THE CONSTITUTIONAL PROTECTION OF LINGUISTIC DIVERSITY IN SOME OF THE EU COUNTRIES

GIANCARLO ROLLA & ELEONORA CECCHERINI[1]

The recently approved European Charter of Rights establishes (art. 22) the respect of cultural, religious and linguistic diversities. This is a general and programmatic provision which may be acted upon in different ways according to the policies that the European Union will establish at the due time. Inevitably, these policies will have to keep in view the cultural and historical differences of the European Union members involved. At the present state it is not possible to predict whether the European Union will provide for common standards in order to guarantee linguistic diversities; Otherwise the European Union could grant to each State the right to establish procedures and ways of conduct to ensure the use and the protection of language rights. Apart from these two scenarios, it is most likely that the European Union institutions will be influenced by particular national experiences. The focus of this paper consists in examining the constitutional and legislative provisions relating to the protection of language rights, underlining the principal characteristics of each national legal system as well as the eventual common profiles that may be considered as common constitutional traditions.

1. Introduction

Fundamental EU documents provide a common foundation for the many different national laws concerning linguistic rights. More specifically, article 14 of the European Convention on Human

[1] Sections 2 and 3 of this article were prepared by Giancarlo Rolla, whilst section 4 was prepared by Eleonora Ceccherini. Section 1 was co-written by both authors.

Rights (ECHR), article 13 of the Treaty establishing the EU, as well as articles 21 and 22 of the European Charter of Rights have laid down the relevant groundwork.

Pursuant to such provisions, linguistic rights are taken into consideration from three different viewpoints:

a. *rules against discrimination (art. 21 of the European Charter of Rights and article 14 of the ECHR);*
b. *commitment to promote positive actions aimed at fighting off discrimination (article 13 of the Treaty establishing the EU);*
c. *respect for diversity (article 22 of the European Bill of Rights).*

The concern shown towards cultural, religious and linguistic diversity finds its cause in the new consideration currently afforded to linguistic rights. On the one hand, the need to promote equality – intended in its formal meaning, as in rules against discrimination, as well as in its substantial one, in the role of a wide-sweeping commitment to remove any existing disparity – is consistent with the need to establish a single domestic market and a single common citizenship. On the other, showing consideration for linguistic diversity complies with the commonly felt desire to protect and preserve those differences that still represent the historical and cultural heritage shared by Europeans.

However, being that article 22 of the European Charter of Rights is a non self-executing provision, its implementation will follow new directions each time the EU specifically enforces relevant policies. Yet, the Union will still delineate common standards, even though, in keeping with the principle granting supplementary authority to single States, it will also award them the power to separately determine the procedural details required to effectively enforce such rule. In point of fact, this is probably the most rational solution to ensure that the historical and cultural experiences of each member state get adequate consideration.

A comparison of the constitutional and legislative systems providing for the protection of linguistic rights, as set forth by several of the European countries such as Austria, Belgium, France, Germany, Italy and Spain, can prove highly beneficial. In fact, it can highlight the distinctive factors defining each national legal regime, as well as revealing potential similarities, which are likely

to be regarded as part of the common European constitutional tradition.

Each legal regime is significant, since every one of them deals with linguistic pluralism from a different perspective.

With regard to the languages protected in every legal order:

Country	Language
Austria	Slovenian, Croatian, Czech, Hungarian, Slovakian
Belgium	French, Flemish, German, Dutch
France	Corsican, Tahitian, Melanesian
Germany	German, Frisian, Danish, Sorab, Sinti and Rom
Italy	Italian, Ladino, Mokena, Cimbrian, Albanian, Catalan, German, Greek, Slovenian, Croatian, French, Franco-Provencal, Friulan, Occitanian, Sardinian, Arbereshe, Roma and Sinti
Spain	Vasca, Catalan, Galizian, Balearian, Valentian, Bable, Aranesian
Switzerland	German, French, Italian, Romansch

Besides, seeing that each State tends to follow a distinctive pattern when balancing the issue of linguistic pluralism with its institutional order, such an assortment of models becomes the indication of the multitude of possible directions likely to be taken when implementing the principle set forth by article 22 of the European Charter of Rights on the protection of linguistic diversity.

In Belgium, linguistic diversity constitutes a structural factor characterizing its current Constitution; in France, on the contrary, the concept of coming together as one nation signifies dissipating differences and, consequently, reducing the appreciation of the rights of linguistic minorities. All other legal orders, instead, such as Austria, Germany, Italy and Spain have agreed on furthering intermediate protective arrangements for the safeguard of minority rights.

By way of illustration, even if these said countries preferred an in-the-middle approach, it is possible to identify several different

applications of the same method. For example, the very same Constitution can grant minority languages the same official rank as the national language (Spain), or else it can recognize them as the simple expression of a cultural identity (Italy). Likewise, some of said countries are aware of and protect national linguistic minorities, as well as small communities speaking different, non-national languages (Italy, Belgium and Germany).

Moreover, some legal orders enforce protective measures for all individuals speaking a non-official language, even if their communities are not deeply-rooted in the national territory (Germany); other legal systems, instead, have codified the principle of "linguistic territoriality", which provides that the relevant protection be restricted only to the geographical area occupied by the linguistic community (Switzerland).

In the first instance, the protection of linguistic diversity is regarded simply as an individual right, while in the second; such rights are set forth as community rights (Italy and Spain).

By means of its constitutional framework, the EU could eventually turn into a cultural union, based on different nationalities and linguistic communities. Assuming such a perspective, a study of the Swiss constitutional order could be very interesting: because of its social and cultural heritage, such an analysis would result in the greater appreciation for the remarkable, politically and historically perfect approach it pursued in blending an assortment of cultural and linguistic systems.

2. Linguistic policy and the evolution of the concept of State

Linguistic policy and the evolution experienced by the concept of State go hand in hand. This follows from the mere circumstance that language is inherently bound to the concept of nation, as well as to its people, i.e. two key factors in the foundation of any modern State.

By all accounts, the concept of nation is truly a pre-juridical notion. In fact, it originates from objective elements – specifically, the qualities shared by a same group, such as their language, their history, and their race as well as their religious beliefs – in addition to historically and culturally well-defined subjective elements – that is to say, the desire and the will to give rise to a social unit.

Conversely, the concept of 'people' came about at the time every single legal order was introduced: all individuals share the same constitutional principles and participate in the very same legal system.

Individuals come together as a people only on account of a legal bond.

A nation, instead, is primarily built on cultural, ethnic, religious and linguistic ties: the formation of legal relations among individuals is always a subsequent step. It is imperative to fully grasp the difference existing between the concepts of nation and people: 'multinational states' – that is to say, nations not likely to end up as a legally recognized state – can occasionally come about, whereas every State can only have one acknowledged national community.

Linguistic rights are awarded different constitutional protection according to the selected viewpoint: such protection can shift significantly if its foundation goes from the concept of nation to that of population. In order to completely understand such distinction, it is beneficial to examine the unique approaches aimed at dealing with linguistic issues. For example, consider, on the one hand, the methods used by 'national' states, such as France, or by 'multinational' states, such as Belgium and Switzerland, while on the other, take into consideration the technique applied by states founded on shared citizenship, such as Spain.

In France, language has always been employed as an instrument to strengthen national identity, legitimately founding the nation's unity as a recognized State. In the past, linguistic identity was regarded as the necessary condition to give rise to the concept of nation, and after that, to bring on the creation of a unitary State. By all means, there has always been a tightly knit relationship between linguistic policy-making and the progressive creation of a State: in fact, it can be said that the French constituents were really aiming for the setting up of a legal order, which could enable all individuals who shared the same ethnic origin and the same language to come together as one nation.

More to the point, the sense of community shared among the members of a state can also arise from the fact that all of them speak the same language. From their point of view, the common feeling of belonging to the same State is also represented by their linguistic unity.

Following this lead, it is not surprising that the Jacobins forced

the use of French on the entire state territory: further to decree 26 October 1793, the use of German was prohibited in the Alsatian province and the French language was to be the only language taught in all schools; also, by way of decree 27 January 1794, the *patois* dialect was banned from any educational institution and, lastly, consequently to decree 20 July 1794, French was intended as exclusive language for the writing of all judicial decisions and legal documents.

