the State should undertake social and economic efforts to accommodate the usage of regional and minority languages. These are all very broad provisions and “obligations” on the State but the number of limitations present in the Articles supports the notion of this being a promotional Charter and not a binding document.

The second convention is the Framework Convention for Protection of National Minorities which has a direct aim of defining national minorities and offers recommendations for their protection.⁶² It is a promotion-based convention, meaning it has a non-binding character where the State is obliged to promote what is ratified. It is a report-based system where a country submits reports based on the cycle which are followed by a visit of the Advisory Committee which has a function of creating their own report based on their investigation and meetings with the government.⁶³ Their report is called an opinion and after it is submitted the State can submit a comment which finalizes the observer and subject strain of the report making.⁶⁴ With the usage of cycles, dialogue between the Advisory Committee, States and minority representatives, the main aim is to gradually go towards a better system of minority protection with the help of recommendations. It is a document which focuses on creating policies which are aimed at defining what a minority is, how they should be protected and a

⁶⁰ Council of Europe: Committee of Ministers, *European Charter for Regional or Minority Languages*, Article 12

⁶¹ Council of Europe: Committee of Ministers, *European Charter for Regional or Minority Languages*, Article 13

⁶² Council of Europe, *Framework Convention for the Protection of National Minorities 1995*

⁶³ Alan Phillips, “Contribution of the Council of Europe Framework Convention for the Protection of National Minorities and Its Advisory Committee to the Effective Participation Rights of National Minorities,” *International Journal on Minority and Group Rights* 16, no. 4 (2009): p. 528.

⁶⁴ *ibidem*

commitment to promote equality between minorities and the majority.⁶⁵ A textual analysis of the Convention is needed and so we look at Article 1 which imparts the necessity to respect human rights and minority rights in this context.⁶⁶ Article 4 tells us that no minority should be discriminated based on their status and that they are free to pursue and protect their interests.⁶⁷ Article 5 poses an obligation on the State to protect the minority in developing their culture with a policy making view that should seek to advance their protection.⁶⁸ Article 6 promotes the intercultural dialogue between the minority and majority and it is a reaffirmation to curb discrimination based on race, ethnicity, religion and language.⁶⁹ Apart from the definition and protection of the concept of a minority, there are also linguistic rights defined from the Articles 9-14 as the concept of minorities and their languages proves to be inseparable.⁷⁰ Article 9 ensures the right of a minority to use their language without the interference of authorities and free access to media.⁷¹ Article 10 broadens this usage of minority languages in lieu of the ability to address local governments in their language along with the right to an interpreter in criminal proceedings.⁷² Article 11 provides the minority to have official documents issued in their language as well as signs in places where they constitute a sufficient population.⁷³ Article 12 is focused on minority education in the aspect of their culture, religion, language and history with an obligation of the State to promote access to education.⁷⁴ Article 13 handles the aspect of private education where minorities are allowed specifically tailored educational programs and facilities in order to foster their cultural ties.⁷⁵ Article 14

⁶⁵ Philip McDermott, "Language Rights and the Council of Europe: A Failed Response to a Multilingual Continent?," *Ethnicities* 17, no. 5 (October 2017): p. 613

⁶⁶ Council of Europe, *Framework Convention for the Protection of National Minorities* 1995, Article 1

⁶⁷ Council of Europe, *Framework Convention for the Protection of National Minorities* 1995, Article 4

⁶⁸ Council of Europe, *Framework Convention for the Protection of National Minorities* 1995, Article 5

⁶⁹ Council of Europe, *Framework Convention for the Protection of National Minorities* 1995, Article 6

⁷⁰ Supra 51

⁷¹ Council of Europe, *Framework Convention for the Protection of National Minorities* 1995, Article 9

⁷² Council of Europe, *Framework Convention for the Protection of National Minorities* 1995, Article 10

⁷³ Council of Europe, *Framework Convention for the Protection of National Minorities* 1995, Article 11

⁷⁴ Council of Europe, *Framework Convention for the Protection of National Minorities* 1995, Article 12

⁷⁵ Council of Europe, *Framework Convention for the Protection of National Minorities* 1995, Article 13

has a very strong accent on language and the right of a minority to learn this language especially in areas where their number is large.⁷⁶ Yet its scope is limited by the wordings of the clauses which are not direct and provide for qualifying phrases thus effectively becoming a soft law mechanism without a strong and binding character.⁷⁷

The ECMRL and the FCPNM are the two specifically drafted instruments by the Council of Europe in order to deal with the premise of linguistic rights. As it was analyzed, they are both promotion based with the only real obligation being submitting reports and participating in the cycles. Recommendations are given to countries based on the advisory committee and their observations of the report. States are in no way obliged to follow these recommendations as an enforcement mechanism does not exist. The wordings of provisions are filled with “if”, “where it is possible” and such which can be understood to be a guideline, a stimulus for the State party that wishes to protect linguistic rights in one way or another. But what if this creates a system which does not manage to provide for the upholding and protection of regional or minority languages? As there is no avenue of litigation present, it is all up to the State party to respect these provisions as far as they wish which leads us to the current situation where linguistic rights are suspended in the air. Torn between a litigable and aspirational right which does not create a particularly potent climate for protection. This approach by the Council of Europe can also be understood as a way of adding to the current instruments without taking the bold step to include linguistic rights in the ECHR, as that would not be an option with possible resistance from many States.

From the UN to the Council of Europe, we are seeing partial efforts to define and somewhat protect linguistic rights of minorities. There is a push followed from the end of the 90’s with the various declarations and conventions coming but there is still a final push that is missing

⁷⁶ Council of Europe, *Framework Convention for the Protection of National Minorities* 1995, Article 14

⁷⁷ Supra 51, p. 614

in order to have actual litigable linguistic rights. The current atmosphere reinforces the attitude of reluctance to confer protection to minority linguistic rights as soft law does not provide for the same starting point as hard law. The question that is in focus is if only a supervisory report-based mechanism can protect the linguistic rights of minorities under the current legislative scope. The three jurisdictions that are analyzed here shall be Austria, Croatia and France under the scope of the aforementioned mechanisms.

C) The European Union

The European Union has also dealt with linguistic rights in some capacity. The Treaty on the functioning of the European Union (TFEU) mentions that Member States languages shall be present in education.⁷⁸ Regional and national diversity is also to be protected by the Union.⁷⁹ Not much is given by the TFEU because these are the only mentions of linguistic rights. The focus of the TFEU is certainly not on linguistic rights and this tangential mention is more of an inclusionary statement that the EU is not just the majority culture and languages of States but much more as minorities are promoted in a small but meaningful way.

The Treaty on European Union does a similar thing as TFEU as, *It shall respect its rich cultural and linguistic diversity*, stands at the top of the document at Article 3.⁸⁰ Article 4 follows this suit as it is mentioned that the Union will respect the national identities, regional and local self-government.⁸¹

With the Lisbon Treaty came the binding effect of the Charter of Fundamental Rights of the European Union which meant that a number of human rights would be protected with EU

⁷⁸ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01, Article 165

⁷⁹ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01, Article 167

⁸⁰ European Union, *Treaty on European Union (Consolidated Version)*, *Treaty of Maastricht*, 7 February 1992, Official Journal of the European Communities C 325/5

⁸¹ European Union, *Treaty on European Union (Consolidated Version)*, *Treaty of Maastricht*, 7 February 1992, Official Journal of the European Communities C 325/5, Article 4

membership.⁸² Article 21 is an anti-discrimination ban and language is listed as a ground of distinction much like in the majority of documents mentioned.⁸³ In the next Article it is also mentioned that *The Union shall respect cultural, religious and linguistic diversity*.⁸⁴ This *shall respect* part is an ominous way of defining a right as it is phrased in such a way that is weaker than *shall be protected* for instance. This lesser degree of protection is still a form of recognition even though it may not equate to the same level as the previously mentioned.

It is estimated that around 40 to 50 million people speak a regional or minority language in the EU which is a significant number.⁸⁵ Taking in account that the population of Spain is around 46 million it really paints a picture of just how many people across the EU speak minority languages. If they were to be erased or if their usage is diminished, with time the languages in question would not be present in their countries anymore and with such a significant number it puts more importance on protecting the language.

D) Jurisdictions

Austria

Austria is a federal republic and as such has nine States.⁸⁶ It is a part of the Council of Europe, the European Union and is a signatory party to the ICCPR, ECMRL and FCPNM. In two of the states, namely Carinthia Slovenes and Burgenland Croats who live in the two States with their own languages which have been recognized by Austria under the ECMRL.⁸⁷ As stated in the Constitution of Austria, German is the official language without prejudice to minority

⁸² Supra 43, p. 5

⁸³ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, Article 21

⁸⁴ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, Article 22

⁸⁵ Supra 43, p. 7

⁸⁶ Austrian Constitution, adopted on October 1st, 1920, Article 2

⁸⁷ Council of Europe, European Charter for Regional or Minority Languages, States Parties to the European Charter for Regional or Minority Languages and their regional or minority languages, available on: <https://rm.coe.int/states-parties-to-the-european-charter-for-regional-or-minority-langua/168077098c> accessed on August 13, 2018

languages.⁸⁸ This is further extended in the same provision under the second paragraph where the *linguistic and cultural multiplicity has grown, expressed in autochthonous ethnics groups are to be respected, safeguarded and supported.*⁸⁹ Here we see that linguistic rights are to be respected within national minorities who have lived on the grounds of Austria throughout history as it only refers to the autochthonous groups, thus excluding migrants who have come in large numbers. The primary focus of this thesis shall be Slovenes who primarily live in the Carinthian area.

Carinthian Slovenes have lived in the region for many years and they are the remnants of Slavic groups that have populated the Southern parts of Austria with a long history in that region.⁹⁰ As the Slovenes were quite numerous in the region, in 1920 a plebiscite was carried out with the result of Carinthia becoming a part of Austria while the other option was joining the Kingdom of Yugoslavia.⁹¹ This history tells us that the Slovene minority in Austria is not only a regional one but a linguistic as well as the two are interlinked. After the Anschluss and the end of the Second World War, Austria was granted independence in 1955 according to the Treaty signed in Vienna.⁹² This treaty contained a provision which grants minority rights directly to the Slovene and Croat minorities.⁹³ It goes beyond mere recognition of minority rights per se, as it grants directly linguistic rights to the minorities as Austria is bound to ensure elementary instruction in Croatian and Slovenian respectively.⁹⁴ Expanded further as the Slovene and Croat language shall be accepted as an official language in addition to German.⁹⁵ Any activity that deprives the minorities of these rights shall be prohibited under

⁸⁸ The Austrian Constitution, adopted on October 1st, 1920, Article 8

⁸⁹ The Austrian Constitution, adopted on October 1st, 1920, Article 8 (2)

⁹⁰ Tereza Smejkalová, "Slovenian Minority in Austria," *The Annual of Language & Politics and Politics of Identity*, Roč 1 (2007): p. 35–36.

⁹¹ Sebastian M. Rasinger, "Linguistic Landscapes in Southern Carinthia (Austria)," *Journal of Multilingual and Multicultural Development* 35, no. 6 (September 19, 2014): p. 281

⁹² Treaty for the re-establishment of an independent and democratic Austria, 1955

⁹³ Treaty for the re-establishment of an independent and democratic Austria, 1955, Article 7

⁹⁴ Treaty for the re-establishment of an independent and democratic Austria, 1955, Article 7,(2)

⁹⁵ Treaty for the re-establishment of an independent and democratic Austria, 1955, Article 7, (3)

the treaty.⁹⁶ Under the State Treaty, we see a very progressive document which predates the Council of Europe mechanisms and comes five years after the signing of the first iteration of the ECHR. Nonetheless, the Austrian State Treaty was met with resistance during the years of independence as the political situation was not welcoming to the ideas of autochthonous rights for minorities and especially for those who would use other languages in Austria except of German.⁹⁷ The resistance would be somewhat shut down as the Government reacted to the volatile political situation inspired by right wing Austrian political parties.⁹⁸ The answer was the Ethnic Groups Act of 1976 which accentuated the notion that minorities have the same rights under Austrian law and are enjoying the same protection.⁹⁹ The protection of minority languages is also mentioned under the opening of the Act.¹⁰⁰ Upon further analysis the Act contains numerous provisions specifically tailored towards minorities and their protection. Under Article 8 we see that the State takes upon themselves to finance activities and projects that are used in preserving the ethnic groups.¹⁰¹ Article 12 deals with bilingual topographic names as signs in German and the minority language are to be displayed.¹⁰² Article 13 is one of the longest provisions and deals with the usage of minority languages in the official sphere.¹⁰³ Carinthia also has its own Constitution which explicitly mentions Slovenian after the 2017 amendments.¹⁰⁴ The “Slovenian paragraph” was a contested issue in Austrian politics that has been resolved with the passage in the new State Constitution.¹⁰⁵ The

⁹⁶ Treaty for the re-establishment of an independent and democratic Austria, 1955, Article 7,(5)

⁹⁷ Michael Bommers and Dietrich Thränhardt, *National Paradigms of Migration Research* (Vandenhoeck & Ruprecht, 2010), p. 197–98.

