

# Federalism, Autonomy, Pluralism, Identity, Access and Inclusion – How to solve modern language policy conflicts?

Ingo Richter\*

*The thesis of this paper is that the new language policy conflicts cannot be solved by the old principles of federalism, autonomy or pluralism but only by the new ideas of identity and access and particularly by the principle of inclusion.*

## I. Types of Language Conflicts

### A. *The territoriality principle and its implementation*

The territoriality principle in language policy means that the language of a region is the language of the majority population, e.g. “The language of the Russian Federation is Russian” or “The language in Flanders is Flemish” or “South Tyrolians in Alto Adige in Italy have the right to speak German”. Breaking the territorial principle down from the national to the federal and then to the regional level is not that easy. But, there are some more problems around.

73

Looking back into the history of the territoriality principle and its implementation we will find several problems, and today this principle can no longer serve to solve our present language policy problems

- In some territorial states there is just one language spoken, the national language. But, there are many states with several national languages, like Switzerland or Belgium. And, even if the national languages are recognized as equal, their extension very often is disputed, like in Switzerland and in Belgium.
- In some territorial states there is a national language, but other languages are recognized as regional languages in regions of the state where the majority speaks the regional language, like in India or in Russia. Here, the problem comes up whether mastering the national language is mandatory for everybody.
- National linguistic minorities are protected by international law – I will come back to this later on - because the national majorities in history always tried to erase them, like the Basque in France or the Uyghur in China.
- Indigenous peoples had and some still have languages of their own, like the Sorbs in Germany or thousands of tribes in South and Middle America. But, as the indigenous peoples more and more vanish, their languages will die with them, even if they are protected by international law.
- People on both sides of national borders very often speak the two languages of the bordering states, like Spanish and English on the border between Mexico and the US or Dutch and German on the border between Germany and the Netherlands. As in the course of history borders always have been disputed, so the language use has been disputed.

---

\* Professor of Law, University of Tübingen and Paris – Nanterre.

## **B. *Learning other, learning foreign languages***

The language most people in the world speak best is the so-called mother tongue. It is called mother tongue because babies are supposed to learn to speak from their mothers, and the language they learn is the language of the mother. But, psychologists and pedagogues tell us that learning a second language is important for the intellectual and cultural development. And, there are many many people in the world who speak three or more languages fluently, and they are said to be more intelligent than the others, but, I do not know that. Some researchers tell us the opposite, namely that making kids learn several languages destroys their cultural identity and might lead to intellectual retardation.

Let us come back to the second language. The big question is, which language should be learned as the second language, and when and where and by whom?

- In bi-lingual families the problem seems to be solved, when the children become bi-lingual. This for many linguists seems to be an ideal, but it only works in the upper social classes.
- In bi-lingual countries, in general children in one region of the country should also learn the language of the other region of the country. So, the Flemish learn French and the Walloons learn Flemish, the German Swiss learn French and the Romands learn German. But what about the Italian language in Switzerland and what about learning English, the lingua franca in our times?
- When it comes to the relationship of the majority and the minority languages and to the learning of indigenous languages it becomes very complicated. The minority people and the indigenous people should learn the majority language, yes, but will the majority learn and speak the language of a national or indigenous minority. We will talk about this later, intensely.
- When it comes to foreign language learning in schools, many problems come up: Should every child learn a foreign language, beginning at what age? Should the foreign language be taught in the national language or in the foreign language? Should some children learn just one foreign language, but others several foreign languages depending on their intellectual capacities or their social class? Should the old languages Latin and Greek survive? Should everybody learn English as the modern lingua franca or Spanish and Chinese which might claim the notion “lingua franca” as well? And what about the order? English first for everybody? Regional differences? Russian first in Eastern Europe like in the times of the Cold War? French first in the former French colonies? And so on and so on! And who will make these decisions? The national or the regional government? The local community, the schools, the parents? Should there be a central political or administrative decision or should choice prevail?