These legislative measures were influenced primarily by the equalitarian principle, as set forth by the "Declaration des Droit de l'Homme et du Citoyen" of 1789, which proclaimed all persons as free and equal individuals. It was also affected by the commonly advocated reaction to the ancient regime and to its totally anachronistic dialects, in favor of the newfound conception of nation as a homogenous social entity.

Such a formulation of the issue is still current in present day France, even if greater value is awarded to the cultural significance of the existing local idioms. Proof of such an approach is given by article 1 of law n.665 of 1994: according to this provision, the French language – which is the language of the Republic, as stated by article 2 of the Constitution – represents "an essential component of French personality and heritage". Besides, according to the circular letter of 12 April 1994 on the use of the French language by public employees, such idiom is to be regarded as "the founding factor of national identity, history and culture", seeing that it embodies the nation's unity.

The policy aimed at implementing linguistic homogeny can be numbered among the techniques applied in strengthening national identity and it progressively assumes a symbolic role. For instance, this is exactly what happened with the Italian process of unification, during the so-called Risorgimento, when linguistic and cultural identity was employed to create a myth, specifically, the ideal capable of producing political unity. In a way, the process generating linguistic unity is actually slower and more challenging than that directed to political union. This is why the former was truly achieved only during the Fascist regime: law n.160 of 1922 declared Italian as the exclusive schooling language, while further to legislative decree n.2191 of 1925, the teaching of minority languages within state territory was proclaimed illegal.

In truth, the promotion of linguistic unity in Italy was – at least at this moment – smeared by dictatorial suggestions and by an ethnic-

inspired concept of citizenship. The foremost consequence of this situation was that, further to the Italian-German agreements of 1939, the German speaking communities of Alto Adige were compelled to choose between sacrificing their linguistic individuality or else leaving the country.

Conversely, the 'multinational' states do not acknowledge a single national language, seeing that they are not made up of one single nation. They recognize several idioms, all official and equally important: this is the case of Belgium and of Switzerland.

The very same Belgian Constitution identifies three Communities (see article 2, which admits the French, the Flemish and the German Communities), in addition to four linguistic regions (see article 4, enumerating the French, the Dutch and the German speaking regions, as well as the bilingual region of Brussels). Every single language is considered official in its peculiar territorial section or in relation to a specific subject matter. On the other hand, article 70, paragraph 1 of the Swiss Constitution lists the Confederation's official languages, which are German, French and Italian. However, the Romansch dialect is considered the official language used by Romansch speaking people.

As a result of 'multinationalism', then, language cannot in any way symbolize national unity: in fact, it can only represent the several different national components. On this assumption, every State's 'single nationality' feature must be connected with the presence of a complete linguistic identity: therefore, if we look at several nations at once, we can infer the simultaneous presence of several different languages. It then follows that a 'multinational' State can only be 'multilingual' in nature.

If the correlation between nation and State is closely examined, especially from a theoretical point of view, it is possible to reveal the impact it truly has on the relationship between citizenship and linguistic identity. In modern times, a legitimately founded democratic State is not actually based on pre-juridical factors, such as ethnic origin, language and culture, but it really is based on the citizens' acceptance and support of widespread values and beliefs. Members of a community share a sense of belonging and of common identity, rising from the appreciation given to "mutual civic values": it follows that the bond tying the national community and State together can only adopt a voluntary dimension, rather than a merely naturalistic one.

In point of fact, the people of a democratic State can be fully incorporated in the legal order only through their complete acceptance of all the constitutionally set rules and values required for peaceful cohabitation. As stated by a Spanish commentator, such integration is borne by a so-called "patriotismo constitucional", rather than by the mere belonging to a community "de origen y destino".

Individuals progressively develop a feeling of attachment to their legal order by means of a significantly uniting factor, that is, a "*value-driven citizenship*": this is made up of shared ideals and it represents the catalyst for the creation of a new state community.

It must not come as surprise that linguistic policy-making progressively adapted to the new circumstances. As of today, language cannot be regarded simply as a founding component of national identity: in addition, it has now become an essential element of social and territorial pluralism, which greatly characterizes modern democratic States. Many of the former contrasts – such as those between unity and autonomy, and between equality and diversity – have been slowly toned down, as they are now hardly regarded as in direct opposition with each other. Generally, modern constitutional systems make every effort to reach their full agreement. As a consequence, strictly unitary legal orders can acknowledge extensive territorial autonomy, in the same way as declaring complete equality cannot rule out the protection of personal differences.

By the same token, the national language is awarded protection just as the minority languages are progressively acknowledged, seeing that crucial differences have been slowly leveled. In fact, while the former represents one of the facets of State unity, minority idioms end up as the symbol of existing multiple territorial and social components.

As an example, it is appropriate to take into consideration article 3 of the Spanish Constitution. The first paragraph declares Castilian as the State official language: the Spanish are compelled to learn it and know it, but they can freely decide whether to use it; paragraph 2, instead, recognizes all other Spanish idioms as equally official, as stated by the statute of each autonomous Community.

Lastly, taking a glance at the Italian legislation, it should be said that article 1 of law 482 of 1999, pertaining to historical linguistic minorities, calls for State intervention in the promotion of minority languages and cultures, in addition to support of the Italian linguistic and cultural heritage.

3. Sources of law for the protection and regulation of linguistic rights

The issue of linguistic rights is tackled by several different sources of law: this is due to the connection identified between said rights and the diverse protective measures set forth for the protection of fundamental rights. However, linguistic privileges are a matter of interest also on account of the correlation existing between different systems of government and the territorial explication of the relevant power.

Better still, an overview of comparative law reveals the progressive change undergone by legal sources regulating minority languages. In the past, it was the international legal system that obliged national States to acknowledge and safeguard minority languages: little by little, though, the question of protection became exclusive to every single constitutional order.

This is the current situation, even if some legal systems have acknowledged small communities' right to an identity on account of international law documents. For example, the protection of certain minorities in Austria, such as the Croatian and the Slovakian ones, is provided by the peace Treaty of Saint-Germain, signed on 10 September 1919, and by the Treaty of Vienna of 15 may 1955.

By assuming the law sources perspective, in the end, it is possible to define some interesting general classifications.

3.1 Firstly, with regard to the protection of linguistic rights, it is imperative to distinguish domestic from international rules. Limiting our review to the European area, the most relevant international sources of law are the Pact on civil and political rights, the Declaration on the rights of the national, ethnic, religious and linguistic minorities, the Convention on national minorities, the European Charter on regional and minority rights, as well as the European Charter of Rights.

More specifically, article 27 of the Pact on civil and political rights acknowledges the right of all individuals belonging to any linguistic minority to freely live out their personal cultural experiences, as well as to use their own language. Such international provision has been construed on a two-tier basis: on the one hand, it compels the State to enforce affirmative actions aimed at supporting linguistic identity among minority groups, while on the other, it encourages

the members of said communities to use their own language when communicating with other participants of the same group.

The Declaration on minority rights stands out among other international documents, as it sets forth the essential standards necessary in the definition of positive rules aimed at promoting minority linguistic rights. According to such Declaration, the use of one's personal language is not guaranteed in those legal systems, which have not specifically provided for:

a. *the presence of linguistic identity;*
b. *the possibility for members of a minority group to employ their common language, without discrimination, in any circumstance, private or public in nature;*
c. *the enforcement of affirmative measures directed to make the commonly shared language known, in addition to safeguard the community's traditions and cultural uniqueness.*

Taking a glance at the European situation, we can observe the positive effort made by the EU organs to improve the general approaches employed in the protection of several linguistic minorities. Specifically, their main purpose is to keep these minorities from disappearing (as stated in the European Constitution on regional languages), but they are also trying to involve member States in their attempt to avoid a general process of progressive cultural assimilation. In this perspective, the general goal is to defend minorities in their right to use their idiom, in all situations – in private, in public, in writing and in speech – as well as to promote their access to all means of communication and through their common language. Such diverse objectives have come together in the words of article 22 of the European Charter of Rights: as we have previously mentioned, article 22 is aimed at advancing mutual respect for one's cultural, religious and ethnic diversity.