⁹⁸ *ibidem*

⁹⁹ Austria, Constitutional Act, Ethnic Groups Act, 1976

¹⁰⁰ Austria, Constitutional Act, Ethnic Groups Act, 1976, Article 1

¹⁰¹ Austria, Constitutional Act, Ethnic Groups Act, 1976, Article 8

¹⁰² Austria, Constitutional Act, Ethnic Groups Act, 1976, Article 12

¹⁰³ Austria, Constitutional Act, Ethnic Groups Act, 1976, Article 13

¹⁰⁴ State Constitution of Carinthia, Article 5, available at

https://www.ris.bka.gv.at/Dokumente/LgblAuth/LGBLA_KA_20170629_25/LGBLA_KA_20170629_25.pdf

¹⁰⁵ Einigung über „Slowenepassus” – Kaernten news, 10.02.2017, available at

<http://kaernten.orf.at/news/stories/2824970/> accessed October 20, 2017

amendment itself mentions that the Government shall aspire to protect the usage of the Slovenian language used by the autochthonous Slovenes.¹⁰⁶

According to the Committee of Experts Evaluation Report which was adopted in 2012 under the ECMRL, the issue with linguistic rights protection does not lie primarily in the lack of legislation as issues are analyzed one by one. The main issue is the reluctance of implementing the existing legislation and mechanisms which were put in place in order to protect linguistic rights. From bilingual signs, education in the minority language, to usage of the Slovenian in front of Courts and administrative bodies we see issues under the report that have been a matter of contention since 1976 which should have been solved by the Austrian State Treaty in 1955.¹⁰⁷ It is clearly a matter of reluctance in implementing the current structure or the outright ignoring the situation, possibly due to political reasons. Nonetheless this all amounts to the position of the minorities who are unable to enjoy their linguistic rights even though the State tries to, on paper at least, to protect this right. It is a discrepancy based on reluctance.

Croatia

Croatia, just like Austria, is a member of the Council of Europe, European Union and is a signatory party to the ECMRL, FCPNM and the ICCPR. As Croatia gained independence from Yugoslavia in 1991, the matter of contention was the western part of Croatia which was a para-state of Croatian Serbs living in that area.¹⁰⁸ Following a military action in 1995, the area was put back under the control of Croatia but it resulted in a large displacement of Serbs

¹⁰⁶ Supra 104

¹⁰⁷ Council of Europe: Committee of Ministers, *European Charter for Regional or Minority Languages: Application of the Charter in Austria, 4th Monitoring Cycle*, 28 November 2012, ECRML (2009), paragraphs 252-330

¹⁰⁸ Rieff, David. "The Krajina War: Endgame for the United Nations." *World Policy Journal* 12, no. 3 (1995): 71-74

living there and the Croat-Serbian relations would remain filled with tension.¹⁰⁹ The post-war period was to be one of repatriation and reintegration of Serbs into Croatia but it did not result in a significant return, and those that have returned were met with an anti-Serb sentiment in the country which has been ongoing since the start of the 90's.¹¹⁰ With a speech by the President Franjo Tuđman in 1997, the low number of the Serb population in Croatia was to be a celebrated achievement which serves as a dark omen of nationalism and the Yugoslav wars in general.¹¹¹

The Constitution mentions minorities in the first section as it mentions minorities being part of the country.¹¹² Serbs are included in the list amongst other minorities. Croatian is the official State language along with the Latin script.¹¹³ The provision is not excluding other possible languages as it states specifically that *another language and the Cyrillic or some other script may be introduced into official use along with the Croatian language and the Latin script under conditions specified by law.*¹¹⁴ The constant mentions of the Latin script and the possibility of another script being used is because of the Serbian language and the Cyrillic script that is being used by the Serbian minority. Article 14 of the Croatian Constitution establishes the principle of anti-discrimination, as everybody must be equal under law regardless of race, color, gender, language etc.¹¹⁵ Article 15 establishes that all minorities shall have equal rights and that their freedom to use their language and script shall be respected.¹¹⁶ Article 19 ensures the right to a fair trial and to an interpreter if the person does not understand Croatian.¹¹⁷ In addition, the Constitutional Act on Rights of National

¹⁰⁹ *ibidem*

¹¹⁰ Ivana Djuric, "The Post-War Repatriation of Serb Minority Internally Displaced Persons and Refugees in Croatia—between Discrimination and Political Settlement," *Europe-Asia Studies* 62, no. 10 (2010): 1643–44.

¹¹¹ *ibidem*

¹¹² Constitution of the Republic of Croatia, 1990, section 1

¹¹³ Constitution of the Republic of Croatia, 1991, Article 12

¹¹⁴ *ibidem*

¹¹⁵ Constitution of Croatia, 1991, Article 14

¹¹⁶ Constitution of Croatia, 1991, Article 15

¹¹⁷ Constitution of Croatia, 1991, Article 19

Minorities has been passed in 2002 with a wide and comprehensive list of minority rights and recognition.¹¹⁸ It is a further mechanism of protection conferred to national minorities that is extensive in scope and it offers many rights to the national minorities. Like Austria, only autochthonous minorities are conferred special rights in the sense of protection of cultural and linguistic heritage.¹¹⁹ The legislation has a broad range of minority protection and it seeks to, ensure that minorities have their official documents issued in the language and script of their heritage,¹²⁰ the right to education in their language,¹²¹ and it seeks to regulate the communication to authorities in the minority language.¹²² There are many more provisions which shall be analyzed further as Croatia has a large body of law which regulates minorities and their rights.

As the report under the FCPNM states, the country has a favorable minority legislation framework, but the linguistic rights of minorities are impeded because of the political climate in the country, namely the nationalist rhetoric which is majorly anti-minority.¹²³ The main area of contention is the Eastern parts of the country that were most affected by the war and where the Serb minority resides.¹²⁴ In an atmosphere of high tensions with the demonization of minorities, one can hardly expect for the minorities to feel free to express their cultural and linguistic differences.¹²⁵ The Serbs number around 180.000 or roughly 4% of the total population in Croatia based on the census of 2011.¹²⁶ This is a sharp decline from the pre-war census of 1991 where Serbs were numbered at 580.000 or 12% and their numbers have

¹¹⁸ Constitutional Act on the Rights of National Minorities, 2002

¹¹⁹ Constitutional Act on the Rights of National Minorities, 2002, Article 5

¹²⁰ Constitutional Act on the Rights of National Minorities, 2002, Article 9

¹²¹ Constitutional Act on the Rights of National Minorities, 2002, Article 11

¹²² Constitutional Act on the Rights of National Minorities, 2002, Article 12

¹²³ Council of Europe: Secretariat of the Framework Convention for the Protection of National Minorities, *Advisory Committee on the Framework Convention for the Protection of National Minorities: Opinion on Croatia, adopted on 18 November 2015*, report summary

¹²⁴ Ibidem, para 4

¹²⁵ ibidem

¹²⁶ Croatian Bureau of Statistics, Census of Population, Households and Dwellings 2011 available at https://www.dzs.hr/eng/censuses/census2011/results/htm/e01_01_04/e01_01_04_RH.html accessed on December 5, 2017

declined because of the conflict in the Eastern part of the Croatia. The epicenter of the conflict can be placed in Eastern Slavonia area amongst others.¹²⁷

The conflict ended in summer of 1995 and Croatia underwent a democratic transition, reinstated its territorial integrity and became a member of the European Union since 2013. The current 28th Member State is also the latest addition to the European Union and the second ex-Yugoslav country to join the EU with the first one being Slovenia. As the tensions seem to be based on disbanding the previous Yugoslav notion of brotherhood and unity, the shared languages would split into distinct entities based on the idea of nationhood and differences of ethnicities.¹²⁸ The linguistic split of Serbo-Croatian into Serbian and Croatian, now official or minority languages in the respective States, was used as a way to bolster and reconstruct identities presumed lost in Socialist Yugoslavia as both ethnicities use their own language.¹²⁹ Analyzing the position of the Serb minority is additionally layered with complex issues like reconciliation and the post-conflict rebuilding process not only of infrastructure but of inter-ethnic relations. Even after EU accession where many steps were undertaken in regards to non-discrimination and a more open democracy, in 2018 there is an effort to undermine these efforts. A new movement of citizens labeled as *People decide* (*Narod odlučuje*) have put forth a referendum which is directly targeting minorities insofar as it wishes to lower their guaranteed seats in the Parliament as well as limit their ability to vote on certain issues.¹³⁰ It is currently in a vetting process and it is unclear whether it will take place in this shape or form. This is not the first attempt at trying to mobilize the majority against a

¹²⁷ Antonija Petricusic, "Nation-Building in Croatia and the Treatment of Minorities: Rights and Wrongs," *L'Europe En Formation* 349–350, no. 3 (2008): p.136–37.

¹²⁸ Ana Ljubojevic, "What's the Story? Transitional Justice and the Creation of Historical Narratives in Croatia and Serbia" 49, no. 5 (2012): p. 50–51.

¹²⁹ Ronelle Alexander, "Serbo-Croatian Dialectology Revisited," *Harvard Ukrainian Studies* 28, no. 1/4, (n.d.): p. 46–50.

¹³⁰ Anja Vladislavljevic, Balkan Insight, Croatian Conservative Campaigners Claim Rapid Success, available at <http://www.balkaninsight.com/en/article/croatian-referendum-initiatives-praise-their-success-in-signature-collection-05-17-2018> accessed July 29, 2018

minority in a referendum which is inherently positioned towards the majority, as the Constitutional Court of Croatia banned a proposed referendum on Cyrillic which aimed to expel its usage in the aforementioned Eastern parts of the country. Perhaps it is an evolved and simply better coordinated attempt at further marginalizing the Serb minority, now along with others, by using the populist method of referenda. All the progress from the reign of Tuđman until EU accession can simply be overshadowed if this newly founded anti-minority campaign can find its ground.

France

The French Constitution begins with the notion that French is the supreme language of the nation and that it can only be used as an official one.¹³¹ Since the French Revolution, there was a strong movement towards the notion of nationalization of French meaning the imposition of a uniform usage of the French language by all the people in France without compromise.¹³² The plan to “universalize” French has been present even before the events of the 18th century but it was in these critical moments that the direct policies and plans regarding French being hegemonized starting with education have begun.¹³³ As some define it, this approach is called linguistic nationalism and it compels people to abandon their linguistic differences and to unite under one singular language.¹³⁴ Going back to the Constitution, in Article 75-1 we see the only mention of regional or minority languages in a provision which is worded, *regional languages are part of France’s heritage*.¹³⁵

From the outset we see that France has an exclusionary approach to language as the Constitution does not offer any protection or recognition. The wording of the Article 75-1

¹³¹ Republic of France, Constitution of 1958, Article 2

¹³² Keisuke Kasuya, “Discourses of Linguistic Dominance: A Historical Consideration of French Language Ideology,” *International Review of Education* 47, no. 3–4 (2001): p. 239–40.

¹³³ Ibidem, p. 241–242

¹³⁴ Ibidem

¹³⁵ Republic of France, Constitution of 1958, Article 75-1

tells us that languages are part of heritage, but what does that broad provision mean? Being a part of heritage does not have the same power as the wordings for the freedom of expression in Article 11 of the French Constitution.¹³⁶ France is a member of the European Union and the Council of Europe, but its relationship with the Council of Europe mechanisms for protection of language are strained to say the least because of the aforementioned isolationist policies towards languages other than the standardized French language. This universalism of the French language came at a price for regional minorities, as universalism or a uniform French variant can only come about by use of assimilation.¹³⁷ This process has started since the inception of the French Republic and it is at the heart of the nationhood itself. Standardized French for the French people is the building block of the French nation.

The ECMRL was signed by France in 1999 but it still not ratified leaving the Charter out of force.¹³⁸ There were hopes that 2015 would be the year when ratification talks will advance but the Senate has shot down the proposal to ratify the Charter.¹³⁹ The argument being that special rights for groups that allow for usage of minority languages are not permitted because of their “special nature”. This brings us back to the issue of minority rights in the current time and the clash with universal human rights. The French Consiel Constitutionnel decided to go against the notion of special rights in favor of a single uniform system of rights which would be equal for all. This decision has hindered efforts of the minority language speakers who are located throughout the regions, from Breton in the Brittany area, to Corsican in the South and

¹³⁶ Republic of France, Constitution of 1958, Article 11

¹³⁷ Leigh Oakes, “Normative Language Policy and Minority Language Rights: Rethinking the Case of Regional Languages in France,” *Language Policy* 16, no. 4 (November 2017): p. 369.

¹³⁸ Promoting ratification of the European Charter for Regional or Minority Languages in France – Council of Europe, accessed on 08.02.2018, available at <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/promoting-ratification-in-france>

¹³⁹ Nationalia – French Senate buries ratification of European Charter for Regional and Minority Languages, accessed on 08.02.2018, available at <https://www.nationalia.info/new/10635/french-senate-buries-ratification-of-european-charter-for-regional-and-minority-languages>

Occitan in the West near the Spanish border amongst others.¹⁴⁰ The Charter and its ratification have been a topic in the political landscape of France ever since the signing in 1999 as the topic was filled with Parliamentary discussions and judicial interpretations.¹⁴¹ The analysis of the Charter was undertaken and if it were to be ratified, as many as 75 languages would qualify for protection in France.¹⁴² Unwilling to go that route, it seems that in the current state of affairs, France is a conscious objector to the needs of minorities and especially minority languages.

The Constitution is not the only hinderance in the path of regional or minority language protection as the French have put the Toubon law in place which states that only French can be used as a language of official education.¹⁴³ The law strengthened the position of French as the key element of French heritage which highlights the notion of linguistic imperialism and hegemony.¹⁴⁴ The law has a provision which permits the use of regional languages as an exception to the rule, which provides room for a future protection of languages under the French system.¹⁴⁵ But is this exception enough in the face of a highly restrictive law whose sole basis is to alienate anything other than French and how does this law effect the current developments in France is a topic to be analyzed further.

¹⁴⁰ Simo K. Määttä, "The European Charter for Regional or Minority Languages, French Language Laws, and National Identity," *Language Policy* 4, no. 2 (June 2005): p. 177–78.

¹⁴¹ Ibidem, 179

¹⁴² Noemi Nagy, "The History of Linguistic Legislation in France," *Journal on European History of Law* 4, no. 2 (2013): p. 137

¹⁴³ Supra 140, p. 174 - 175

¹⁴⁴ Supra 140

¹⁴⁵ Supra 140, p. 175

Chapter II

A) Defining the right to education through international instruments

The importance of education and its value in all stages of life, especially children needs to be reiterated in order to develop a proper context for its protection. It is a primary shaping tool of character, a vital means of providing the necessary skills and knowledge in the early stages of life.¹⁴⁶ This is a process which cannot be forfeited, and it can even be argued that it descended from natural law being described as one of the basic properties of a human, to learn.¹⁴⁷

As such, the right to education has found itself in numerous international documents. Starting from the Universal Declaration of Human Rights we find education in Article 26.¹⁴⁸ The UDHR, being a shining beacon to strive to, sets a blueprint which can be followed by other documents as it does not have binding power. With its tone of education being free and compulsory at least in the elementary level with higher levels being attainable it sets a first in international documents and the mention of education.