74

## **C. *Migration***

Migration has changed the “linguistic landscape” and migration will change that “landscape” and the decisions based on it even more in the future. But what is migration? And to what extent does it influence language policies? For centuries already, the population of the world was on the move, just to mention the migration of peoples from the East to the West in the between 300 and 600 A.D. or the emigration from Europe to North-America beginning in the 16<sup>th</sup> century. Millions of people left their homes for economic and political reasons, and very often we do not even know why they migrated to other countries. However, they always carried their languages with them and mostly continued to speak them.

In modern times, the two main reasons for migration are economic and political factors. People migrate to other countries to find work or a better living (migrants) and people flee their countries because of wars or political prosecution (refugees). There are two basic approaches to migration that determine the ways to handle the problems that result from migration. The first one is the melting-pot approach, which means that the migrants are integrated into the population. That means that they learn the language of the host country and over time lose their own language. The second approach is the rotation approach, which means that the migrants are supposed to leave the host country after

some time and are not supposed to integrate and to learn the language of the host country. They very often keep their culture and their language in order to facilitate the return to their country of origin. However, both approaches did not work. The melting-pot theory in the US turned out to be an ideology and the rotation theory in Germany could not be implemented. More and more we have to speak about the so-called 'transmigration' and the so-called 'pendulum migration', which means that people migrate from one country to another or travel forth and back.

Migration has caused many linguistic problems, - and not only linguistic ones, of course:

- Should the migrant children speak their own language at home? Of course, one would say, but parents very often make them speak the language of the host country? Some politicians have tried to promote that.
- Should the migrants be integrated into the normal curriculum of the school, and when?
- Should the migrants get preference treatment or privileges in school?
- Should the mother tongue be the language at school? And how do we need to handle that problem if there are several languages spoken? Some linguists came up with the idea that teaching the mother tongue first would promote the learning of other languages, e.g. the language of the host country. However, this has not been proven.
- Should the instruction be given 50% in one and 50% in the other language? And in the case of several languages in which one?
- Can they take their mother tongue as second or third language?
- Can we imagine a multi-lingual classroom?
- Should the mother tongue be taught in voluntary courses outside the normal curriculum?
- Several German schools decided that German should be spoken on the school yard by the migrants.
- How can we recognise and award migrant children that learn two languages and make considerable effort to speak them both?
- What about the so-called "creolisation" of languages, the development of a mixture of two languages, e.g. the so called "Creole" a mixture of Spanish and English or what was called "Kankaksprak", a mixture of German and Turkish?
- What about the dialects that the migrants very often speak?

No country in the world has found a satisfactory solution for all these problems up to now.

#### **D. Global communication**

In the 19th century, an international communication existed. The nobility spoke French, philosophers and scientists spoke German and the Higher Clergy spoke Latin. Nowadays, there is global communication about everything: about politics and economy, about science and art, about popstars and blockbusters. English seems to be the language of the global communication, but it is not that clear.

- The military command structure and the space research speak English, - or Russian or Chinese? The secret services have a secret language of their own.
- In big business, the governing boards usually use the English language, and the big deals are made in English. However, many transnational negotiations still need translation, if they are not bi-lingual.
- The operations manuals for machines and the consumption regulations for consumer goods for the international market mostly nowadays are in several languages, but certainly not more than ten. That is also true for pharmaceuticals.
- The United Nations have six official languages and the European Union has twentythree, the working language being English, although the French and the Germans try to resist. At most international conferences the language of the proceedings is English, but very often translation is offered.
- The language of the sciences nowadays is English. That is also true for economics, psychology, sociology, international law, political science and some other fields, but some disciplines still use the national language, particularly law and pedagogy, theology and the humanities. Even in these fields,

- what counts is the number of English language publications. The French still try to stop this trend, and the Russian, Chinese and Spanish scientific communities are still big enough to resist as well.
- Three years ago, “Minerva”, an all online university, opened a campus in San Francisco, the only language being of course English. International student programs like Erasmus are extremely popular – like international student travel – and these “globetrotters” are completely socialised in English.
  - The Olympic Games and other international sports events must be reported on in the national language because the broad public does not understand English that well, and the athletes – fortunately enough – mostly do not talk that much!
  - The arts, particularly literature, still are the domain of the national languages, although the anglo-american market is by far the biggest market in the world for books.
  - The pop-culture is completely dominated by the american market and most of the other pop-events are staged in the American style, using of course the English language. Yes, there are regional pop-cultures with regional languages, and the European film industry still tries to resist all overwhelming Hollywood or Bollywood. But to me it seems a lost battle.
  - The internet is completely free. Everybody can use his or her language. Although the business is American, Google, Wikipedia, Facebook, Whatsapp, Instagram and all the others do not prescribe any particular language. The technical and commercial infrastructure is in English, but the social media are really open space for an unlimited linguistic use. But what is the reality? In which language do we communicate in the social media worldwide? I do not know any statistics or empirical research. Nationals will use the national language also on the internet, but for international communication I just do not know. I presume that there too is a trend towards the use of the English language, but I really do not know.