From a purely legal point of view, there is quite a difference between international and European Union legislation. In a nutshell, the former is legally binding for all subscribing States, but it cannot directly acknowledge rights, in the narrow sense of the term. Instead, EU legislation is binding for all EU States, as it requires them to provide all essential conditions necessary for linguistic minorities in order to employ their language and to safeguard their cultural heritage. However, at the same time, the European Union legislation

enables all citizens to move against their State, whenever it should fail to perform in these matters.

3.2 It is essential, of course, that linguistic rights find their actual acknowledgement in the domestic legislation of each legal order. These provisions are generated from two different legal sources: the Constitution on one side, and primary legislation on the other. However, constitutional rules can be supplied either in accordance with the national legal order, or in relation to the subordinate territorial statutes (or Constitutions).

Firstly, it is worth bearing to mind that Constitutions are intended for the definition of both the object and the boundaries of law, whereas the legislation generally regulates the relevant, applicable measures necessary to implement constitutionally set rules, in addition to setting up the protective remedies and affirmative actions aimed at eliminating any kind of discrimination.

Normally, the Constitution tackles the linguistic issue from a two-fold perspective. To begin with, seeing that linguistic rights can be regarded as one of the many expressions of privacy, constitutional provisions grant them the very same protection awarded to the principle of equality and to freedom of speech. On the other hand, Constitutions consider language as one of the many manifestations of the right to cultural identity. Assuming that the latter argument involves giving deeper thought to collective or common rights, the former instead shows an equally significant, yet rather traditional and historically settled point of view.

More specifically, the opinion referring linguistic rights to the concept of privacy, dates back to the time-honored expressions of equality, upheld by constitutionalism in Europe in the wake of the French Revolution and its "Declaration des Droit de l'Homme et du Citoyen". A few considerations will help understand this point. Article 3.3 of the German Constitution states that no one can be damaged or favored "on account of sex, birth, race, language, nationality or origin, religious belief, personal religious or political opinions". By the same token, article 3 of the Italian Constitution, as well as article 8, paragraph 2 of the Swiss Constitution prohibit any kind of discrimination on grounds of linguistic diversity. In addition, pursuant to article 19 of the Austrian Constitution, all communities are awarded the same rights and all languages existing within state borders are equally valid in schools, in public offices as well as in

public relations. The Spanish Constitution has not expressly provided for the protection of linguistic diversity: in spite of this, similar protection is likely to be inferred from the interpretation of article 10, clause 2 of the same Constitution, as it acknowledges the influence exercised on the national legal order by international treaties and agreements.

These approaches reveal the importance of equality before the law among European legal orders, which have made it a point to avert from the assumption that individuals are actually different only because of their distinctive group association. By all means, European constitutions are directed to prevent any such difference from becoming grounds for discrimination, rather than the simple expression of individuality. Such a common point of view originates from the consideration that, all through times past, ethnic, racial, religious and linguistic diversities were employed to deny equal moral and legal dignity to all individuals. To be more precise, it should not come as a surprise that a similar partiality towards the 'equal' connotation of said rights is to be found mostly in the European Constitutions written up right after Second World War. Many of such drafting countries had in fact lived through the atrocities of dictatorial regimes, an experience that significantly touched them, to the point of inducing them to act in response and codify fundamental rules against discrimination on grounds of any type of diversity, whether linguistic, or due to sex, race and religious beliefs.

On comparing said Constitutions, the principle of equality, intended in the meaning of 'non discrimination', is also strictly correlated to a more tangible dimension of parity: social history and conditions can actually be a factor in turning linguistic diversity into a reason for discriminating the members of distinct communities. Therefore, constitutional rules have stepped in to provide for legislative and administrative balancing remedies, in order to rule out any material discriminating condition.

This is the focus of the issue: all Constitutions numbering the right to use one's personal language among the possible expressions of the equality principle, have not only provided for rules against discrimination, but have mostly opened the door to specific positive actions aimed at removing any obstacle hampering the achievement of real equality among individuals.

But a third profile is to be highlighted, when it comes to considering the principle of equality. This standard does not only

concern the enforcement of anti-discrimination rules as well as of definite positive actions: it also entails considering all individuals as equal even in the appreciation of their differences. In a sense, equality does not disallow pluralism and it does not underestimate the value of diversity: as a consequence, the right to equality implies even the protection of the right to individuality.

Likewise, most of the Constitutions consider linguistic pluralism as a treasure to cherish and protect, rather than a threat from which the legal order should be defended. By way of illustration, consider article 8 of the Austrian Constitution: pursuant to said rule, the Republic is required to promote cultural and linguistic diversity displayed by the present communities. Also, article 6 of the Italian Constitution forces the State to specifically provide for the protection of linguistic minorities, while article 3, paragraph 3 of the Spanish Constitution states that the abundance of local idioms represents an incredible cultural wealth worthy of exceptional protection.

The EU has followed in similar footsteps: in fact, article 14 of the European Convention on Human Rights prohibits any kind of discrimination; article 13 of the Treaty establishing the EU puts pressure on all member States to develop and improve well-defined positive actions intended to thwart discriminations; finally, pursuant to the previously mentioned article 22 of the European Bill of Rights, all member States are compelled to acknowledge diversity, whether cultural, religious or linguistic.

By all accounts, case law is the leading instrument in furthering the principle of equality, when this is construed as rule against discrimination on grounds of linguistic diversity; instead, legislation appears to be crucial in the definition of content and features of protective and supportive remedies, which are to be vigorously applied with regard to linguistic rights. As a consequence, the law is competent for the enforcement and the improvement of constitutional provisions, by way of specialized promotional policy-making.

3.3 Up till now, we have simply classified legal sources on the protection of linguistic rights according to two distinctive criteria: on the one hand, with regard to territorial competence, defining domestic as well as international sources, on the other, instead, we take a look at content, therefore differentiating constitutional sources from legislative ones. However, given the progressive

development experienced by the constitutionally provided safety measures set for the protection of linguistic rights, a third category must be taken into consideration: specifically, the one distinguishing sources pertinent to the national legal order, and those relating to the decentralized territorial bodies (i.e. Lander, Regions, Communities).

There is reason to assume that such a distinction originates from the very same nature of a language: language is indeed a component of a group's cultural identity, and for this reason, it represents an individual right, as well as a right of the entire community to which such individuals belong. This involves making a further step: that is, moving up from considering every person as an individual, to considering him or her as a member of a territorial community. Assuming such a perspective, each person can be defined on account of the history experienced as an individual, but also as a member of a group: every person becomes part of a greater community, which is given unique individuality by way of its well-grounded, shared, yet distinctive ethnic, linguistic and cultural features. Of course then, the right to linguistic individuality becomes an essential component of the larger right to cultural identity: it tends to bring to light a new concept of citizenship, as made up of differences, rather than of similarities alone.

There is a tendency, however, to adjust the protection awarded to linguistic rights, due to the assorted connotation they can assume. More specifically, if we agree that such rights are directly correlated to the equality principle, then they are "naturally" regulated and protected by the general rules of the legal order, given that these are applicable to all community members. Conversely, if linguistic rights are regarded as tightly linked to the territorial community's cultural identity, then they are "naturally" regulated according to autonomous legal sources, specifically, the single Statutes (or Constitutions) and the rules provided by decentralized bodies.

As an example, let's take a look at the Spanish situation. On the one hand, article 3, paragraph 2 of the Spanish Constitution delegates to each autonomous Community the task of regulating the use of their common idiom; on the other, article 3 also awards such subordinate bodies full legislative competence to approve laws concerning "linguistic harmonization" and aimed at promoting and strengthening the use of their language within their territorial boundaries. Following this rule, it is interesting to examine both

the *ley basca de normalización del euskera* (Basque territory) n.10 of 1982 and the *lei de política lingüística* n.1 of 1998 (Catalonia).