Following the UDHR, the Covenant on Economic and Social Rights features a thorough and wider approach to education.¹⁴⁹ Education is a primary tool for the development of personality and the sense of dignity and it leads to further strengthening of human rights together with democracy.¹⁵⁰ It is for all individuals and within a free society it promotes understanding and tolerance of all groups.¹⁵¹ This introductory part of the article tells us again of the importance of education. It is positioned as an essential tool of human development and the ICESCR elaborates further of what the right to education should entail. It repeats the

¹⁴⁶ Kavana Ramaswamy, "The Right to Education: An Analysis through the Lens of the Deontological Method of Immanuel Kant" 16 (n.d.): p. 49.

¹⁴⁷ Ibidem, p. 50

¹⁴⁸ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 26

¹⁴⁹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, Article 13

¹⁵⁰ ibidem

¹⁵¹ ibidem

UDHR notion that it should be free but notes that it is to be progressively realized with primary education being compulsory and free.¹⁵² This article is followed by another regarding education which gives a two-year time period for State parties to establish compulsory primary education in case they did not already do so.¹⁵³ In its General Comment number 13, the Economic and Social Council which is tasked with monitoring the implementation of the Covenant gives further explanation on the textual basis contain within.¹⁵⁴ *Education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.*¹⁵⁵ As the Council notes, Article 13 is the longest provision and as such is the most comprehensive one with the addition of Article 14 as well.¹⁵⁶ Education as a right must be followed by certain essential features such as availability, accessibility, acceptability and adaptability.¹⁵⁷ This is presented in a way to promote education to be available to everyone, without discrimination and tailored to the culture and events unfolding in the society.¹⁵⁸ Even though the linguistic component is not mentioned in any way in the Covenant or the UDHR in terms of education, it finds itself in Article 2 as a ground upon which one can be discriminated.¹⁵⁹ The General Comment further states that forming separate educational facilities for groups defined as in the Article 2, such as linguistic groups does not produce a violation of the right.¹⁶⁰ And this is where we find some mention of linguistic rights in education, even though in passing and in a document which is meant to be progressively realized, it still exists on paper and it is interpreted as such by the Council.

¹⁵² Supra 149, Article 13, a,b,c

¹⁵³ Ibidem, Article 14

¹⁵⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10

¹⁵⁵ Ibidem, para 1

¹⁵⁶ Ibidem, para 2

¹⁵⁷ Ibidem, para 6

¹⁵⁸ ibidem

¹⁵⁹ Supra 149, Article 2, 2

¹⁶⁰ Supra 154, para 33

The Convention against Discrimination in Education has more emphasis on language as it used as a discrimination ground.¹⁶¹ It is a Convention produced by UNESCO which naturally puts a stronger emphasis on education as it is one of its main goals. There we find actual mention of minority rights which are given space in the Convention.¹⁶² *It is essential to recognize the right of members of national minorities to carry on their own educational activities* which is further located in Article 5 gives us a simple premise of minorities being able to have their own educational systems and activities but this comes with limitations.¹⁶³ As these activities must be tailored so that the minorities are exposed to the culture and language as a whole and they cannot be aimed at undermining national sovereignty.¹⁶⁴ The attendance must be optional as well and the standard shall not be lower than the general one in these schools as well.¹⁶⁵ This document predates the Council of Europe's own effort to protect the right to education which came three years after UNESCO's work.

The International Convention on the Elimination of All Forms of Racial Discrimination provides in Article 5 that no one shall be discriminated based on race, color, ethnicity or nationality while enjoying the right to education.¹⁶⁶ In its General Comment on the Article, the Committee on the Elimination of Racial Discrimination did not further elaborate on how it is that education is protected directly by the Convention but it states that the purpose is to ensure equal treatment of individuals regardless of race or ethnicity.¹⁶⁷ As ethnicity is a ground for discrimination, it can be argued that the effort of ethnic minorities to be educated

¹⁶¹ UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention Against Discrimination in Education*, 14 December 1960, Article 1

¹⁶² Ibidem, Article 5, c

¹⁶³ Ibidem, Article 5, C, 1, 2, 3

¹⁶⁴ Ibidem, 5, c, 1

¹⁶⁵ Ibidem, 5, c, 2, 3

¹⁶⁶ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, Article 5

¹⁶⁷ UN Committee on the Elimination of Racial Discrimination (CERD), *General recommendation No. XX(48) on Article 5 : The guarantee of human rights free from racial discrimination*, 8 March 1996, CERD/48/Misc. 6/Rev. 2

could be a protected category. The Committee did not elaborate on this, but this could stand as a potential ground nonetheless.

The Convention on the Rights of the Child mentions and protects education and linguistic rights directly. *State parties recognize the right of the child to education* stands in the Article 28 and it is very similar to the ICESCR provision on education but with an emphasis on the rights of children.¹⁶⁸ As it is stated in the Article, the measures to be undertaken under the Convention are to be progressive and are similar to the aforementioned ICESCR provisions as well.¹⁶⁹ They both aim at making at least primary education free and compulsory with secondary and higher levels of education becoming eventually free with an emphasis of making it accessible as well. Article 29 follows suit as it provides that education is directed toward developing of a child's personality, the development of his cultural identity, language and values among others.¹⁷⁰ This mention of cultural identity and language comes as a rare expression towards cultural and linguistic rights alike in an instrument like this. By placing this provision and wording it in such a way, it can only be deduced that the language of the education and the cultural aspect of it are very important in the development of the child and its identity. As culture plays a vital role in development, it is clear why we find a mention of such. Even more direct is the following Article 30, which is concerned with directly allowing the children to use his language and enjoy his culture.¹⁷¹ This is a minority language-based provision which refers directly to minorities or indigenous communities and their specific rights.

¹⁶⁸ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Article 28

¹⁶⁹ Ibidem

¹⁷⁰ Ibidem, Article 29

¹⁷¹ Ibidem, Article 30

The General Comment made by the Committee on the Rights of the Child expands further upon the value and necessity of education.¹⁷² In the document it is stated that education is of far reaching importance.¹⁷³ The emphasis is put on making the process of education child-centered which can be interpreted as the need for the educational system to be tailored towards the need of the child.¹⁷⁴ What benefit does education bring if it is not in touch with the needs of the child, especially in the realm of linguistics. Being educated in a language of one's choice is not defined strictly as a justiciable right but having access to education in other languages, especially in minority languages can be made subjected to consideration of human rights. A person has to gain something out of the educational process and the importance of how the system is made with the child in mind is where the key point lies. In an educational system made to foster only one language, the minorities might find themselves in a situation where they simply have no formal education in their mother tongue. This holds more ground in situations where we have autochthonous minorities as in the case of France, Croatia and Austria. This means that an educational system is out of touch or distanced from the actual cultural needs of its citizens. As the General Comment states, education should be directed towards a wide range of values.¹⁷⁵ Education should be held to a higher standard, it should overcome the barriers made by cultures that are different.¹⁷⁶ This might seem contradictory to other provisions which state that education is based on the principle of equality and the need for development of one's own distinct identity which is shaped by culture. Being addressed in the document as seeming so, the Committee sees this merely as a balancing approach towards the issue of differing cultures and languages in education.¹⁷⁷ This

¹⁷² UN Committee on the Rights of the Child (CRC), *General comment No. 1 (2001), Article 29 (1), The aims of education*, 17 April 2001, CRC/GC/2001/1

¹⁷³ Ibidem, para 1

¹⁷⁴ Ibidem, para 2

¹⁷⁵ Ibidem, para 4

¹⁷⁶ ibidem

¹⁷⁷ ibidem

balancing approach would see that both sides of the argument are met as minorities would be able to experience both their culture and the culture of the majority so that they can also participate in the public arena. It is also a matter of boosting integration where the Committee does not wish to impose some sort of approval towards isolating minorities. Instead it gives them the boost towards functioning together and overcoming the barriers in a way which provides for more integration and preservation of culture and language at the same time.

In addition there is mention of the struggle against the racism, xenophobia and other intolerances where there are cultural and linguistic differences among others.¹⁷⁸ There is also a possibility that the educational system itself promotes these beliefs by teaching distorted values.¹⁷⁹ Education is also one of the main tools for fighting against these phenomena and can be utilized to overcome them if education is prioritized highly enough.¹⁸⁰ Teaching about racism and discrimination on other grounds is a primary way of countering these issues. That way a child is shown from an early age how to deal with differences on ethnic lines and other.¹⁸¹

It is important to mention that France and Croatia have both signed the Convention against discrimination in education.¹⁸² France was one of the first countries to ratify, not surprising as it is the seat of UNESCO.¹⁸³ Croatia made a notification of succession in 1992 as it broke off from the Socialist Republic of Yugoslavia.¹⁸⁴ Austria did not sign or ratify the Convention but

¹⁷⁸ Ibidem, para 11

¹⁷⁹ Ibidem

¹⁸⁰ Ibidem

¹⁸¹ Ibidem, para 14

¹⁸² Convention against Discrimination in Education signatories, available at

<http://www.unesco.org/eri/la/convention.asp?KO=12949&language=E&order=alpha> accessed on August 1, 2018

¹⁸³ ibidem

¹⁸⁴ ibidem

it submits reports on its implementation even though it is not an official party to the Convention.¹⁸⁵ This means that all the three comparators are bound by the same document.

The Convention's implementation is monitored, and reports are made to the Executive Board who supervises the process.¹⁸⁶ This process occurs in cycles where States supply the Executive Board with their reports and they are laid out with the comments.

The report by Austria is an outdated one as it was submitted in 2007.¹⁸⁷ The report does not mention Austria's relationship with its educational system and the linguistic component of it, but what is mentioned is that Austria established a commission and ombudsperson in charge of promoting equal treatment in education.¹⁸⁸ Adding to this, studies and observations from the OECD show that there are still structural barriers to education and to equal treatment.¹⁸⁹ It is not specified in which form do these structural barriers occur, perhaps they are social or economic barriers. As this was in 2007, a follow up to the report should be made in order to assess what transpired in the period.

The French report is made in the same cycle as Austria's but it does not mention any effort or information regarding the linguistic minorities in the country. Instead the focus is mostly on how France tackles racism and anti-Semitism in their educational system and how the principle of laicite is being reinforced in the public-school system.¹⁹⁰

The Croatian part of the report is also located in the same cycle as France and Austria. Here we find mention of the linguistic rights of minorities mentioned in Article 5 of the Convention

¹⁸⁵ UNESCO, Results of the seventh consultation of Member States on the implementation of the Convention and the Recommendation against Discrimination in Education (1960) (34 C/56) 2007

¹⁸⁶ UNESCO, Summary of the reports received from Member States on the measures taken to implement the 1960 Convention and Recommendation against Discrimination in Education (39 C/24) 2017

¹⁸⁷ Supra 185

¹⁸⁸ Ibidem, para 9

¹⁸⁹ Ibidem, para 46

¹⁹⁰ Ibidem, para 16

but they are completely focused on Roma as a national minority and not Serbs.¹⁹¹ A high level of critique is given to Croatia and their low amount of effort to follow the principles of the Convention as Roma are not being taught in their own language.¹⁹² As we have no mention of Serbs and their equal rights under the Constitutional Act on the Rights of National Minorities it is hard to gauge the position of Serbs during that reporting period.

The Convention, even though it does mention linguistic rights of minorities, does not contain any relevant information regarding the topic nor does it direct any criticism at the States in question regarding their position towards minorities, being positive or negative.

Moving on to other instruments that regulate linguistic rights of minorities we go back to the ECMRL for a more thorough analysis of education. The Convention in question as it was previously noted deals with all matters of linguistic rights. If we focus on education, it starts with Article 7 titled *Objectives and principles* where minority languages are to be promoted as an objective in education.¹⁹³ This follows the premise that educating tolerance and exposing children to linguistic diversity promotes the fight against intolerance. If the linguistic minorities are encouraged and integrated with the majority and are able to use their language, the idea is that they will be less discriminated upon in their region. In this pursuit, State parties are encouraged to communicate with the minorities how they can cater to their needs and establishing bodies is also called upon.¹⁹⁴ This is a step which promotes inclusion towards the minorities who are to be a part of the process which is vital to their interest of protecting their language.

¹⁹¹ Ibidem, para 41

¹⁹² ibidem

¹⁹³ Council of Europe, *European Charter for Regional or Minority Languages*, 4 November 1992, Article 7, 3

¹⁹⁴ Ibidem, Article 7,4

Article 8 carries the brunt of linguistic rights and education as it is aptly named *Education*.¹⁹⁵

A very lengthy Article which seems to cover a large spectrum of linguistic rights in education.

The rights are laid out in a way that emphasize the hierarchy of education. It starts with pre-school education, moving to primary, secondary, tertiary and it ends with the university level.¹⁹⁶ All the provisions can be summed up by the idea that education should be made available in the relevant minority or regional language. If it is not possible to make it fully available, the Convention offers the option of making a substantial part of the education available in the minority language, or to provide within the educational system for the teaching of the language in some way. The substance of the right stays the same. It is just the level of education that changes with every provision, but the substance is the same. Countries are called upon to offer teachings of history and culture to the minorities in their language and to promote its usage more in their regions.