There seems to be a trend towards English as the lingua franca of our times, but the trend is not that clear. There are still huge regions of the world out of reach of the English language, particularly in Russia, China and Latin America. And as long as the proficiency in English is limited the triumphal march of the English language will be stopped.

76

But what does all this mean for language politics? Should there be any national or international regulation of the languages? And what kind of regulation could that be? Or should the language use be left to the social and cultural development? After all, to speak your own language is a human right!

Everything depends on the importance that we give to the language in the cultural, social and political context. I will not talk about language philosophy or linguistic theory, nor will I talk about the history and the economy of the languages. But, in order to prepare my analysis of six principles of political philosophy, I will explore the representation of these principles in fictional literature.

## II. Poets and Writers on Governing Principles for Language Policies

### A. *On federalism*

Friedrich Schiller, a German poet, writer and philosopher at the times of the French Revolution, invented the myth of Wilhelm Tell, who was supposed to have founded the Swiss Federation in 1291 (It is still called *Confederatio Helvetica*, but in fact it is a federal state), the oldest federation to my understanding. Imagine some hundred peasants from three different valleys in the highest Swiss mountains in the end of the 13<sup>th</sup> century, serfs of some Austrian nobles and under the tax authority of the Habsburg monarchy meet in the woods to conclude an eternal covenant against the imperial suppression:

“Wir wollen sein in einig Volk von Brüdern  
 In keiner Not uns trennen noch Gefahr“  
 (Let’s unite and be brothers)

Neither danger nor distress will separate us)

And they successfully created a common defence against one of the great powers of the time, the Habsburg Empire, but the three valleys kept their independence, forming the first federation of the world. Language was not their problem at that time, but freedom from exploitation. Later other regions joined them, regions with different confessions and languages, but religious and linguistic freedom always was fundamental for the Swiss federation.

### **B. On autonomy**

In 1795, the Russian Tzar, the Austrian Emperor and the Prussian King decided on the third polish division, which attributed the remaining polish territory to these three powers. On the maps the polish state did not exist anymore. And, in 1815, the Congress of Vienna confirmed that decision, making the region under Russian occupation a Polish Kingdom with the Russian Tzar being at the same time the King of Poland. And the official language became Russian. For 100 years there was no Polish Poland on the landscape. But for these 100 years the restauration of the Polish state and the re-establishment of the Polish language as the national language was the aim of the Polish nationalists and of the European Intelligenzija. Adam Mickiewicz was and still is the most important poet and writer of that time. He is *the* Polish national poet! Every Polish kid even nowadays seems to know the beginning of Mickiewicz` best known work "Pan Tadeusz" by heart:

"Oh, Poland!  
Who did not loose you,  
Does not know you!"

Mickiewicz supported the Polish uprising in 1830, which was not successful. He praised all the battles the Poles fought against all European powers, particularly against the Russians for their independence, but for their culture and language as well. And, for decades "Freedom for Poland" was the dream of all European romantic poets, for the freedom loving European Youth. And they used to sing: "Poland is not lost yet", which is still the Polish national anthem. They all claimed autonomy for Poland, and autonomy at that time meant cultural and linguistic autonomy, finally of course the renaissance of a Polish national state.