Similar views can be developed to include other federal legal orders, as well as highly regionalized territories. For example, consider Germany: the Brandenburg and Sachsen Landers have provided in favor of the Sorabs present on their territory, while the Schleswig-Holstein protects the linguistic identity of Dutch and Frisians. In Switzerland, instead, the cantonal legal system is substantially compelled to regulate the rights of all minorities within Swiss borders, owing to the accepted principle of territoriality with regards to linguistic rights. Also bear in mind the present situation in Austria: pursuant to some of the smaller States' Constitutions, the Land is required to encourage the development of its linguistic minorities' culture and identity. Lastly, some Italian Regions – especially those having a special statute – have employed their statutory authority and legal competence to protect their linguistic heritage.

This is the case, for example, of the Statutes of the Special Regions of Trentino-Alto Adige, Friuli Venezia Giulia and Valle d'Aosta, in addition to the Statutes of the Ordinary Regions of Calabria, Veneto and Molise. Conversely, a more extensive regional legislation has been provided for the protection of specifically identified linguistic communities (as in Basilicata, Friuli Venezia Giulia, Sicily, Tuscany and Veneto), or for the promotion of the territory's cultural and linguistic heritage (as in Sardinia, Piedmont, Emilia Romagna and Molise).

A closing thought on the Italian situation: constitutional laws n.1 of 1999, which increased the Regional legislative authority, and n.3 of 2001, which, instead, has extended Regional subject-matter jurisdiction, make for a stronger territorial legislation on the matter of linguistic rights.

4. Implementation measures for the use of one's personal language

National legislative policy-makers have outlined distinct approaches for the implementation of linguistic rights, as they are aware that their mere declaration runs the risk of amounting to empty and rhetorical slogans, absent any protective instrument and effective performance.

These techniques can be described as part of several categories, among which a special mention must be awarded – in our opinion – to the following ones:

4.1 Representatives' involvement in constitutional organs

Many legal orders deem that ethnic and linguistic differences affect the very same notion of national political representation. From this point of view, it is appropriate to take in consideration the decision rendered by the European Court of Human Rights on 2 March 1987: given the adoption of very different electoral systems in each state, the court discussed the need to set out certain mechanisms that would allow all linguistic minority voters to express their preference for candidates able to speak the language of their region, so that they could have representatives who were also members of their same community.

Accordingly, it should be pointed out that in Italy linguistic minorities – but just those deemed worthy of additional protection – have been awarded the right to be politically represented. This is the case, for example, of the Statute of the Region of Trentino-Alto Adige: pursuant to article 30, members of the Italian and German linguistic communities follow a rotating scheme for the election to President and Vice-president of the Regional council. In fact, during the first 30 months of the Council's term (it stays in charge for 5 years), the President is chosen among the councilors belonging to the Italian community, while for the remaining time before the legislature expires, he is elected among the German-speaking ones. Besides, during every session, the Vice-president must belong to the linguistic community opposite to that of the sitting President. The Ladino minority can aspire to presidency for a limited time, only if both the German and Italian groups agree to it. Similar rules apply to the election of the President and Vice-president of the provincial Council of Bolzano (article 48 of the Region's Statute): the very same statute also provides for representative attendance of the Ladino minority.

Such representative standards must be complied with even with respect to governing bodies. By virtue of article 36 of the Statute, in fact, the Ladino community must be awarded one seat in the regional board, albeit this is not ensured according to proportional representation. Instead, the composition of the provincial board of

Bolzano must mirror the consistency of linguistic minorities attending the Council.

The Constitutional Court has judged that including the ethnical and linguistic factor to political representation is constitutionally legitimate (decision n.233 of 1994): it acknowledged the right of linguistic minorities to express their political representation in a condition of actual equality, "even if such entitlement cannot exceed certain limits, due to several different considerations (also regarding numeric proportionality) and mainly because of the need to balance this privilege with other significant issues worthy of protection (such as the principle awarding equal validity to every vote required for the constitution of elected organs)".

It must be noted, though, that mentioning "actual equality" suggests the unconstitutional nature of all provisions setting barring clauses concerning the distribution of seats, given that these can make it rather difficult, if not impossible, for certain linguistic minorities to access elected organs.

The presence of linguistic diversity affects the legal order of other states, such as Spain, for example: however, in this country, the prescribed solutions have not proven highly penetrating. Linguistic representation has been taken into consideration by the recent senatorial reform, the so-called "small reform". It came into force on 11 January 1994 and immediately had an effect on the Senate regulation, by allowing the use of the autonomous Communities' languages in some of the activities performed in the second House.

On greater scale, the same situation has affected the Belgian legal order. In fact, linguistic differentiation influences the structure of all organs, legislative, governing and judicial in nature.

With regard to the legislative body, pursuant to article 43 of the Constitution, "the voted members of each House are subdivided in a French speaking group and a Dutch speaking one, as provided by law". It should be pointed out that the German speaking group, instead, is denied entry, even though it is represented in the Senate: pursuant to article 67 of the Constitution, associates of the German community can appoint one of the 71 Upper House members.

The equal representation awarded to the two larger linguistic minorities involves the governing organ as well: article 99 of the Constitution requires the Council of Ministers, exclusive of the Prime Minister, to be made up of an equivalent number of French and Dutch-speaking ministers.

Finally, with regard to the judicial authority, article 152 of the Constitution outlines the Superior Council of Judges' composition: it must consist of an identical number of French-speaking and Dutch-speaking members. As for the German community, instead, it is merely required that one of the French-speaking members is familiar with German. The *Cour d'Arbitrage* held that the German community's subordinate position is completely legitimate. In its decision n.3 handed down on 25 January 2001, it ruled that the presence in the *Conseil* of a limited number of members who are knowledgeable in German does not constitute a case of discrimination, given that all members of the judicial order are familiar with French, having had to graduate or achieve their doctorate degree using that language. According to such an opinion, the Court gave adequate reason for the different degree of protection awarded to the German speaking community, compared to the French and Flemish ones: it held that a different principle is to applied in order to protect said minorities, and such principle is not represented by linguistic independence, as it normally happens for larger minorities, but it focuses only on bilingualism.

In fact, the law regulates that the members of both the Court of Cassation and of the *Cour d'Arbitrage* must be equally subdivided among French and Dutch-speaking judges.

In Switzerland, a contractual yet juridical rule defines the composition of the federal executive body, according to which there must always be a stable representation of all the different linguistic minorities. Further to this provision – and in opposition to the legal order present in Belgium – all minority groups are represented, to the point that such rule provides for the appointment of an Italian-speaking minister. Besides, pursuant to article 188, paragraph 4 of the federal Tribunal statute all members must be designated compliant with the principle sanctioning the representation of all official languages.

4.2 The use of one's personal language in judicial and administrative proceedings

With regard to the judicial matter, the right to use one's personal language is tightly intertwined with the right to have counsel, as well as a fair trial.

This is what happens in Italy. The recognition of such linguistic

privileges is based on laws executing international treaties – with regard to civil actions –, while it is directly provided for by the Constitution – with respect to criminal proceedings. As often stated by the Constitutional court, article 24 of the Constitution on the right to have counsel takes account of the possibility of using a language that is different from Italian in all legal proceedings (decisions n.271 of 1994, n.16 of 1995 and n.406 of 1999). Besides, according to said Constitutional court's case law, there has never been any doubt on the fact that every Italian citizen has the right to use his individual language in all civil and criminal actions, if he or she is a member of acknowledged linguistic minorities (see decisions n.28 of 1992, n.62 of 1992 and n.15 of 1996).

The approach embraced by Belgium on the same issue is a bit more complicated. In relation to both civil and criminal proceedings, the general rule is to use the language spoken in the region where the judicial district is located. On the contrary, the rule followed in the bilingual region of Brussels favors the language spoken in the region where the defendant is resident: however, he can formally request the court to use another language during trial, but the judge can deny such motion if he deems that the defendant is fully capable of understanding it. Conversely, if the motion is granted, the trial is subsequently transferred to a judge of equivalent degree, but appointed to a court placed in the defendant's linguistic region.

Pursuant to the Swiss federal law of 4 December 1947, during a civil action, all parties – judge included – can express themselves by means of one of the confederative national languages: when necessary, though, the court remains free to provide for the use of a translator (article 4). As regards the witnesses, article 7 of the Concordat of 26 April and 8-9 November 1974 on legal aid establishes that they shall be summoned using their language or else that which is spoken in the Canton where they live (article 7).