The soft approach of the Convention is made apparent in the phrasing, *to make available* and with all the options proposed to the State party, it is easily described as a mechanism that values promotion and progressive realization over justiciability. Nonetheless, the idea of protecting minorities and their specific linguistic rights in education outside of the judicial scope stands firm. As Austria and Croatia are parties to the ECMRL, they made declaration of which language they protect. Croatia signed to protect and promote, amongst others, the Serbian language.¹⁹⁷ Austria gives its protection to Burgenland Croatian and Slovenian as well in the document.¹⁹⁸

The FCPNM takes a similar approach albeit in a smaller dosage than the ECMRL when it comes to protecting minorities in education. Article 1 sets out with the premise that protecting

¹⁹⁵ Ibidem, Article 8

¹⁹⁶ Ibidem, Article 8, 1 a-f

¹⁹⁷ Supra 87, p. 1

¹⁹⁸ ibidem

national minorities is an integral part of protecting human rights.¹⁹⁹ As we have no minority, provision or some mention of minority rights in particular in the European Convention, this stands as some sort of replacement but without access to Court, it stands as a separate Council of Europe instrument on regulating minority rights. A Convention without the punch of a Protocol to the ECHR, the FCPNM still tries to protect and define minority rights. Article 6 starts out with a provision of promoting tolerance and intercultural dialogue between all the persons living regardless of differences in ethnicity, culture, language in the fields of education, culture and media.²⁰⁰ This promotion of tolerance is basically a rephrasing of the anti-discrimination provisions in other international documents as the promotion of tolerance part can be exchanged with, eliminating discrimination. The second part of the Article specifically binds the parties to undertake measures to protect minorities who are discriminated upon based on their ethnic or linguistic differences.²⁰¹ Article 12 ties in more with education as it states that the Parties, *where appropriate, shall take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.*²⁰² The, *where appropriate* part of the Article removes the effect of urgency when defining and protecting a right. Still it can be understood that positioning this as a *must* would not receive enough support. This is not the end of the Article as it goes further to elaborate that the States should undertake to promote equal opportunities for access to education at all levels for those who are minorities and that States should assist the training of teachers and access of textbooks.²⁰³

¹⁹⁹ Supra 62, Article 1

²⁰⁰ Ibidem, Article 6, 1

²⁰¹ Ibidem, Article 6, 2

²⁰² Ibidem, Article 12

²⁰³ Ibidem, Article 12, 2-3

B) Case law

The right to education is one of the first addendums to the ECHR findings its place in the First Protocol in Article 2. *No person shall be denied the right to education*, is a simple premise and not much more can be pulled out of it. But this sentence cannot stand on its own in this barren way. *The State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions*, provides some meaning to the right to education and what it could possibly entail. The CoE's own guide to this provision sheds some more light on how this right functions in practice. The case of *Campbell and Coasans v. United Kingdom*,²⁰⁴ provides that the right to education is a whole that is dominated by the first sentence.

For the direct meaning of the right to education, the guide provides that it is a negative obligation for the State.²⁰⁵ Thus, the State has no direct obligation to provide a schooling system which was put in place to respect the discretion the State has in dealing with something that is as sensitive as education.²⁰⁶ If we look at the drafting process behind the provision we can see that there were ideas that go against this negative wording. There was a certain fear during drafting that with a positive wording, the State would have to ensure that everybody must attain education that is desired by them.²⁰⁷ Out of this fear that a positive obligation would simply be too much for a State to handle and that a negative wording will produce enough space for the State to implement an education system in a manner they deem fit. In the midst of drafting, there was a proposal to put in linguistic preferences for the parents, as they could choose the language of education, but this was discarded as overbroad

²⁰⁴ *Campbell and Coasans v. The United Kingdom*, App no. 7511/76; 7743/76, 1982, para 40

²⁰⁵ *Supra* 42, para 5

²⁰⁶ *Ibidem*

²⁰⁷ Katherine Williams and Bernadette Rainey, "Language, Education and the European Convention on Human Rights in the Twenty-First Century," *Legal Studies* 22, no. 04 (November 2002): p. 630.

and outside of the Convention's scope.²⁰⁸ Worded and accepted in such a way, education found itself in the Convention with a first test coming soon thereafter.

The Belgian case

The test came in the now famously dubbed Belgian linguistics case where the practical application of the right came under interpretation by the Court.²⁰⁹ The applicants are parents of children whose mother tongue is French and it is the language they use and wish that their children are educated in French as well.²¹⁰ Due to the complex administrative structure of Belgium, the administrative units are divided into French and Dutch speaking depending on the majority which also affects schools, as they either teach in Dutch or French with the exception of larger schools that offer a choice. The municipalities in which the applicants live do not offer education in French as they are majority Dutch populated which only leaves one option to the parents, to enroll their children in other schools.²¹¹ As such the parents are presented with a dilemma, either enroll their children in other schools which are "designated" as French teaching which are located farther from their homes, or completely abandon the notion of learning their mother tongue in schools where they live and succumb to the majority as they simply live in an area that is not specifically accommodating their needs. Faced with this, the parents decided to turn to litigation to the now defunct Commission for Human Rights which in turn, referred the case to the Grand Chamber of the ECtHR.

The decision rendered by the Grand Chamber would stand as the first one under the second protocol, which made education a justiciable right and with the nuance of minorities fighting for the right to education in their language, it would lay the groundwork for such practice in

²⁰⁸ Ibidem

²⁰⁹ Buergenthal, Thomas. "EUROPEAN COURT OF HUMAN RIGHTS, 23rd July 1968: CASE "RELATING TO CERTAIN ASPECTS OF THE LAWS ON THE USE OF LANGUAGES IN EDUCATION IN BELGIUM" JUDGMENT." *International Legal Materials* 8, no. 4 (1969)

²¹⁰ Ibidem, para 2

²¹¹ Ibidem, Para 3

the future. The outcome of the case would rest upon the strict formulation of the right, which is a negative obligation of the State to not interfere in the process of education, mainly it pertains to the fact that there is no obligation for the state to subsidize education at any level.²¹² Even though it would be hard to imagine a State that does not subsidize or support public education in any way, this wording in the Convention provides for the discretion and power of a State to organize education at their own volition. The reasoning behind this approach can be that the Council of Europe does not wish to interfere in the way a State manages the peculiarities and details of their own educational systems. As education is a critical matter for a State which will, to ensure upbringing and development of its citizens, finance and manage the process there is no need to add a positive obligation to do so as it is in the best interest of the State to do it regardless. Without the added pressure of the Council of Europe, the State is then free to finance and design its curriculum so that education is available to its citizens.

But the Court did not stop with the reading of the negative obligation although the argument stays that there is no positive obligation for the State to finance and organize education. As the object and purpose of the protocol and article in question is to ensure a right, the Court iterates that the right to education is a right and that it needs to be enforced as such.²¹³ *It cannot be concluded from this that the State has no positive obligation to ensure respect for such a right*, is the point where we see the affirmative action of the Court.²¹⁴ Even though the wording is used specifically to promote the negative obligation, there is still the positive obligation that is inferred in this decision that gives more ground to the right to education as a State must do something to ensure that it is respected. This positive obligation comes in the form of a State ensuring that citizens have access to education and this is where the State must

²¹² Ibidem, p. 832

²¹³ Ibidem

²¹⁴ Ibidem

act in order to ensure equal access to education.²¹⁵ According to this decision, it can be deduced that a State does not need to necessarily organize and subsidize a system of education, but it must act in order to ensure that its citizens have access to it.

What happens when minority rights touch upon education and how well do they intertwine?

The question was answered in this case and it still stands as one of the most important decisions regarding linguistic rights in the jurisprudence of the Court. As it was the first case, the Judges used the chance to elaborate on how language plays a role in the new framework of the Protocol. As there is no mention of language in the Article, the Court does not see it fit that language is a part of the right to education per se, as it was clearly omitted based on the preparatory work during the drafting.²¹⁶ Language has an undeniable role to play in education, but it is not up to the Council of Europe to impose any sort of requirement or obligation upon a State as they decided so before adopting the Protocol. With this intent in mind, the Court sees no need to venture forth in dealing with the aspect of a right to be educated in one's mother tongue but instead it turns to another Article. Namely, Article 14 and the general prohibition of discrimination under which we find language as a basis of discrimination and Article 8 which focuses on private life. The reasoning is based on the premise that being educated in one's mother tongue and having access to such an education is integral to the identity of a person which in turn relates to the right to family life as well. The Court dismisses this argument as it sees no strong correlation between these two and finds no violation as well.²¹⁷ A strong statement by the Court follows this dismissal in terms on linguistic rights and the freedom of the State to design the educational system. As Belgium is split up into districts based on language and that tailoring, a system that favors linguistic unity

²¹⁵ Ibidem, para 4

²¹⁶ Ibidem, para 7

²¹⁷ Ibidem, p. 847

in these areas is valid as it promotes the language of the region.²¹⁸ This clearly majoritarian approach towards education shows how the Court deduces the actions of a State that wishes to provide education to all of its citizens. It is not an issue to favor certain languages in certain regions per se, as it is a legitimate aim of a State whilst implementing schools and laws that govern education.

The crux of the case shifts from linguistic rights into the technicalities of residence upon which the Court finds a violation.²¹⁹ Namely, the fact that residency is a sole factor in deciding whether a child has access to a school and the language of its curriculum is not in compliance with the Convention based on the general anti-discrimination article and the newly ratified right to education.²²⁰ Analyzing the Court's decision is a complex endeavor as this is a case which required probing of censuses, administrative laws and Acts made by Belgium as it tried to organize regions and promote linguistic unity in them. In a country which does not boast a large landmass but is a federal state, divided into three regions and ten provinces is adding to the layers of complexity in general with numerous changes being made to the country between the 70's and 90's the past century.²²¹ This is important to note because of the Court's careful approach to the issue of education and linguistic rights which have been discarded by the Court as those which do not have a basis in the Convention in terms of education. But this was in the infant stages of the Protocol, the prototype which could be expanded upon and as more than 50 years has passed from the case, the Court expanded upon linguistic rights as more applications were lodged.

²¹⁸ Ibidem, p. 848

²¹⁹ Ibidem, p. 847

²²⁰ Ibidem, p.848

²²¹ Belgium Federal Government, Official Info and Services, available at https://www.belgium.be/en/about_belgium/government/federale_staat accessed on 28 August, 2018

The Moldovan case

The case of *Catan and others v. Moldova and Russia* is also an equally complex case as the Belgian one but from completely different perspectives because of the territoriality issue and the dealing with the existence of Transdniestria.²²² Again the Court must sift through the history, Soviet and post-Soviet of Moldova and the subsequent dispute with the region. The peace agreements, talks, meetings, the role of the OSCE and others are all laid out in the facts. On top of it all, it is multiple applications against two States, Moldova and Russia, in a province which wishes to isolate itself from Moldova. Nevertheless, the basis of the application is in fact, the right to education and what has transpired in the Moldovan region of Transdniestria under direct support and involvement of Russia and the inability of Moldova to do something about it.²²³

The province in question and its leadership decided to pass laws which would make the use of the Moldovan language in the Latin script an offense with a fine of 50 minimal salaries.²²⁴ The Constitution of Moldova meanwhile states that the official language is Moldovan, written in Latin and this administrative law of the province seems to go directly against the Constitution for a reason.²²⁵ The reason being following the Soviet tradition of writing the Moldovan language with the Cyrillic script only whilst Moldovan independence reverted this practice to the usage of the Latin script when writing. Perhaps another attempt of distancing itself from Moldova in the legal limbo and the dreams of independence. Nonetheless, this law was “passed and enforced” which led to schools which use the Moldovan Latin being closed and children had no means of going to a school which taught the language in the form decreed

²²² *Catan and Others v. Moldova and Russia*, Applications nos. 43370/04, 8252/05 and 18454/06, 2012, para 8-63

²²³ *Ibidem*, para 123 and 110

²²⁴ *Ibidem*, para 43

²²⁵ *Constitution of the Republic of Moldova* 1994, Article 13

by the Constitution of the Moldova.²²⁶ Local authorities would harass the parents, disconnect utilities, try to evict the staff and such in order to enforce this law.²²⁷ This was all followed by reports of PACE, OSCE and other international organizations which closely followed the Moldovan situation so all that has transpired is well documented and used by the Court.²²⁸

Moving to the merits of the case and the assessment by the Court, the Belgian case is cited as it is said that a person should have some official recognition of the completed studies.²²⁹ As the most notable quote is that *the right to be educated would be meaningless if it did not imply in favor of its beneficiaries, the right to be educated in the national language or in one of the national languages*.²³⁰ Of course this relates to the fact that this peculiar case is one where a province actively denies the official State language and the Court states that this is a protected category. But minority rights as such are not mentioned in the case because this is not such a case. It can even be argued that it is the opposite as the province and the “minority Transdnistrians” would impose their own rules against the majority. As this category does not exist we are left with discriminatory efforts to remove the official language and force indoctrination of the populace. With a violation in terms of the right to education, we have a rare and somewhat radical case of educational rights being violated. As it is not often the case that we find such situations in Europe, where one region tries to take the whole country hostage and advertise separatism in such a form. Nonetheless, linguistic rights in education find their way and are supported by the Court.

²²⁶ Supra 222, para 44-45

²²⁷ Ibidem, para 46- 63

²²⁸ Ibidem, para 64-73

²²⁹ Ibidem, para 137

²³⁰ Ibidem

The Cyprus case

Yet, a similar situation of a region vying for its “right to self-determination” happened in the Cyprus conflict where the northern part of the country, with the assistance of the Turkish military, proclaimed after an armed insurgence the Turkish Republic of Northern Cyprus.²³¹ Many parallels can be drawn to the case of Moldova and their issue of territorial sovereignty as we have an almost identical occurrence in Cyprus as well. Under foreign assistance and military aid, a region tries to break out of a country and practically freezes the reach of the central government and thus, isolates a part to be run “independently”. Transdniestria and Northern Cyprus share more similarities than differences, and they both had a case in front of the ECtHR regarding educational rights with a component of linguistic rights.