Taking a look at criminal proceedings now, the federal law on the administration of justice of 16 December 1943, amended by federal law 4 October 1991, provides that all decisions are to be drafted in one of the official languages, and in the event of an appeal, the decision must be written up in the same language used in the appeal. However, the court is free to enter the decision in the official language spoken by the parties, if this is different (article 37).

Lastly, in Spain, the general law on the judicial system – n. 5 of 1986 – provides that whenever autonomous communities use more

than one official language, a member engaged in any type of proceedings can choose to use the distinctive idiom shared by the Community, if all parties agree on it. Documents are to be translated in Spanish only when they are effective outside of the community's territorial borders.

With regards to government activities, the law on administrative proceedings in force in the German Land of Brandenburg sanctions the possibility for all submitted documents to be written in the Sorab idiom: their translation to German is charged to the government (but if the documents are submitted in any other foreign language, it is the private citizen who is responsible for its expense). Likewise, article 7 of the Treaty of Vienna requires the Austrian administrations of the Carinzia, Burgenland and Stiria Landers to use the Croatian and Slovakian languages in all government and judicial activities.

Instead, according to the Belgian law of 18 July 1966, local administrative officers are compelled to use only the language spoken in the linguistic region they belong to, in all domestic-regional activities as well as for any information and communication with the public.

However, when it comes to dealings between public authorities and the population, the general rule is still the same: specifically, the language to be used is the one spoken in the region to which the officers belong to, except for the case when they need to communicate with citizens of other regions, in which situation they should make use of the language spoken by the private individual. Such an alternative has become the rule in the *malmediennes* and in the German city councils, where the administrative authorities can reply in French or in German, compliant with the other party's request. Also, all the towns on the linguistic border are obliged to use either French or Dutch.

All government documents can be translated, if the interested party passes on such an application to the Governor of his Province of residence: following this, the latter will issue a duplicate of the original. In the *malemediennes* towns, such a request can be submitted directly to the authority releasing the document.

In Spain, instead, pursuant to law n.30 of 1992, the official language used in all government proceedings is Castilian. However, with respect to all the other autonomous communities recognizing another idiom as the official language, the law has authorized the

use of both languages when dealing with government administration. According to decision n.26 of 1986, handed down by the Constitutional Tribunal, the act of acknowledging a language as official presumes that all public authorities have accepted it as the normal means of communication, not only in domestic relations, but also in their contact with private citizens, as well as recognizing it as having full legal validity and effects.

4.3 Access to administration on account of language

Provided that the large presence of certain languages in distinct geographic areas has been the cause of their mandatory use, it should not come as a surprise that several legal orders decided to introduce specific selection criteria for public administration, grounded on linguistic factors and in direct contradiction with the principle of equal access to public offices.

These special techniques are in use mainly in Belgium, where public employees can be subdivided in three different categories: as regards their language, they speak French, Dutch or both; however, when considering their employment status, there are only French and Dutch groups. Still, 20% of the chief executive positions are reserved exclusively to bilingual officers. Besides, according to its decision n. 2 of 13 January 1999, the *Cour d'Arbitrage* held that an equivalent number of French and Dutch speaking officers must be numbered among said percentage of chief executives: as a consequence, even if an applicant comes in after other candidates, his recruitment is legitimate as long as he belongs to the less represented linguistic group.

Specific provisions have ordered judges to prove that they graduated in law in a French or Dutch course of studies, according to the district to which they have been appointed. With regards to the bilingual region of Brussels, instead, the majority of judges must demonstrate they are knowledgeable in both national languages.

Further to law 25 March 1999 on the reform of all judicial cantons, the city councils having a special linguistic statute are compelled to give evidence that at least one operative justice of peace and one substitute are familiar with the second spoken language of that judiciary district. Even the *Cour d'Arbitrage*, by rendering decision n.62 on 30 May 2000 deemed this provision to be fully legitimate

with regard to justices of peace, given that they can perform administrative duties as well.

Even in Spain, further to law n.30 of 1984 on the "Measures for the reform of the public office", subsequently amended by law n.23 of 1988, it has been established that "in relation to the open competition for access to the public office, the administration, in as far as to its expertise, will have to select civil servants who are apt to perform in autonomous Communities that use two official languages". Therefore, the so-called harmonizing laws of several autonomous communities, such as Cataluña, Galicia and País Vasco, have established that being familiar with the community's own language is to be deemed as a preferential factor in all public examinations; instead, in relation to such test, the Statutes of Valencia, Aragona and Navarra support the knowledge of the community's law.

4.4 Linguistic protection through the financial support and the creation of radio and TV programs and channels

The Italian Minister of Communications, by virtue of article 12 of law n.482 of 1999, can draw up agreements with the concessionary company for public TV, so as to encourage the promotion of specific conditions for linguistic minorities; article 13 of the same law, instead, provides for agreements signed between Regions and the concessionary company for public TV and/or local radio stations, in order to sponsor programs using minority languages.

The same happens for German minority communities: they can benefit from public TV and radio airtime. More specifically, the Danish minority can avail itself of their own representative sitting on the committee for the Authority on Telecommunications in Schleswig-Holstein. Conversely, the support given to the Frisian and Sorab communities is definitely less incisive. In fact, the former only have a few minutes of daily news in their language on the TV channel "Welle Nord", while the latter have a couple of daily hours of airtime on public TV channels reaching within the regional borders.

Likewise, in Austria, public TV supports Croatian, Slovakian and Hungarian by way of a local TV transmitting in Karten and in Burgenland.

In Switzerland, instead, the federal law on radio and TV of 21

June 1999 has provided a general framework aimed at ensuring full parity to all linguistic groups. To this purpose, it compels the public channel to assure the protection of all linguistic communities, in order to supply information "focused on the events having national importance, as well as those pertinent to linguistic regions" (article 26, paragraph 2, letter b). Said law also regulates the specific radio broadcasting time that must be guaranteed by the public transmitting station, in addition to special TV programs, exclusive to every region where a different national language is spoken. According to the same law, the federal Council is competent in defining the standards for the protection of the Romancch language. On the matter, it is imperative to bear in mind that the Swiss constitution differentiates between national languages (German, French, Italian and Romansch) and official languages (all of the above, except for Romansch).

In Spain, the State has jurisdiction as to the laws regulating the social means of communication, while the decentralized bodies are responsible for the promotion and development of state legislation. According to such distribution of competence, for example, we can better understand Catalonian law n.2 of 2000, which provides for the use of such language for all radio and TV broadcasting managed exclusively by the community. If instead the broadcasting means belong to the State, then Catalonian programming can only amount to 50% of the total. However, the promotion of the Catalonian culture is backed by an added 25% airtime, given the presence, in both TV and radio programs, of said community's songs.

It is very interesting that the Catalonian Community legislation also provides for the protection of the Aranesis language, which can regularly broadcast on TV and on the radio.

4.5 Linguistic protection through the funding of newspapers and other instruments intended for the circulation of opinions

In Germany, the Danish community living in the Schleswig-Holstein region has its own newspaper, just as the Sorab minority in Brandeburg and Saschen.

In Switzerland, by virtue of law 6 October 1995 on the funding for the protection and promotion of the Romansch and Italian culture and language, the Ticino and the Grigioni Cantons are eligible for special financial support. Besides, article 2, paragraph 4 of the same

law provides for the grant of further funds by the Confederation, so as to cover part of the expenses incurred in sponsoring programs for:

a. *the implementation of protective and promotional measures intended for both languages;*
b. *the establishment and the organization of associations working for the protection and promotion of said idioms beyond regional borders;*
c. *editorial activity.*

By all means, the advancement of such protective legislation concerning the Romansch and Italian linguistic minorities finds its cause in their progressive waning: the lawmaker felt the need to provide specific, beneficial rules and measures that could gradually avert their progressive extinction.

In Spain, the laws aimed at bringing the idioms spoken by the various autonomous communities together, on the premise that they are equally official as other languages spoken there, have encouraged the use of the second language. For example, according to Catalonian law n.1 of 1998, all means of communication and written material generally use Catalonian. Also, all representative organs can stimulate and support the publication of periodicals using said language.

4.6 The promotion of one's personal language through cultural and academic activities

Pursuant to article 102 of the Statute of the Italian region of Trentino-Alto Adige, all schools in the province of Trento – where Ladino, Mokena or Cimbrian is spoken – must teach both the Ladino and German language, as well as their culture.

On the other hand, article 4 of law n.482 of 1999 provides that in all territories where historical minorities are protected, their languages can be used: specifically, in beginning with educational activities for kindergarten children, continuing on to the instruction of elementary and middle school students. Besides, even Universities, in accordance with their distinctive autonomy and financial resources, can entertain cultural and scientific activities aimed at enhancing their minority idiom.

In Germany, in the Schleswig-Holstein Lander, there are specific

schools for the Danish, whereas the Sorabs students attend exclusive schools in the Landers of Brandeburg and Saschen. With regard to the former, their right to establish special schools dates way back to a Prussian law of 1928, but has more recently been confirmed on 26 September 1949 by the Schleswig-Holstein government Declaration, as well as by the Bonn-Copenhagen Declaration of 1955. Further to the 1955 declaration, the Lander can decide to institute Danish language schools of any order and grade. It is imperative to point out the mixed nature of all funding guaranteed to Danish education institutes as well as to the services intended exclusively for such students: it is made up of Lander resources, in addition to financing received directly from the Danish government and from private associations.

The Frisian community residing in the same Lander, instead, is not similarly protected, as its members cannot attend specific institutes: in fact, they can only take a couple of courses on Frisian language in public schools, or else follow a course on language and literature at the Kiel university.

Conversely, the Brandeburg and Saschen Landers have undertaken a different, midway approach: on the one hand, they have set up public schools that teach Sorab language and culture, on the other, there are private institutes where all lectures are in said language.

In Belgium, the language used for education is the same as the one spoken in the region the school is in, except for the bilingual capital of Brussels. However, anyone residing in a region speaking a language that is different from his personal mother tongue is likely to have some kind of protection: in fact, the State provides financial aid to parents who prefer enrolling their children in a relatively close institute that teaches in the desired language. Also, at the request of several parents living in a region having a special statute, the local authority must arrange for special kindergarten and primary schooling, in order to teach children using the same language they are used to speak at home, even though this is not the national language normally employed in that specific region.

Likewise, in Austria, article 67 of the Saint-Germain treaty of 1919 compels the Austrian government to assist non-German speaking minorities with the purpose of granting them the right to attend schools where classes are taught using their personal language. Similar funds are offered also for the promotion of cultural

activities benefiting linguistic, as well as racial and religious minorities. This rule – sanctioned by the WW1 Peace Treaty – is completed by article 7 of the Vienna Treaty of 1955: pursuant to said article, the Slovakian and Croatian minorities now have the right to attend primary and secondary education lecturing in their language. By sanctioning the protection of linguistic minority, the Federal State is allowed to also legislate on the matter of Lander jurisdiction. In point of fact, according to the Bundesgesetz of 19 March 1959 (Minderheiten Schulgesetz fur Karten) and to the Bundesgesetz uber die Minderheiten Schulgesetz fur das Burgenland, the two Landers' competence on educational matters is significantly restricted, given that the mentioned laws directly determine the number of minority language classes to be taught, they organize all educational activities for schools lecturing in said language, although they allow for a minimum of German-spoken hours of class.

In Spain, taking a look at the autonomous communities where another official language – besides Castilian – is employed, the law provides for both languages to be taught in primary and secondary education, with the purpose of making all students perfectly bilingual.

With respect to Universities, besides, every autonomous Community can freely draft its own promotional rules and instruct on when to use either language in educational activities, among professors and in research projects.

When it comes to considering the educational perspective, even France, a traditionally hostile country with regard to acknowledging linguistic diversity, has considered the likelihood of using local dialects and idioms, as stated by law n.51-46 of 11 January 1951, the so-called Dexionne Law. Further to this law, teachers are allowed to use dialects whenever it is likely to benefit education (article 2), and at their request, professors can also be allowed to dedicate one hour a week in teaching local idioms. However, students can choose whether to attend such classes.

4.7 The beneficial use of onomastic and toponomastic studies

The use of onomastic and toponomastic studies in relation to minority languages represents an important, yet merely symbolic, factor that highlights the degree of attention granted in the

protection of such diversity. On this matter, article 11 of the Council of Europe Framework Convention for the Protection of National Minorities provides that "The Parties undertake to recognize that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system".

In Italy, article 11 of law n.482 of 1999 allows the member of a minority to change his name or last name, in keeping with his idiom. In this instance, one's linguistic right is tightly linked to his constitutional right to have an identity, as reiterated by the Fascist regime. In a way, this rule is somehow aimed at healing the serious injury that was suffered by such a fundamental privacy right.

It is also worth mentioning article 102 of the Trentino-Alto Adige Statute, which insists on the protection of the Ladino, Mokena and Cimbrian toponomastic. Likewise, article 5 of the Treaty of Vienna prescribes that geographical names are to be maintained in both German and non-German idioms in the regions where Croatian and Slovakian communities reside.

In Spain, pursuant to law n.7 of 1977 and therefore before the entry into force of the 1978 Constitution, Spanish names can be translated in the various idioms present on the territory: this procedure is performed by simply appearing before the judge responsible for all personal registrations.

The Spanish government recently furthered its efforts in the protection of equally official languages: in 2001, it reached an agreement with the authorities governing autonomous communities, where more than language is deemed the official one, and as a consequence, it is now possible to issue bilingual ID documents.

Lastly, with reference to toponomastic, it is important to take in consideration Catalonian decree n.78 of 1991, given that it prescribes the Catalonian language as the official language for all regional geographical denominations, whereas in the Aran Valley, it is still possible to express them in the minority idiom.

4.8 Linguistic rights and specifically intended bodies

Quite remarkably, the Belgian legal order instituted a *Commission permanente de contrôle linguistique*, which is supposed to continuously monitor the actual implementation of rules providing

for the protection of linguistic minorities. Said committee is composed of individuals designated by the cultural Councils of three communities: five members are indicated by the French and Dutch linguistic groups respectively, while the German council appoints only one. The commission is also subdivided in a French and a Flemish section: the German language member attends meetings only when the dealings concern a German-speaking region.

Also, the Belgian law has provided for the institution of a permanent national Committee for the Cultural Pact: its duty is to make sure that none of the decrees issued by the Cultural Councils for the protection of their languages is basically discriminatory on grounds of ideological and philosophical opinions, according to law 16 July 1973. This Commission is made up by 28 members, 13 of whom are respectively for the French and the Dutch speaking groups, while only 2 are for the German-speaking group.

4.9 The publication of official texts

In Switzerland, according to federal law 21 March 1986 on legislative reports and the Official federal Gazette, all federal legislative documents must be drafted in each of the three official languages (German, French, Swiss). However, if the act is of crucial importance, then it is possible it may be published in Romansch as well. Specifically, the law prescribes that each version is proof of the original text.

Similarly, the constantly updated complete Federal Digest is published in each of the official languages, while the Cantonal constitutions are only published in the Canton's official language.

Lastly, the order of 8 April 1998 on the electronic publishing of juridical data, prescribes the use of languages in much the same way as set forth for paper texts, providing that this is "possible and reasonable" (article 8).

5. Brief closing considerations on the constitutional and normative framework regulating linguistic rights

National legislation – as we have described in detail in the previous paragraph – is obviously affected on one hand, by the distinctive historical and social components of every legal system, on the other, by the personal opinions that influenced drafters

on the possibility of integrating ethnical and linguistic communities in the social body.

Likewise, it appears absolutely consequential that said legal framework is also shaped by governmental and parliamentary policy decisions: just as an example, institutional approaches are very different, whether the chosen goal is to intensify diversity and difference-making factors, or to mold such differences in an overall perspective of assimilation.