Since Northern Cyprus (TRNC) proclaimed itself an “independent and democratic state” which is separate from all countries and run by the Turkish-Cypriot people.²³² As such, an “independent country” like TRNC came under a lot of attention in the international arena as the UN Security Council drafted a resolution to declare this proclamation and secession invalid.²³³ This did not dissuade the intentions of the TRNC as it tried to run parallel to Cyprus after the armed conflict which resulted in previous applications to the ECtHR.²³⁴ This is an application which contains numerous claims but we shall only focus on the right to education raised by Cyprus and how it affected the linguistic rights of the citizens. The educational system established in the TRNC would be heavily favoring the Turkish-Cypriot part of the citizens as there were no secondary school facilities in which Greek would be taught.²³⁵ The secondary school facilities would be located further in the south or the children would have to succumb to the majoritarian pressure and go to secondary schools taught in

²³¹ Cyprus v. Turkey, App No. 25781/94, 2001, para 1-14

²³² Ibidem, para 15

²³³ Ibidem, para 14

²³⁴ Ibidem, para 13

²³⁵ Ibidem, para 273

Turkish or English.²³⁶ TRNC in their process of forming and operating as a para-state abolished secondary schools teaching in Greek in favor of their schooling system which focuses on Turkish leaving the children in a similar predicament as the Moldovan and Belgian case.²³⁷ Children not having access to educational facilities that teach a language of their preference or their mother tongue is not a right guaranteed by the Convention as there is no linguistic component set in the text. However, in this particular situation we have a difference from the Belgian case as this concerns secondary education and not primary. Nevertheless, the Court decided to issue a judgment based on the fact that, if the TRNC allows primary level education in Greek, their denial of Greek being available on the secondary level is a denial of the right to education in its entirety.²³⁸ As the TRNC manages the educational system as the de facto sovereign of the region, their decision to allow Greek on only one level and deny it on the other is a matter of contention for the Court because of the way it has transpired. It seems that since the schools were abolished and there is no system, there has been a targeted attempt of removing the language from the usage in the educational system which amounts to a violation of the right to education.

C) The dwindling approach

This taking of a stand in these two cases is more of an anomaly than it could be taken as a constant situation. Understanding the historical and cultural context of these two is very important as the situation prompts a stronger answer from the Court. Two separatist regions wish to secede and begin a campaign of removing any mention of the language of the majority is not something that happens often and certainly not often enough in the Court's registrar. These applications are a telling sign of what the Court considers as a degree of

²³⁶ Ibidem, para 277

²³⁷ Ibidem, para 275

²³⁸ Ibidem, para 278

action to declare something a violation. Closing down schools, banning textbooks and in general just outright banning official languages from being used in education is a clear violation and the Court steps in to pronounce the situation as such. But the question arises what happens in the “lesser” situations which are not plagued by armed conflicts, issues of territorial integrity and such? The Court already clarified in the Belgian case that *conferring on everyone within the jurisdiction of a State a right to obtain education in the language of his own choice would lead to absurd results*.²³⁹ An understandable premise as that would very much impede a State’s right to freely organize their educational system, but does this extend to absolutely every language? Even through the small number of applications that were covered as the case-law is not that well developed or numerous, we can see that the only hard emphasis is on defending the majority language i.e. the official languages. Conferring protection to all languages is not an option, but what about minorities and their need for protection of languages?

²³⁹ Supra 209, para 11

Chapter III

Historical perspectives

Slovenes in Austria

As it was previously mentioned, Slovenes have had a presence in Austria for many centuries and they are no strangers to the region of Southern Austria. However, the dialect of the Carinthian Slovene is also different from the standard literary Slovene, which is used in Slovenia in addition to being a different language than German.²⁴⁰ Slovene having different roots in its Slavic languages from German is an obvious difference but it is important to note that Carinthian Slovene might not be the identical twin of the established Slovene language used in Ljubljana. The Austrian effort to suppress or to put it in better terms, Germanize the population of Slovenes has been long seen and noted with an increasingly higher presence since the mid-19th century.²⁴¹ The year 1867 marked the first instance of a widely used policy of making the educational system more “German” and less “Slovene” in order to assimilate the populace as the nationalist tendencies of the Germans speakers tended to mobilize the educational facilities as an arena against Slovenes.²⁴² In 1889, the Carinthian member of Commerce Baron Armand Dumreicher, stated that the Slovenes should not be robbed of their German language as it would not be feasible for them as it would have been an economic misfortune for them.²⁴³ Following this statement, there is an elaborate movement of Austria in order to move the minorities away from their Slovene mother tongue into the German speaking majority. This was a continuous effort that completely exploded in the Second World War with the Nazi regime which had a direct mission to eradicate any mention of

²⁴⁰ Tom Priestly, “Denial of Ethnic Identity: The Political Manipulation of Beliefs about Language in Slovene Minority Areas of Austria and Hungary,” *Slavic Review* 55, no. 02 (1996): p. 372.

²⁴¹ Ibidem p.376

²⁴² Ibidem p. 376-377

²⁴³ Ibidem p. 377

Slovene as a language which promptly resulted in an ethnic conflict of the German and Slovene speakers.²⁴⁴

Serbs in Croatia

Serbs have been present in Croatia for a very long time as the two States share a physical border and have done so throughout history with their position becoming an increasing issue with the start of the 20th century for the Croats.²⁴⁵ As the situation at the start of the 20th century was muddled with attempts to fight the idea of a “Greater Serbia” which would encompass areas of Croatia, the Kingdom of Croatia at that point decided to prosecute people who were supposedly involved in this plan.²⁴⁶ This adversary position against the Serbian community living in the Eastern part of the country has been noted in these times, as there was a lot of tension in terms of national identity. In this period, the mass identification of people as Serbs started to surface on the territory of Croatia but in a movement which would not resemble the organization of a minority, but rather a waking up ceremony for an autonomous region.²⁴⁷ The situation is more complicated with the row over the ethnogenesis, the origin and the name of the language these two people speak a speech in the Hungarian Parliament was held in the 1870’s by a Hungarian-Serb politician who stated that they are the same language and the same people with the Serbs preserving their nationality better.²⁴⁸

Even the unification of the two and other territories in to the Kingdom of Yugoslavia in 1918 was a matter of tensions between the two ethnic groups.²⁴⁹ The presence of Serbs in the

²⁴⁴ Knight, Robert. 2017. *Slavs in Post-Nazi Austria : Carinthian Slovenes and the Politics of Assimilation, 1945-1960*. London ; New York : Bloomsbury Academic, 2017, p. 3-4

²⁴⁵ Filip Tomić, “Serbs in Croatia and Slavonia 1908–14: The Contested Construction, Employment, and Reception of an Ethnic Category,” *Austrian History Yearbook* 49 (April 2018): p. 58.

²⁴⁶ *ibidem*

²⁴⁷ *Ibidem*, p 58, 59

²⁴⁸ *Ibidem*, p. 61

²⁴⁹ Sofija Bozic, “Serbs in Croatia (1918-1929): Between the Myth of ‘Greater-Serbian Hegemony’ and Social Reality,” *Balkanica*, no. 41 (2010): p. 185.

country was perceived as subjugators, as they were seen as oppressors and those who conquered the territories of Croatia.²⁵⁰

Seeing the Cyrillic script was even back in those times, a matter of open contention and it was met with hostility.²⁵¹ Numerous incidents and hostilities were recorded between the two ethnic groups in this period across the region and especially the Eastern parts where the Serbs were most numerous.²⁵² This resentment was only increased with the invasion of Nazi Germany which broke up the Kingdom of Yugoslavia and created the Independent State of Croatia, a fascist led territory which conducted a systematic genocide against the Serbs.²⁵³

With the defeat of the Nazi regime, Tito's Yugoslavia and the Socialist regime established the principle of all people being equal and united under one language, Serbo-Croatian.²⁵⁴ The usage of Serbo-Croatian was well established in all institutions of Yugoslavia but the problem was in denying each Republic their own distinct language which sparked a certain nationalistic uproar against the State as Croats felt threatened under the Serbo-Croatian moniker and vied for only pure Croatian to be taught.²⁵⁵ During the years the situation would get more complicated in Croatia as the term Serbo-Croatian was unofficially abandoned and they used Croatian and they did not teach Serbian in schools.²⁵⁶ This was met with a reaction in the 80's as the Serbian nationalist group awakened and stated that Serbian is threatened not only in Croatia but also in Serbia as well as the Serbo-Croatian was not deemed rightful for the Serbs.²⁵⁷ In such a political climate with a high level of ethnic tension which sparked the conflict later on in the 90's when the Serbs separated into an autonomous region which

²⁵⁰ Ibidem, p. 186

²⁵¹ Ibidem, p. 189

²⁵² Ibidem, p. 185 - 206

²⁵³ Øyvind Hvenekilde Seim, "Including the Serbs of Croatia into Croatia's History Writing," *Serbian Studies: Journal of the North American Society for Serbian Studies* 2, no. 1 (2009): p. 56.

²⁵⁴ Greenberg, Robert D. *Language and identity in the Balkans: Serbo-Croatian and its disintegration*. OUP Oxford, 2004. p. 11

²⁵⁵ ibidem

²⁵⁶ ibidem

²⁵⁷ ibidem, p. 11-12

comprised a third of Croatia, in order to establish and secure Serb dominance in the newly formed territory.²⁵⁸ This would of course mean the usage of Cyrillic and Serbian in the area as the Serbian minority identified their language with their position in Croatia.²⁵⁹

France and autochthonous minorities

There was always a linguistic enemy present in the French society, with the first being Latin fought by Charles VIII to impose French over it.²⁶⁰ The revolutionary period was the time where the finger-pointing After the Revolution and consolidation of the Third Republic we have education becoming compulsory where speaking something other than French would be a punishable offense for the children.²⁶¹ Yet, in the 50 years of such a policy, French has become a staple of the heterogenous linguistic minorities and it has truly become an official language with such a repressive method.²⁶² The efforts against the Breton language for example are well documented through history. In 1794 a French revolutionary stated that Breton was a language of the barbarians and of the past, which just stresses the French position against minority languages through history.²⁶³ However, even the modern times are not wholly different as in 1925 the Minister of Education said that Breton should disappear in order to ensure French unity. The post-war period was also characterized by the same sentiment as Pompidou said in 1972 that there is no place for regional languages in France.²⁶⁴ But going back to history, there was always a linguistic enemy present in the French society, with the first being Latin fought by Charles VIII to impose French over it.²⁶⁵ The revolutionary period was the time where the finger-pointing started to go towards the regional

²⁵⁸ *ibidem*, p.12

²⁵⁹ *ibidem*

²⁶⁰ R. Pach, "The Linguistic Minorities of France," *Literator* 7, no. 2 (May 7, 1986): p. 93.

²⁶¹ *Ibidem*

²⁶² *Ibidem*, p. 96

²⁶³ Mercator-Education, "The Breton Language in Education in France", (2nd Edition), Regional Dossier, Leewarden, Netherlands: Mercator-Education, 2003, p. 4

²⁶⁴ *Ibidem*, p. 4-5

²⁶⁵ *Supra* 260

language speakers, who have suddenly become an issue to the unity of the French.²⁶⁶ After the Revolution and consolidation of the Third Republic, we have education becoming compulsory where speaking something other than French would be a punishable offense for the children.²⁶⁷ Yet, in the 50 years of such a policy, French has become a staple of the heterogenous linguistic minorities and it has truly become an official language with such a repressive method.²⁶⁸ The situation is also complicated with regional languages in France as these are autochthonous entities. They do not have a homeland or support of another State as they are these are separate and *alien* to the continent.

Linguistic rights in education between the comparators

The Croatian Constitutional Act on Rights of Minorities is a document which is directly influenced by all the relevant international documents covering minority rights. The first Article of the Act names documents such as the FCPNM, the ECHR, and the ECMRL as being the direct influence to its creation.²⁶⁹ The Austrian Ethnic Groups Act has similarities to the Croatian Act even though there is a difference of several decades between them. Common provisions such as a ban on discrimination, the right to declare yourself a minority, the right to have their language used in an official capacity, having a right to be educated in their mother tongue and other rights as well. Since it is already specified which documents are used as inspiration, it can be assumed that this Act is adopted to uphold minority rights and codify their existence in a high-level manner such as a Constitutional Act. It even has a similar provision which establishes a Minority Council which is tasked with representing interests of the minorities. The Croatian Constitution already protects minorities as the Austrian does, but the added Act serves as a broader protection and definition of minority rights in the country.

²⁶⁶ Ibidem, p. 95

²⁶⁷ Ibidem

²⁶⁸ Ibidem, p. 96

²⁶⁹ Supra 118

Especially with the Croatian Act, which is a much more detailed and direct approach than a four-line Article in the Constitution.

In the Constitutional Act it is mentioned that minorities shall have the right to be educated in their mother tongue under the condition that Croatian is taught as well.²⁷⁰ This follows the UN documents that also propose a similar ordeal as education should not be presented as a chance to exclude minorities from participating in the public sphere but it is supposed to ensure their rights and participation as equally as it can in a dual approach of integration. Therefore, the minorities get to learn both languages and use the minority language under the conditions listed in State legislation. Education in minority language can be offered to children even though the threshold may not be met which is a welcome exception to the rule enabling potentially everyone to learn and study the language.²⁷¹ Whilst the usage of minority languages as equal to Croatian is allowed if the minority constitutes a third of the population in the administrative unit.²⁷²

The Minority Council struggles with the same issues as the Austrian Minority Council as well. As the general sentiment is that the funds allocated to the Councils are more for a folklore nature as it is given to promote a static representation of a culture.²⁷³ This can mean that cultural events are delegated to a simple show of traditional clothes and songs whilst ignoring the developing culture and context of being a minority.²⁷⁴ There is also talks about the politicization of these minority bodies as those who are close to the Government tend to get more funds which defeats the purpose of the body.²⁷⁵ If a body does not represent the

²⁷⁰ Ibidem, Article 10

²⁷¹ Ibidem

²⁷² Ibidem, Article 12

²⁷³ Supra 123, para 36

²⁷⁴ Ibidem, para 37

²⁷⁵ Ibidem, para 36

minority equally, they are basically playing into the majoritarian pressure and disregarding their own community.