If the agreed upon objective is to deepen differences, then authorities and law-makers tend to highlight the existing diversity, mostly using strategies promoting linguistic separatism; in the opposite case, instead, the main trend favors positive actions, as well as acknowledging minority languages as equally official when compared to the generally spoken idiom.

The choice of encouraging social integration derives from the appreciation for diversity, considered as a fundamental trait of modern society's multifaceted nature: the primary aim is to tone down such dissimilarities in order to reach a deeply unified social context. Conversely, the tendency to point out differences produces an even greater divergence, amplifying the contrasting nature of different groups. As a consequence, the first normative measures tend to create a linguistic combination of some kind, whereas the latter have a propensity to put up barriers between different linguistic communities.

This is not the place or moment to judge the merit of said approaches: however, especially in view of what happened in the past, we cannot go without saying that all autonomist tactics have the tendency of increasing conflict, loosening the connective tissue keeping all social parties together. In addition, such line of attack does not take into account that society and culture are forever moving elements, likely to be frequently altered. This is why the presence of many different cultures requires continuous communication: they cannot be disconnected from each other. It is a fact: different cultural identities are not solid and unyielding; they are affected by each other.

The educational value of this paper is hopefully beneficial: by presenting an overview of the positive legislation provided for by several states, it can aid in bringing out "patterns", not only with respect to the different kinds of potential linguistic policy decisions, but also with regard to the nature of the right to use one's personal language.

5.1 In connection with the different kinds of potential linguistic policy decisions and further to the review of the normative framework currently present in the previously examined states, we can come to outline several general categories

Firstly, a preliminary distinction can be made between legal orders that award a condition of substantial equality to linguistic minorities, and legal orders which instead grant only some of them the right to a more intense protection.

Taking into consideration the former group, this includes both Switzerland and Spain. On the one hand, the Swiss order designates three official languages (French, German, Italian), all of which benefit from an equal protection within each Canton, that has chosen one of said official idioms. On the other, the autonomous Communities in Spain, having decided to use another official language together with Castilian, give proof of the substantial parity of treatment assured to both languages, even if it is unquestionable that if they are to prefer one, this will certainly be their personal idiom.

As regards the group granting a more intense and, therefore, uneven protection to certain linguistic minorities, we must take a look at the situation in Belgium and Italy. Although it allegedly considers itself as a State based on three languages – French, Flemish and German – Belgium actually privileges the first two more than the third. In Italy, instead, on the one side, the Constitution expressly provides for the protection of linguistic minorities residing in the special regions of Trentino-Alto Adige and Valle d'Aosta, whereas all other linguistic minorities are granted protection only by way of primary law. As a consequence of this distinction, with respect to the former regions, Italian and all local idioms are completely made equal, and therefore, said communities can use both of them in all legal proceedings, in schooling and in their dealings with public authorities. Conversely, minority languages spoken in non-special regions can be used only in some of the educational activities, in addition to administrative transactions.

Another category differentiates legal orders that provide for the protection of the linguistic and cultural rights of communities, which have traditionally been located – in localized as well as in dispersed groups – in a certain area, from those legal orders that, instead, have attempted to pay special attention to the "new minorities", in other words, to "atypical" categories of ethnical groups, which are

not structurally settled in a precise area. For example, this is the case of nomads and gypsies.

In general, there has been a marked trend favoring the first approach: special protection of linguistic minorities is awarded only to communities deeply rooted in the region, whether they are to be regarded as "founders" of the State, or simply as minorities. With respect to the former hypothesis, we can consider Switzerland and Belgium, where all languages present on the national territory are deemed as completely equal. To a certain extent, the same happens in Spain: the autonomous Communities that ascertain the presence of yet another language within their borders tend to consider it equally official. This is the case of Cataluña and of the Balearic Islands with Catalonian, of País Vasco with Basque, of Navarra with Basquense, of the Community of Valencia with Valencian, of Galicia with Gallegos.

As regards the latter hypothesis concerning the territorial linguistic minorities, a glance should be taken at the situation in Italy, Austria and Germany.

In Italy, the Statutes of the regions of Trentino-Alto Adige and Valle d'Aosta have provided for a remarkably penetrating protection of the linguistic communities that have resided here since ancient times, respectively, French and German speaking populations. Also, law n.842 of 1999 has regulated the protective measures to be awarded to historical linguistic minorities, which entered in the wake of migratory flows or of past occupations. Likewise, Austria has regulated in favor of the protection of the Slovenian, Croatian, Majar and Slovakian minorities, given their presence in the nation's territories since the dissolution of the Austro-Hungarian Empire. And lastly, Germany has decided similarly with regard to the historical Danish, Frisian and Sorab minorities, which are all awarded a special protection.

So-called "new minorities", instead, do not benefit from comparable protective measures: specifically, they are granted lesser consideration than historical linguistic minorities, given that legal orders do not pay much attention to the linguistic uniqueness of nomads and gypsies. Some appreciation for such communities has been registered in Germany, where Sinti, Rom, refugees, as well as immigrants are to some extent protected. On the contrary, in Italy, this matter has been dealt with by the regional law-makers: for example, Tuscany law n.2 of 2000 and Veneto law n. 54 of 1989

have both attempted to provide for protective measures aimed at preserving the Rom and Sinti cultures.

Thirdly, another category can be identified, when considering that some linguistic policy decisions have the tendency to promote total bilingualism, whereas others are in favor of true linguistic separatism.

The first choice has been furthered by Belgium, in relation to the Brussels area, by Spain, as well as by Italy; conversely, the other option has become the rule regulating the linguistic issue in the rest of Belgium, in Switzerland and in Italy, with regard to the region of Trentino-Alto Adige. Specifically, 'complete bilingualism' means that all recognized languages are to be regarded as communicating languages, therefore, local authorities must be familiar with both and private citizens must be free to choose which to use.

On the other hand, linguistic separatism determines that one language only is to be used on a definite area of state territory: as a consequence, such a policy implies the existence of a linguistic homologation within the residual territory.

The promoters of linguistic separatism believe that the members of a certain linguistic community are not required to be knowledgeable in another group's idiom; rather, they have the right to use their language and all public departments and offices are compelled to answer in the same language employed by private citizens. On the contrary, in a bilingual approach, every private or public employee can freely decide on the language to use, either the national language or that of one's personal *linguistic* group. It is possible for both policies to be simultaneously promoted in a single State: for example, take a look at Italy, where the region of Trentino-Alto Adige furthers linguistic separatism, whereas Valle d'Aosta upholds complete bilingualism. More specifically, pursuant to article 38 of the Valle d'Aosta Statute, Italian and French are deemed equal as for the entire regional territory and all public acts, except for judicial ones, can be drafted using both languages. Besides, article 39 of said Statute requires schools of all orders and grades to have an identical number of classes for both languages.

Additionally, according to law n.482 of 1999, total bilingualism is to be promoted even with respect to local governing bodies, in the districts where different historical minorities live, so that such authorities can use Italian as well as the language spoken by said minority communities.

Lastly, it is possible to bring to light the cultural connotation that is tightly correlated to language: ethnic diversity must be regarded as a remarkable heritage in need of serious protection and encouragement, seeing that it embodies the cultural tradition of a nation. Assuming such a point of view, language amounts to a true cultural asset, "an indication of civilization".

This particular category includes, on one hand, the provisions aimed at safeguarding and promoting minority languages, regarded as the expression of historical and cultural tradition; on the other, the laws that, by way of beneficial remedies and incentives, are directed to prevent certain communities from being wiped out.

Regarding the first kind of normative framework, consider what has been legislated by the Italian regional lawmakers. As an example, review Sardinia law n.26 of 1997 on the Support and promotion of Sardinian culture and language; or Sicily law n.26 of 1998 on the Provisions concerning the safeguard and promotion of the historical, cultural and linguistic heritage of the Sicilian communities of Albanian origin and of the other linguistic minorities.

With respect to the legal framework aimed at preventing linguistic extinction, it is appropriate to bear in mind the example set forth by Switzerland: its Constitution compels the multilingual Cantons of Ticino and Grigioni to provide favorably in relation to the preservation of the Romansch and Italian languages.

5.2 On review of the constitutional provisions and of the ensuing implementation legal framework, it is possible to view a different kind of consideration that is awarded to the right to linguistic identity for certain communities.

Firstly, in the perspective of constitutional orders inclined to consider linguistic rights not merely as individual rights, but also as a right of the entire community to which such individuals belong, significant consideration must be granted to the principle of territoriality. Pursuant to this principle, only the members of a particular linguistic minority, living within the defined territory, can benefit from specific remedies, provided that the legal order decides to grant them only to said community.

In its decision n.213 of 1998, the Italian Constitutional Court expressly stated that the protection of citizens whose mother tongue is not Italian is not grounded on the personality principle, rather on the territoriality one.

Besides, the latter criterion seems to be regarded as the guiding option: in fact, the right to use a minority language is subject to the fact that such idiom has been previously acknowledged within a definite region. This happens in Italy, in the regions of Trentino-Alto Adige for the German and Ladino communities; in Valle d'Aosta, for the French-speaking group; in Friuli Venezia Giulia for the Slovakian minority. Instead, all other minorities living in different areas are awarded specific protective measures, but merely within their regional borders – whenever the related Statute prescribes this –, or else within specifically delimited areas defined by each Province, when it concerns historical minorities. Specifically, the Provincial Councils, after consulting the interested City councils and at the request of at least 15% of the City voters or of 1/3 of the City councilors or else as a result of a voters' initiative proposition, outline the boundaries of the areas where such provisions concerning historical communities will be enforced.

In Austria, protective measures are legislated in favor of the Slovakian and Croatian minority communities living in the districts of Carinzia, Buregenland and Stiria, whereas similar ones are provided in Germany, for the protection of Frisians and Danish groups in the Schleswig-Holstein Lander, as well as for the Sorabs in the Brandenburg and Saschen Landers.

What is more, it happens that in several different countries the particular territorial regulation ends up affecting the safety and management of linguistic rights: specifically, there is a remarkable difference if the relevant jurisdiction is lodged with national sources of law, rather than with decentralized ones.

Generally speaking, the Constitution outlines the privileged nature of such right, while the decentralized legislation (of either constitutional or legislative status) is competent in the delineation of the borders within which certain groups can exercise their right, as well as in defining the subject matter of such rights.

The Italian legal framework guarantees a similar multi-level kind of protection, seeing that article 6 of the Constitution establishes the protection of linguistic minorities. This provision is then completed by the rules supplied by the Special Regions Statutes, which enjoy constitutional status as well, in addition to national and regional laws. On this subject, it is appropriate to consider decision n.289 of 1997, handed down by the Constitutional Court, according to which the principle affirming the protection of linguistic

minorities constitutes a more general principle of the entire legal system and, as a consequence, it acts as a restraint on the regional legislative power.

Likewise, Germany has partly delegated the protection of minority languages to Landers. In fact, they refer to the contents set forth by the Grundgesetz, given that every protective measure awarded to linguistic minorities is prescribed in keeping with the codified principle of non-discrimination.

However, the framework has outlined some exceptions concerning the protection of the Danish and Frisian communities in Schleswig-Holstein and for the Sorab group living in Brandenburg and Saschen. Said Landers' Constitutions have in fact specially recognized such territorial minorities, allowing them to use their common language in public offices and requiring that every effort be made in order to promote their cultural identity.

A third factor can be brought to light: seeing that in all the constitutional systems we have reviewed so far, the linguistic component can be numbered among the possible expressions of the equality right – expressions that are aimed at resisting any kind of direct or indirect discrimination – then, we are likely to identify a new and different meaning of the concept of pluralism, intended as the foundation of all differences making up the population of a specific nation.

On the matter, several countries have construed the pluralistic principle – which, in the case at issue, is likely to involve acknowledging the presence of a multilingual situation – to also mean 'separation between groups". Other countries, instead, have intended it as an evaluation of the degree of interest actually shown in the study of linguistic differences by the theoretically concerned institutions, such as the government and cultural organizations.

An example of the former countries is given by Belgium and Switzerland: their respective subdivision in linguistic regions and in Cantons, in fact, determines the acknowledgment of a single communicating language for each territorial sector. All other languages, albeit accepted as official, are not used and do not benefit from comparable protective measures within the territorial borders.

On the contrary, the presence of multiple, equally official languages in certain countries is deemed equivalent to the possibility of freely using all of them in dealing with the government. This is

the situation in Spain: in fact, the autonomous Communities recognize more than one idiom as official and allow the use of both of them in education and in administrative proceedings, leaving the actual choice up to the private citizen.

However, other countries have an inclination towards appreciating the presence of 'pluralistic institutions', rather than identifying such concept 'in' the very same institutions. In other words, it is imperative that linguistic communities regarded as worthy of protection are granted the right to set up their own schools, cultural institutions, TV stations and newspapers. An example can be useful: consider Germany and the school regulation for Schleswig-Holstein. This law prescribes the creation of schools that are specifically tailored for Danish students, precisely as the educational provisions in Saschen and Brandenburg, which agree to the introduction of private schools using the Sorab idiom.

Bibliography

I. Agirreazkuenaga, *Educación y lengua: reflexiones jurídicas sobre el modelo vasco*, in *Rev.vasca adm. Publ.*, 61, 2001, 50

G. Barbina, *Le comunità etnico-linguistiche in rapporto al territorio*, in *Atti della Conferenza sui gruppi etnico-linguistici della provincia di Udine*, Udine, 1980

S. Bartole, *La cittadinanza e l'identità europea*, in *Quad. cost.*,2000, 140

P. Blair, *The Protection of Regional or Minority Languages in Europe*, Fribourg, 1994

D. Canciani, S. De la Pierre, *Le ragioni di Babele*, Milan, 1993

L. Domenichelli, *Constitution et régime linguistique en Belgique et au Canada*, Bruxelles, 1999

R. Dunbar, *Language Rights under International Law*, in *Intern. Comp. L. Quart..*, 50, 2001, 90

H. Giordan (ed.), *Les minorités en Europe. Droits linguistiques et droits de l'homme*, Paris, 1992

S. Mancini, *Lo Stato italiano e le minoranze autoctone: agnosticismo, repressione, promozione*, in S. Gambino (ed.), *Europa e Balcani. Stati, culture,nazioni*, Padova, 2001

A. Milian Massana, *Derechos lingüisticos y derecho fundamental a la educación. Un estudio comparado: Italia, Belgica, Suiza, Canada y España*, Madrid, 1994

A. Nogueira López, *La regulación del pluralismo lingüistico. Otra lectura del marco constitucional de los derechos y deberes lingüisticos*, in *Rev. vasca adm. publ.*, 58, 2000, 279

D. Ordoñez Solís, *Cuestiones lingüisticas y normativas del derecho comunitario europeo*, in *Rev. der. com. eur.*, 4, 1998, 593

V. Piergigli, *Lingue minoritarie e identità culturali*, Milano, 2001

A. Pizzorusso, *Diritti linguistici della persona nelle comunità bilingui, con particolare riguardo alla loro protezione giurisdizionale*, in *Rev. vasca adm. publ.*, 44, 1996, 11

Id., *Libertà di lingua e diritti linguistici*, in *Le Reg.*, 6, 1997, 1332

Id., *Minoranze e maggioranze*, Torino, 1993

G. Poggeschi, *Le nazioni linguistiche della Spagna autonómica*, Padova, 2002

J. M. Sauca (ed.), *Lenguas, Política, Derechos*, Madrid, 2000

P. Soldatos, *L'Europe des cultures et des langues: quels enseignements?*, Montréal, 1999

J. J. Solozabal Echavarría, *El régimen constitucional del bilingüismo*, in *Rev. esp., der. const.*, 55, 1999, 11

Id., *Los derechos colectivos desde la perspectiva constitucional española*, in *Cuad. Der. publ.*, 2001, 96

S. Ventura, *Il governo dell'istruzione in Belgio e Olanda*,in *Ist. Fed.*, 5, 1999, 834

J. Vernet i Llobet, *La planificación lingüística en las administraciones públicas del Estado: en especial administración periférica y de justicia*, in *Rev. Vasca adm. publ.*, 44, 1996