Croatia, with another parallel to Austria, has its own set of minority language education laws which are made specifically to deal with education in another language than Croatian in a similar manner with the Austrian law. “Law on the Education in the Language and Script of National Minorities is a law akin to the Austrian Burgenland Minority education part sans the territorial aspect as Croatia is a decentralized country unlike Austria.”²⁷⁶ The law prescribes how education in minority languages is to be conducted as it states that it can be conducted on a pre-school level, primary, secondary and any other educational facility, meaning primarily specialized minority education schools”.²⁷⁷ It defines that if a separate class cannot be established for the minority, the education will occur in-class as separate subjects.²⁷⁸ The particularities of minority education and international human rights obligations regarding minority rights also include that besides studying the language, history, culture and similar aspects of the minority must be offered to the children.²⁷⁹ The requirement of studying Croatian is also listed in the document as well.²⁸⁰ As bilingual education is regulated by this law, it states that the minority language will be offered alongside the Croatian official language in areas where the minority language is qualified as official in the cases of a third of the population being a minority.²⁸¹

Nonetheless, there are issues of contention and they occur in the Eastern part of the country where the majority of Serbs reside in Croatia. The Vukovar county is a place which was badly

²⁷⁶ Law on the Education in the Language and Script of National Minorities, NN 51/00, 56/00, 2000, translated from Croatian original available on: <https://www.zakon.hr/z/318/Zakon-o-odgoju-i-obrazovanju-na-jeziku-i-pismu-nacionalnih-manjina>

²⁷⁷ Ibidem, Article 2

²⁷⁸ Ibidem, Article 4

²⁷⁹ Ibidem, Article 6

²⁸⁰ Ibidem, Article 8

²⁸¹ Ibidem, Article 9

damaged during the war and the people there suffered a lot during the conflict, as this was mentioned before. Nevertheless, the Serb minority deals with a problem, which is a pure administrative barrier in order to enjoy their rights to minority education. Namely, they are unable to register their schools in the Vukovar county without a direct explanation coming from the authorities.²⁸² As a newspaper article states, a number of years has passed since the end of the war and the reintegration of Vukovar, yet Serbs cannot register their own minority schools which are guaranteed by all levels of legislation.²⁸³ Even after the visit of the Committee of Experts of the ECMRL the issue still persists and the Serbs report this issue constantly as unresolved.²⁸⁴ Even though the reports from the Council of Europe bodies are favorable towards the Croatian State and how they are handling minorities on a legislative level and on the field, there is not much mention about the issue of registering schools. As the legislation states, this is a secured right and registering an educational facility is an administrative chore but what if there is no will to allow these six Serb schools to legally exist? The critique is minimal which does not mean that the problem is large as by not being able to register, the schools cannot operate legally. Without their own facilities, minorities are not able to fully enjoy their rights and as Croatia is a signatory to so many documents regulating this issue, the question stands why is there a conscious resistance or reluctance to give in to minority rights?

²⁸² Srbi, *Serbian schools still without a registration permit, Serbian party members have left the City Council session* (translated from Serbian, original available on: <https://srbi.hr/srpske-skole-i-dalje-bez-registracije-vecnici-sdss-a-ponovo-napustili-sednicu/> accessed on October 28, 2018).

The news article presents the continuing situation of Serbs being denied to run their own minority schools due to an administrative barrier or to put it better, the unwillingness of the local authorities to surrender their ownership rights which means that they can exert full control over the schools. It is a great matter of contention in the Serb minority led media and the political party representing them.

²⁸³ *ibidem*

²⁸⁴ Council of Europe: Committee of Ministers, *European Charter for Regional or Minority Languages: Application of the Charter in Croatia, 5th Monitoring Cycle*, 15 April 2015, ECRML (2009), para 367, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806d86e8>

The Austrian example is quite similar to the Croatian as there are laws in place to regulate minority rights. Yet Austria struggles with the territorial aspect because of their Constitutional basis and Croatia struggles with granting minority rights to a certain minority and territory even though they do not have any territorial limitations in their legislation. However, looking at the case of not being able to register minority schools, which are allowed under legislation leads to parallels to the Moldovan case, previously mentioned where schools were closed down based on a discriminatory practice. Technically the same logic can be applied in the Croatian situation as we have schools that want to register but are met with some “undefined logistical issues” which in the end could constitute an interference with the right to education. Looking at all the legislation and laws in place that are specifically designed to enable the opening of minority schools but are still precluded to doing so for a number of years could potentially be considered as a continuing violation of the ECHR based on the inferences between the Moldovan case and the Croatian one. Closing down schools that teach a specific official State language and refusing to allow registration and operation of minority schools, which are teaching, in a language that is a minority one but with a protected status is not that different. It all comes down to the point that there is a difference in treatment that should not be there and that it is based on the language of operation of the schools. If it ever came to an application in front of the European Court, there might be a judgment, which would extrapolate on this further and use the previously mentioned Cyprus and Moldovan cases and perhaps even the Belgian linguistics case, which remains, quoted in all educational affairs in the jurisprudence of the Court. However, these are all hypothetical situations and only a product of inference, which might not be seen in the same way by the Court, which sides on the margin of appreciation and sovereignty of the State to regulate their own schooling systems. Still, the case might stand on a discrimination basis.

The French example is perhaps one of the more controversial ones in Europe as it has a long-standing parting of ways when it comes to the definition of minorities due to the political and cultural aspect of the French nation and inception. As it was previously stated, the so-called *linguistic imperialism* that is prominent in the French State and identity building moves in the area of full assimilation into a singular French identity with a mention of regional identities provided for in the Constitution. But a brief mention in a Constitution cannot go far and the situation needs to be analyzed more specifically.

Looking at French educational policies through the history, they are not wholly different from the antagonistic stance the Austrians harbored for the Slovene language but it is to be amplified because of plurality of languages instead of just one like in Austria.²⁸⁵ I am mainly referring to the act of subjugating and trying to remove a language from the sphere of public usage through the arena of education. If there is no teaching of a language and if there is not enough will for the community to preserve it, it will eventually disappear. For example, the usage of Breton by children was a punishable offense in French schools as the monolingual approach was very strong in the late 19th century.²⁸⁶ These experiences would continue until the eventual turnaround in the French approach to minority languages as they passed the Loi Deixonne in 1951 which was specifically designed to enable minority and regional languages to be taught in schools.²⁸⁷ A law which is very concise in what it allows, its aim is to promote local languages and dialects in regions where they are used.²⁸⁸ It allows for the local language or dialect to be taught by the teachers in schools, primary and higher education, as an optional

²⁸⁵ Osterkorn, Patrick Karl. 2014. "Separated Multilingualism? The Experience of Students' Multilingualism in Minority Language Education in Brittany (France)." *Studies in Applied Linguistics / Studie z Aplikované Lingvistiky*, no. 2 (July): p. 52

²⁸⁶ *ibidem*

²⁸⁷ Law No. 51-46 of 11 January 1951 on the teaching of local languages and dialects Diexonne Law, translated from French, original available on

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886638>

²⁸⁸ *Ibidem*, Article 1

course followed by the teachings of art, history and culture of the minority.²⁸⁹ Keeping in mind that this law has been passed in 1951 whilst the Council of Europe needed 40 more years to draft and ratify the two instruments regulating minority and linguistic rights, yet their essence is not different. The general feeling of protecting linguistic rights has been the same for the last part of the 20th century as through the periods, the same ideas existed about how to teach a minority language and what is also required in order to protect and nurture interests of minorities. Just teaching the language is not enough and the addition of history, arts and culture as the object of education together with the language provides for a full package for the minorities. However, this law has its specific shortcoming; mainly it has a closed list of what regional or local languages are allowed to be taught. Namely, it is Breton in Rennes, Basque in Bordeaux, Catalan Montpellier and the surrounding region and Occitan in the Aix-en-Provence.²⁹⁰ It would take another 20 years for Corsican to achieve the same status as the Loi Deixonne was amended in 1974 in order to include Corsican into the list specifically.²⁹¹ Despite this, this law has been repealed in 1975 by the Loi Bas-Lauriol which was specifically brought to introduce French as the only official language in the consumer spheres as usage of any other language than French is prohibited in the usage of, for example, invoices and advertisements.²⁹² Still, the educational aspect of the Loi Deixonne stayed in force through the other laws enacted, specifically Loi Haby.²⁹³ In its Article 12 it provides that regional languages can be taught throughout schooling.²⁹⁴ But these two laws on regional language

²⁸⁹ Ibidem, Article 3,4,5,6

²⁹⁰ Ibidem, Article 11

²⁹¹ Decree N ° 74-33 of January 16, 1974 relating to the teaching of local languages and dialects, translated from French original available on

https://www.legifrance.gouv.fr/jo_pdf.do?id=JORFTEXT000000328661&pageCourante=00694

²⁹² Law No. 75-1349 of 31 December 1975 concerning the use of the French language, translated from French original available on

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000521788&idArticle=LEGIARTI000006421237&dateTexte=vig>

²⁹³ Law No. 75-620 of July 11, 1975 relating to Education, Haby Law, translated from French original available on http://dcalin.fr/textoff/loi_haby_1975.html

²⁹⁴ Ibidem, Article 12

education only open the door without an explicit formulation of how this system should function. Only a modest success has been achieved with these two laws and not much has been done to incentivize the further teaching of minority languages based on these two laws.²⁹⁵ The actual breakthrough can be seen in 1982 under the Minister of National Education, Alain Savary who wrote the Savary circular which permitted bilingual education.²⁹⁶ For France it was a much longer path towards enabling bilingual education even though they had a head start in front of Austria and Croatia as both did not have their complete independence at the time the Loi Deixonne was passed. Adding to the circular and the legislature following it, we have the Code of Education which permits the usage of regional languages in education as well.²⁹⁷ It is a much more direct approach as it defines how the teaching of regional languages functions. Namely, the education in regional languages is organized based on an agreement between the State and the local or regional authorities.²⁹⁸ It seems that the closed list of allowed regional languages is given up on which is highly commendable as it opens the door to all regional languages to find their space in the educational sphere of France. Allowing only the most widely used as was the case in Loi Deixonne is a restrictive approach to minority rights as it is a beneficial one. For the situation of France, this was the first step towards a system which would see minorities as an actual part of the country with their distinct identities united under a French banner rather than being assimilated into being French without any characteristics as they are “all French” in the end anyways. This particular position of France is a more complex issue than the Austrian or Croatian one because of its open approach against the term minority, but somewhat accepting of the term regional language as long as it is not in a completely official capacity.

²⁹⁵ Supra 142, p. 141

²⁹⁶ Ibidem

²⁹⁷ Code of Education of France, consolidated version as of November 2, 2018, Section 4: Teaching of regional languages and cultures, Article L312-10, L312-11, L312-11-1, translated from French, available on <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071191>

²⁹⁸ ibidem

The last decade of the 20th century marked the new Constitutional amendment for France as *the language of the Republic is French* became the catalyst for a new law which would be more restrictive than the previous two.²⁹⁹ The Loi Toubon³⁰⁰, proposed by the Minister of Culture and Francophonie Jacques Toubon,³⁰¹ its first Article is a very strong statement about what role French plays in the daily life of the citizens.³⁰² Namely, it states that French is the fundamental basis of the State, and it is the language of education, work, trade and public services which manages to diminish the effort of Loi Deixonne passed some 40 years prior.³⁰³ What does it mean to have French as the sole language of instruction, trade, basically all public fields of life as a legal necessity? The primary idea behind this newly fashioned law is to protect the French language and heritage against the English language which was becoming more and more present in Europe and especially EU with the Maastricht Treaty.³⁰⁴ A weapon to strengthen the French language and to fight the segmentation of France into different linguistic communities, not just referring to regional languages but to new immigrant languages as well.³⁰⁵ This does not mean that the teaching of regional languages is abolished as it is kept inside the framework of the law as it is not applied directly to the teaching of them.³⁰⁶ The law does in fact, do its best to impose French in every aspect of life, not just usage in public but also usage in private life which was struck down by the Conseil Constitutitonneel as the law was too invasive in the private sphere of use which would go

²⁹⁹ Supra 294

³⁰⁰ Law n ° 94-665 of August 4, 1994 relating to the use of the French language, translated from French original available on

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000349929&dateTexte=20110513>

³⁰¹ Ibidem

³⁰² Ibidem, Article 1

³⁰³ Ibidem

³⁰⁴ Stefaan van der Jeught, "The Loi Toubon and EU Law: A Happy or a Mismatched Couple?," *European Journal of Language Policy* 8, no. 2 (October 2016): p. 142.

³⁰⁵ Ibidem

³⁰⁶ Supra 299, Article 21

against freedom of expression.³⁰⁷ As the mentions are removed from being able to govern private life, the public aspect still stays and the supremacy of French is entrenched further.

A few years prior to Loi Toubon a case regarding the Corsican people and their Autonomy Statute, primarily related to being able to teach Corsican in schools as an elective subject, appeared in front of the Constitutional Council.³⁰⁸ Even though the Upper House expected the Statute to be struck down based on the fact that teaching Corsican is against the principle of equality, the Council did not budge and saw it through a very narrow perspective.³⁰⁹ Namely, since the teaching of Corsican is not compulsory, it does not create any difference in treatment and it can be allowed to continue.³¹⁰ This small victory prior to Loi Toubon stands as one of the rare cases to go through the French judicial system and to come out as a victor in terms of minority rights. This effectively enabled the teaching of Corsican in Corsica with a ground in a decision made by the Constitutional Council which is a feat that no other regional language has managed to achieve.³¹¹

Even the change of the Constitution to include regional languages came fairly recent and it was deliberately written the way it stands, as being part of *heritage* and not having concrete and justiciable rights as the no other Article was changed to reflect the position of regional languages.³¹² If we are comparing the Constitutions and the legislation of the three countries, we can find that they have been progressive in the sense that they are allowing more and more protection to minorities and they are placed in Constitutions as well with the latest addition being France. As the legislative situation has been moving favorably, does this mean that the minorities are in a more favorable position? Enacting laws and passing Constitutional

³⁰⁷ Supra 303, p. 144-145

³⁰⁸ Graziadei, Stefan. 2012. "The French Constitutional Council as the Rottweiler of the Republican Ideal in the Language Field: Does Jurisprudence Really Reflect Reality? EDAP 3/2012." p.20

³⁰⁹ *ibidem*

³¹⁰ *ibidem*

³¹¹ *Ibidem*, p. 21

³¹² *Ibidem*, p. 22

amendments are totally different concepts from following and enforcing them. France may have a mention of regional languages in their Constitution but the fact that they will only allow their teaching as an elective non-compulsory goes completely against the notion of inclusion and protection of languages. The small victories for the French minorities are no different than the position of the other minorities. They are all delegated to the position of “heritage”, of being part of the history, a decoration of the country with an expectancy to keep their identities tied to their cultural events.

The French approach is to regulate the usage of languages as much as it can, is a centuries long effort, with the Jacobin ideal of a nation-state still populating the leadership.³¹³

Austrian's are no different in their long attempt to curb the usage of Slovenes and the Croat example stands as a fresh one without a conclusion to be made. But what can be inferred is that in the end, it is no different than the previous two with its short but consistent history in seeking to control the usage of Serbian as much as it is possible. This is a consistent theme in all three countries, members of the EU, and signatories of many international documents. As Austria only offers bilingual education and schools in one area, Croatia does not let Serbs register their own schools and France allows bilingual education only if it is an optional subject lest it be an attack on the unity of the State. This all leads us to a question, how is this permitted and let to be regulated by the States themselves under the guise of sovereignty and managing their own educational systems and placing barriers for minorities? As the push towards regulating this topic is lesser and lesser with time, what is to be expected in the future without a coordinated attempt to mend the situation by the Council of Europe or the European Union?

³¹³ Ibidem, p. 16

The situation is also complicated with regional languages in France as these are autochthonous entities. Breton does not have homeland or a place where it can be used, Occitan and Corsican are in the same situation amongst others. Whilst Slovene or Serbian has a nucleus to go to and has a community of support from the mother State, the regional languages in France find themselves in a different situation, namely left to their own devices.

The logic behind the Loi Deixonne was that it is not a product of democratization but that it was a luxury, a hand given in order to forget the notion that regional languages can be associated with separatism and an attack on the French unity.³¹⁴ The law managed to provide for a small starting step towards recognition of regional languages but further attempts to gain full recognition backfired as hostilities arisen against the minority representatives from Occitan and Brittany.³¹⁵ The way that regional languages are seen is more as a foreign language, an asset which is optional and not as a must in France.³¹⁶ Even their mention in the Constitution states that they are a part of the French heritage, which amounts to a basic recognition that regional languages exist and that they are a part of France but compared to the Constitutional provisions of Croatia and Austria, it pales in comparison. Heritage by its own definition implies something from the past that is still sometimes mentioned and honored, something that once was and was shaped into something bigger. This view of regional or minority languages has been seen before, where the usage of it is relegated to a folklore environment which was previously mentioned. Keeping the languages outside the public arena and moving it to the sphere of folklore and closed manifestations of “culture and language” does not move the language towards recognition or to a status, it pigeon holes the language and does not allow it to move out this space. A similar issue which is present in all

³¹⁴ Nuria Garcia, “Tensions between Cultural and Utilitarian Dimensions of Language: A Comparative Analysis of ‘Multilingual’ Education Policies in France and Germany,” *Current Issues in Language Planning* 16, no. 1–2 (April 3, 2015): p. 51.

³¹⁵ Ibidem,

³¹⁶ Ibidem, p. 52

the three countries as there is simply no push and no will to do something greater about this issue. But as these are minority rights issues, they remain controversial in the sense that there are less and less speakers of minority languages and that it is simply phased out in favor of the official language or foreign languages.

It is a limbo situation as there is only place for internal change but without a coordinated attempt which might get shut down by the legislature and the State, minorities have no forum in which to express their rights directly. As it was said before, the way linguistic rights in education can be protected is more of an anomalous occurrence, a topic where the European Court rarely steps in favor of the applicant as the notion of sovereignty are too strong for any major intervention. Only in the most radical of cases can we see a movement towards recognition and protection. The European approach to this is to mostly push for soft law reforms and a progressive realization of these cultural rights. A lot of work has been done to promote and raise awareness of minority rights, to try to make States abide by this notion but is it enough and does this approach without a justiciable right have some merit? Some might argue that it is such a broad category and that hard-legal protection of these rights would be a stretch, as States would not wish to go through this path of protecting minorities. But offering financial support for cultural manifestations and sponsoring bilingual schools does not go the long way. Especially when we look at the Constitutional Acts and Constitutions of Austria and Croatia, who have a plethora of legislation on the highest levels which give protection for minorities. But this does not mean that they enjoy these protections, as the territorial aspect applies to Austria and Croatia does not offer registration for schools. The French position goes back and forth with every new law, but the minorities do not enjoy a Constitutional protection and they do not even share the protection offered by the Council of Europe instruments. Positioning France as the outlier does not mean the most precarious position for minorities but the back and forth approach with legislation and the situation they find

themselves in. Having a State which gives a mixed response to minority rights whilst it gives a clear and concise answer that it does not want to commit to the Council of Europe instruments. And even the Council of Europe instruments focus on the not being overtly critical as they try to highlight certain issues and issue recommendations which are not binding.

With France rejecting ratification of the ECMRL and the FCPNM, the French basically assert that they can deal with regional and minority languages without the assistance and supervision from outside. By not ratifying either of these instruments, by passing legislation that seems to restrict the usage of regional languages in all contexts, especially education, is not creating an atmosphere where the minorities can nurture and protect their language. The Corsican decision might have a different outcome if it appeared in today's connotation and especially taking into account the Constitutional provision added after the case was decided. With this insular position and the aforementioned provision, what is the next course of development for France? Their accommodation of non-French languages, including regional languages has been especially halted since the 90's. The change of approach and the rejection of international instruments provides a completely different picture from Austria and Croatia, where the two countries are part of both the CoE instruments regulating minorities and languages. An outlier amongst the three, it puts its own mechanism and framework as the preferred one while the others use international instruments as well. But this does not mean that the position of minorities and their respective languages is in any better shape going from the legislative basis. By not providing a direct model of bilingual education as Austria and Croatia does, France leaves regional languages as a non-compulsory subject thereby not directly supporting regional languages.

Chapter IV Conclusion and recommendations

In the end what does this mean for the minorities who are boxed in their respective States with limited access to Courts because of their specific issues which are not considered completely because of the status of minority rights. Primarily considering their explicit lack in the ECHR after the “minority protocol” failed and resulted in the other instruments, minority rights technically only exist as an interpreted but not a special right. As it seems that the Council of Europe is moving away from the concept of special rights in favor of universal rights for all, minorities find themselves in a position of a limbo. They cannot fight the system from the inside as their rights are guaranteed by legislation on all levels, but the problem is in the State, which usually tries to do the absolute bare minimum for the minorities in order to avoid scrutiny. This is done by shifting education to an optional subject which might be understaffed or in another school or just a distinct region like in Austria. Or it might be only available if it is completely regulated by the State without letting the minorities run their own schools like in Croatia. Or a complete phasing out of regional languages in the public sphere in favor of a monolingual French State. It all amounts to some interference with the minorities and their linguistic rights which exist on a national level if not on an international level.

The system put in place right now which regulates minority languages is based on these soft-law mechanisms which gives States too much freedom on how to regulate minority rights. Especially in countries which troubled pasts regarding minorities as France, Croatia and Austria, where the cultural and historical aspect has been to subjugate them for centuries can a few soft law mechanisms really change the situation drastically if there is no outside pressure or assistance? In such an atmosphere reluctance to follow through what is ratified, be it local or international the minorities are left in a situation where they cannot move to better their position. The European Court takes a stand when it comes to radical cases of high degree, it won't certainly see the threshold met when it comes to linguistic rights in education in these

countries as there is no explicitly defined stance. The minorities also do not have a forum regarding the instruments made specifically for them as these are only staffed with experts and advisors. There is no Court which would take these cases into consideration as it is in the domain of the State to regulate.

This divide between sovereignty and the position of linguistic rights in general is the main barrier to having an enforceable system of linguistic rights. Their cultural notion and the moving further away from minority rights in general places them in a peculiar position. How can rights be softly defined and badly protected without any system or push to change this apart from submitting a recommendation or an advisory opinion? These only provide for effective change if they are met with acceptance and work. But from reading the reports of Austria and Croatia, the problems they have are longstanding and are simply mentioned again in the following reports. Relying on such a system leaves minorities in a more vulnerable position especially when we take into account that all the three comparators have a comprehensive legal and Constitutional framework in place to define and protect minority rights in their respective jurisdictions. What is left to tackle is the principle of following the laws and provisions that were approved by the legislature, coming from either inside or outside of the national scope. Minority rights cannot be phased out under the guise of cultural rights having no direct impact as much as other *fundamental rights* have. If the ECtHR avoids the term linguistic rights as a direct enforceable right and does not offer the minorities a forum to protect their rights, what else is left?

The possibility of a “minority protocol” being added to the European Convention was already thrown out in the 90’s as there was no consensus on it in the Council of Europe. Relying solely on the soft-law mechanisms does not produce the desired protection and security of the minorities and it only results in reports being written without an actual impact in reality as the States are not compelled to change their approach. With small steps and concessions done to

the minorities in terms of funding, the problem is not on the path of solving. As the journal states, *language rights are a dog without a bark*, they exist but they do not carry the punch and strength of other human rights even though they find themselves in international documents and in debates. This position of linguistic rights existing but not being enforceable in the end only means that they do not exist formally but in some transient state. Legislation and international documents are not amiss as well. The legislation in place to regulate linguistic rights is very much progressive and present in all three countries on all legislative levels. The only thing left is to create some sort of mechanism that will provide more assistance to minorities that are in this limbo situation where they have rights on paper but do not have them in reality.

Bibliography

Books and journals

Abayasekara, Sadhana. "A Dog without a Bark: A Critical Assessment of the International Law on Language Rights." *Austl. Int'l LJ* 17 (2010): 89.

Berman, Nathaniel. "Nationalism Legal and Linguistic: The Teachings of European Jurisprudence." *NYUJ Int'l L. & Pol.* 24 (1991): 1515.

Bommes, Michael, and Dietrich Thränhardt. *National Paradigms of Migration Research*. Vandenhoeck & Ruprecht, 2010.

Buergenthal, Thomas. "EUROPEAN COURT OF HUMAN RIGHTS, 23rd July 1968: CASE "RELATING TO CERTAIN ASPECTS OF THE LAWS ON THE USE OF LANGUAGES IN EDUCATION IN BELGIUM" JUDGMENT." *International Legal Materials* 8, no. 4 (1969)

Bozic, Sofija. "Serbs in Croatia (1918-1929): Between the Myth of 'Greater-Serbian Hegemony' and Social Reality." *Balkanica*, no. 41 (2010): 185–208.
<https://doi.org/10.2298/BALC1041185B>.

C. Michael MacMillan, *The Practice of Language Rights in Canada* (University of Toronto Press, 1998) 11; Final Report of the Royal Commission on Bilingualism and Biculturalism—Book I: The Official Languages (1967)

Davis, Michael. "The Music of Reason in Rousseau's Essay on the Origin of Languages." *The Review of Politics* 74, no. 03 (June 2012): 389–402.
<https://doi.org/10.1017/S0034670512000538>.

Djuric, Ivana. "The Post-War Repatriation of Serb Minority Internally Displaced Persons and Refugees in Croatia—between Discrimination and Political Settlement." *Europe-Asia Studies* 62, no. 10 (2010): 1639–1660.

- Garcia, Nuria. "Tensions between Cultural and Utilitarian Dimensions of Language: A Comparative Analysis of 'Multilingual' Education Policies in France and Germany." *Current Issues in Language Planning* 16, no. 1–2 (April 3, 2015): 43–59. <https://doi.org/10.1080/14664208.2014.947015>.
- Graziadei, Stefan. 2012. "The French Constitutional Council as the Rottweiler of the Republican Ideal in the Language Field: Does Jurisprudence Really Reflect Reality? EDAP 3/2012."
- Greenberg, Robert D. *Language and identity in the Balkans: Serbo-Croatian and its disintegration*. OUP Oxford, 2004
- Hilpold, Peter. "The League of Nations and the Protection of Minorities—Rediscovering a Great Experiment." *Max Planck Yearbook of United Nations Law Online* 17, no. 1 (2013): 87–124.
- Jeught, Stefaan van der. "The Loi Toubon and EU Law: A Happy or a Mismatched Couple?" *European Journal of Language Policy* 8, no. 2 (October 2016): 139–52. <https://doi.org/10.3828/ejlp.2016.9>.
- Kasuya, Keisuke. "Discourses of Linguistic Dominance: A Historical Consideration of French Language Ideology." *International Review of Education* 47, no. 3–4 (2001): 235–251.
- Knight, Robert. 2017. *Slavs in Post-Nazi Austria : Carinthian Slovenes and the Politics of Assimilation, 1945-1960*. London ; New York : Bloomsbury Academic, 2017
- LJUBOJEVIĆ, ANA. "What's the Story? Transitional Justice and the Creation of Historical Narratives in Croatia and Serbia" 49, no. 5 (2012): 20.
- Määttä, Simo K. "The European Charter for Regional or Minority Languages, French Language Laws, and National Identity." *Language Policy* 4, no. 2 (June 2005): 167–86. <https://doi.org/10.1007/s10993-005-3518-4>.

- May, Stephen. "Language Rights: The 'Cinderella' Human Right." *Journal of Human Rights* 10, no. 3 (July 2011): 265–89. <https://doi.org/10.1080/14754835.2011.596073>.
- McDermott, Philip. "Language Rights and the Council of Europe: A Failed Response to a Multilingual Continent?" *Ethnicities* 17, no. 5 (October 2017): 603–26. <https://doi.org/10.1177/1468796816654725>.
- Mercator-Education, "The Breton Language in Education in France", (2nd Edition), Regional Dossier, Leewarden, Netherlands: Mercator-Education, 2003
- Michael Bommes and Dietrich Thränhardt, *National Paradigms of Migration Research* Vandenhoeck & Ruprecht, Volume 13 van Schriften des Instituts für Migrationsforschung und Interkulturelle Studien, 2010
- Noemi Nagy, "The History of Linguistic Legislation in France," *Journal on European History of Law* 4, no. 2, 2013
- Oakes, Leigh. "Normative Language Policy and Minority Language Rights: Rethinking the Case of Regional Languages in France." *Language Policy* 16, no. 4 (November 2017): 365–84. <https://doi.org/10.1007/s10993-016-9411-5>.
- Osterkorn, Patrick Karl. 2014. "Separated Multilingualism? The Experience of Students' Multilingualism in Minority Language Education in Brittany (France)." *Studies in Applied Linguistics / Studie z Aplikované Lingvistiky*, no. 2 (July)
- Øyvind Hvenekilde Seim. "Including the Serbs of Croatia into Croatia's History Writing." *Serbian Studies: Journal of the North American Society for Serbian Studies* 2, no. 1 (2009): 55–67. <https://doi.org/10.1353/ser.0.0041>.
- Pach, R. "The Linguistic Minorities of France." *Literator* 7, no. 2 (May 7, 1986): 85–99. <https://doi.org/10.4102/lit.v7i2.883>.

Pasikowska-Schnass Magdalena, European Parliament Research Service, Regional and Minority Languages in the European Union, 2016, accessed September 2018, [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2016\)589794](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2016)589794)

Paz, M. "The Tower of Babel: Human Rights and the Paradox of Language." *European Journal of International Law* 25, no. 2 (May 1, 2014): 473–96.
<https://doi.org/10.1093/ejil/chu037>.

Petricusic, Antonija. "Nation-Building in Croatia and the Treatment of Minorities: Rights and Wrongs." *L'Europe En Formation* 349–350, no. 3 (2008): 135.
<https://doi.org/10.3917/eufor.349.0135>.

Phillips, Alan. "Contribution of the Council of Europe Framework Convention for the Protection of National Minorities and Its Advisory Committee to the Effective Participation Rights of National Minorities." *International Journal on Minority and Group Rights* 16, no. 4 (2009): 527–537.

Priestly, Tom. "Denial of Ethnic Identity: The Political Manipulation of Beliefs about Language in Slovene Minority Areas of Austria and Hungary." *Slavic Review* 55, no. 02 (1996): 364–98. <https://doi.org/10.2307/2501916>.

Ramaga, Philip Vuciri. "The Group Concept in Minority Protection." *Human Rights Quarterly* 15, no. 3 (August 1993): 575. <https://doi.org/10.2307/762611>.

Ramaswamy, Kavana. "The Right to Education: An Analysis through the Lens of the Deontological Method of Immanuel Kant" 16 (n.d.): 19.

Rasinger, Sebastian M. "Linguistic Landscapes in Southern Carinthia (Austria)." *Journal of Multilingual and Multicultural Development* 35, no. 6 (September 19, 2014): 580–602. <https://doi.org/10.1080/01434632.2014.889142>.

Rieff, David. "The Krajina War: Endgame for the United Nations." *World Policy Journal* 12, no. 3 1995

Ronelle Alexander. "Serbo-Croatian Dialectology Revisited." *Harvard Ukrainian Studies* 28, no. 1/4, (n.d.). <http://www.jstor.org/stable/41036941>.

Smejkalová, Tereza. "Slovenian Minority in Austria." *The Annual of Language & Politics and Politics of Identity, Roč 1* (2007): 35–42.

"The League and the Minorities Treaties." *Bulletin of International News* 5, no. 18 (1929): 3–10.

Tomić, Filip. "Serbs in Croatia and Slavonia 1908–14: The Contested Construction, Employment, and Reception of an Ethnic Category." *Austrian History Yearbook* 49 (April 2018): 58–72. <https://doi.org/10.1017/S0067237818000085>.

Williams, Katherine, and Bernadette Rainey. "Language, Education and the European Convention on Human Rights in the Twenty-First Century." *Legal Studies* 22, no. 04 (November 2002): 625–50. <https://doi.org/10.1111/j.1748-121X.2002.tb00672.x>.

Legislation and Constitutions

Austria, Constitutional Act, Ethnic Groups Act, 1976 accessed October 2017, http://www.equalrightstrust.org/ertdocumentbank//erv_1976_396.pdf

Austrian Constitution, adopted on October 1st, 1920, accessed October 2017, https://www.constituteproject.org/constitution/Austria_2009.pdf

Code of Education of France, consolidated version as of November 2, 2018, translated from French, accessed August 2018, available on <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071191>

Constitution of the Republic of Croatia, 1990, accessed October 2017, www.sabor.hr/fgs.axd?id=17074

Croatian Constitutional Law on the Rights of National Minorities, 2002 accessed November 2017, http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation_Constitutional-Law-on-the-Rights-NM.pdf

Constitution of the Republic of Moldova 1994, accessed August 2018, https://www.constituteproject.org/constitution/Moldova_2006.pdf?lang=en

Decree N ° 74-33 of January 16, 1974 relating to the teaching of local languages and dialects, translated from French, accessed August 2018, original available on https://www.legifrance.gouv.fr/jo_pdf.do?id=JORFTEXT000000328661&pageCourante=006
94

European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, September 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12012P/TXT>

European Union, *Treaty on European Union (Consolidated Version)*, *Treaty of Maastricht*, 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002, accessed September 2018, https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_on_european_union_en.pdf

European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01, available September 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

French Constitution of 1958, accessed November 2017, https://www.constituteproject.org/constitution/France_2008.pdf?lang=en

Law No. 51-46 of 11 January 1951 on the teaching of local languages and dialects Diexonne

Law, translated from French, accessed August 2018, original available on

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886638>

Law No. 75-1349 of 31 December 1975 concerning the use of the French language, translated

from French, accessed August 2018, original available on

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000521788&idArticle=LEGIARTI000006421237&dateTexte=vig>

Law No. 75-620 of July 11, 1975 relating to Education, Haby Law, translated from French,

accessed August 2018, original available on http://dcalin.fr/textoff/loi_haby_1975.html

Law n ° 94-665 of August 4, 1994 relating to the use of the French language, translated from

French, accessed August 2018, original available on

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000349929&dateTexte=20110513>

Law on the Education in the Language and Script of National Minorities, NN 51/00, 56/00,

2000, translated from Croatian, accessed May 2018, [https://www.zakon.hr/z/318/Zakon-o-](https://www.zakon.hr/z/318/Zakon-o-odgoju-i-obrazovanju-na-jeziku-i-pismu-nacionalnih-manjina)

[odgoju-i-obrazovanju-na-jeziku-i-pismu-nacionalnih-manjina](https://www.zakon.hr/z/318/Zakon-o-odgoju-i-obrazovanju-na-jeziku-i-pismu-nacionalnih-manjina)

State Constitution of Carinthia of 1996, accessed October 2017,

[www.ris.bka.gv.at/GeltendeFassung/LrK/10000208/K-](http://www.ris.bka.gv.at/GeltendeFassung/LrK/10000208/K-LVG%2c%20Fassung%20vom%2029.10.2012.pdf)

[LVG%2c%20Fassung%20vom%2029.10.2012.pdf](http://www.ris.bka.gv.at/GeltendeFassung/LrK/10000208/K-LVG%2c%20Fassung%20vom%2029.10.2012.pdf)

Treaty for the re-establishment of an independent and democratic Austria, 1955 accessed

November 2017, [https://www.cvce.eu/content/publication/1999/3/2/5c586461-7528-4a74-](https://www.cvce.eu/content/publication/1999/3/2/5c586461-7528-4a74-92c3-d3eba73c2d7d/publishable_en.pdf)

[92c3-d3eba73c2d7d/publishable_en.pdf](https://www.cvce.eu/content/publication/1999/3/2/5c586461-7528-4a74-92c3-d3eba73c2d7d/publishable_en.pdf)

International documents

Convention against Discrimination in Education signatories, accessed August 2018,
<http://www.unesco.org/eri/la/convention.asp?KO=12949&language=E&order=alpha>

Council of Europe, European Charter on Regional and Minority Languages 1992,
<https://www.coe.int/en/web/european-charter-regional-or-minority-languages/about-the-charter>

Council of Europe, European Charter for Regional or Minority Languages, 4 November 1992
<https://www.coe.int/en/web/european-charter-regional-or-minority-languages/the-objectives-of-the-charter->

Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, accessed October 2017, https://www.echr.coe.int/Documents/Convention_ENG.pdf

Council of Europe, Framework Convention for the Protection of National Minorities, Factsheet, accessed October 2017, <https://www.coe.int/en/web/minorities/fcnm-factsheet>

Council of Europe, Promoting ratification of the European Charter for Regional or Minority Languages, <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/promoting-ratification>

Council of Europe: Committee of Ministers, *European Charter for Regional or Minority Languages: Application of the Charter in Austria, 4th Monitoring Cycle*, 28 November 2012, ECRML (2009),
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000016806d868a>

Council of Europe: Committee of Ministers, *European Charter for Regional or Minority Languages: Application of the Charter in Croatia, 5th Monitoring Cycle*, 15 April 2015, ECRML (2009), accessed May 2018,

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806d86e8>

Council of Europe, *European Charter for Regional or Minority Languages*, 1992, accessed September 2017, available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680695175>

Council of Europe: Secretariat of the Framework Convention for the Protection of National Minorities, *Advisory Committee on the Framework Convention for the Protection of National Minorities: Opinion on Croatia, adopted on 18 November 201, ACFC/OP/IV(2015)005rev*, accessed September 2017,

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c268b>

Council of Europe: Committee of Ministers, *European Charter for Regional or Minority Languages: Application of the Charter in Croatia, 4th Monitoring Cycle*, 8 December 2010, ECRML (2009), accessed May 2018,

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806d86e5>

Council of Europe: Secretariat of the Framework Convention for the Protection of National Minorities, *Advisory Committee on the Framework Convention for the Protection of National Minorities: Opinion on Croatia, adopted on 18 November 201, ACFC/OP/IV(2015)005rev*, accessed September 2017,

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c268b>

OSCE – Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen 1990, accessed November 2017,

<https://www.osce.org/odihr/19394?download=true>

Parliamentary Assembly of the Council of Europe. Recommendation 928, 1981. "Educational And Cultural Problems Of Minority Languages And Dialects In Europe." accessed September 2018, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=14962&lang=en>

Promoting ratification of the European Charter for Regional or Minority Languages in France – Council of Europe, accessed on December 2018, available at

<https://www.coe.int/en/web/european-charter-regional-or-minority-languages/promoting-ratification-in-france>

Publication of the European Court of Human Rights, Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights, 2015, accessed October 2017,

https://www.echr.coe.int/Documents/Convention_ENG.pdf

UN Human Rights Committee (HRC), CCPR General Comment No. 23: Article 27 (Rights of Minorities), 8 April 1994, accessed on October 2017,

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.5&Lang=en

UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, accessed May 2018,

[https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d\)GeneralCommentNo13Therighttoeducation\(article13\)\(1999\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d)GeneralCommentNo13Therighttoeducation(article13)(1999).aspx)

UN Committee on the Elimination of Racial Discrimination (CERD), *General recommendation No. XX(48) on Article 5 : The guarantee of human rights free from racial discrimination*, 8 March 1996, CERD/48/Misc. 6/Rev, accessed August 2018,

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7492&Lang=en

UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, accessed January 2018,

<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, accessed November 2017,

<https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, accessed October 2017,

<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III) accessed June 2018, <http://www.un.org/en/universal-declaration-human-rights/>

UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, accessed August 2018, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

UN General Assembly, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 3 February 1992, A/RES/47/135, accessed November 2017, <https://www.ohchr.org/en/professionalinterest/pages/minorities.aspx>

UNESCO *Convention Against Discrimination in Education*, 14 December 1960, accessed June 2018, [http://portal.unesco.org/en/ev.php-](http://portal.unesco.org/en/ev.php-URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html)

[URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html)

UNESCO, Results of the seventh consultation of Member States on the implementation of the Convention and the Recommendation against Discrimination in Education (1960) (34 C/56) 2007, accessed September 2018, unesdoc.unesco.org/images/0015/001519/151923E.pdf

UNESCO, Summary of the reports received from Member States on the measures taken to implement the 1960 Convention and Recommendation against Discrimination in Education (39 C/24) 2017, accessed April 2018, unesdoc.unesco.org/images/0025/002597/259737e.pdf

Case law

Campbell and Coasans v. The United Kingdom, App no. 7511/76; 7743/76, 1982

Catan and Others v. Moldova and Russia, Applications nos. 43370/04, 8252/05 and 18454/06, 2012

Cyprus v. Turkey, App No. 25781/94, 2001

Websites and news articles

Anja Vladislavljevic, Balkan Insight, Croatian Conservative Campaigners Claim Rapid Success, accessed August 2018, <http://www.balkaninsight.com/en/article/croatian-referendum-initiatives-praise-their-success-in-signature-collection-05-17-2018>

Belgium Federal Government, Official Info and Services, accessed July 2018, https://www.belgium.be/en/about_belgium/government/federale_staat

Croatian Bureau of Statistics, Census of Population, Households and Dwellings 2011

accessed June 2018,

https://www.dzs.hr/eng/censuses/census2011/results/htm/e01_01_04/e01_01_04_RH.html

Nationalia – French Senate buries ratification of European Charter for Regional and Minority Languages, accessed November 2017, <https://www.nationalia.info/new/10635/french-senate-buries-ratification-of-european-charter-for-regional-and-minority-languages>

Office of the Historian -The League of Nations, 1920, accessed November 2017,

<https://history.state.gov/milestones/1914-1920/league>

International Court of Justice – Permanent Court of International Justice, <http://www.icj-cij.org/en/pcij>

Srbi, *Serbian schools still without a registration permit, Serbian party members have left the City Council session*, translated from Serbian, accessed November 2018, original available on: <https://srbi.hr/srpske-skole-i-dalje-bez-registracije-vecnici-sdss-a-ponovo-napustili-sednicu/>