77

### **C. On pluralism**

The US are a federation and a pluralistic society. The US do not have a national official language. The immigrants came – beginning in the late 16<sup>th</sup> century – as European migrants and refugees to North-America. They were settlers and they brought with them their knowledge and technology, their religion and culture, but also their languages. Most of them were English, so they spoke English. But, there also was an important Dutch, German, French, Polish etc immigration, and they all spoke their languages at home, in the church and in the schools. But after the First World War, some states tried to restrict the German language education in public schools, e.g. the state of Nebraska, the US Supreme Court decided in Meyer v. Nebraska (262 US 390) that the decision violates the Due Process Clause of the 14<sup>th</sup> Amendment of the US Constitution. Nevertheless, the English language is now the language of instruction in the US, although there is still no official national language in the country.

I will talk here about the so called "Muhlenberg-Legend" published in a book in 1847 by Franz von Löhers "*Geschichte und Zustände der Deutschen in Amerika*" (History and situation of the Germans in America) And the legend goes as follows: one third of the population of the state of Pennsylvania at the end of the 18<sup>th</sup> century, after the Declaration of Independence, was of German origin. So was the famous family of the Muhlenbergs, who gave a famous general to the United States, Peter von Muhlenberg (1746 – 1807), and also the Speaker of the House of Representatives of the State of

Pennsylvania, Frederick Muhlenberg (1750 – 1801). Following the legend, there had been a debate in the House on the introduction of the German language as the official language of the State of Pennsylvania. But there was an equal distribution of the votes; half of the votes for German as official language and half of them against. Then, the Speaker, the “German” Frederick Muhlenberg, cast his vote against German as official language. And, he was supposed to have said:” *The earlier the Germans become Americans, the better.*” Already in 1847, when the book was published, and since the legend means that the history of the US and the history of the world would have been different, if Frederick Muhlenberg would have made another decision. But it’s a legend!

No, German did not become the official language of Pennsylvania nor the national language of the US, and the US did not fight the First and the Second World War on the German side, - because that was the secret message of the legend! The US are still a federal state and a pluralistic society without a national language, - all languages being permitted, but English being the inofficial official language of the States as long as not the Spanish takes over in the South – West!

#### **D. On Identity**

The Jewish people survived the Babylonian Captivity and the Herodian Persecution, the Holocaust and the wars against the Arabic States, living in a state of their own, Israel, but at the same time in the Diaspora all over the world. What is at the core of the Jewish identity? Of course, mainly it is the Bible reporting in the book of Moses that God presented the Ten Commandments to Moses and calling the Jewish people “*the selected people*”. The Jewish religion, the Old Testament, is – like the Islam - a language based religion, and therefore becoming a Jew means learning about the Old Testament and the Torah in the synagogue, and learning it in Hebrew.

78

The importance of the language for the Jewish identity is one of the reasons for the extraordinary intellectual productivity of the Jewish communities all over the centuries. But, there is one very special example for the contribution of the language to Jewish identity-building, the contribution of the *Jiddish*. For more than one thousand years that language – a mixture of medieval German and Hebrew – was the language of the European and American Jews in the diaspora. There might be still half a million people in the world who speak it, but it is dying. It would die, if there were not a Polish - Jewish-American Nobelprice winning writer, called Isaac Bashevis Singer (1902 – 1991, Nobelprice 1978). Singer wrote and published numerous novels in the Jiddish language, and in these works mostly he described the life in the Jewish communities all over the centuries. By describing them in Jiddish he contributed to the survival of the Jiddish language , - and of the Jewish communities.

#### **E. On Access**

This year, we celebrate the 500 year anniversary of the Reformation. I will not talk about the theological, social, economic and political importance of that event. But the Reformation of 1517 made an essential contribution to the “invention” of the German language, to the access of the people to the Bible and to the German nation building.

The Old Testament was written in Hebrew and the New Testament in Greek, and until the end of the 15<sup>th</sup> century there existed only a translation in Latin. Only the clergy and the higher social classes knew Latin and could read the Bible. The people depended on the information given by the priests. Religious knowledge was a monopoly of the clergy, the nobility and the dignitaries. But then, in 1534, Martin Luther published the whole Bible in German. Martin Luther had translated the Bible from Hebrew and Greek into German, and to do so, he had to find a common German language, and one can say that he created the common German language for this purpose. And the German language, thus created by Luther, in the 19th century, when Germany was divided in hundreds of big and little, sometimes tiny states, the German language was the basis for the German nation building.

## **F. *On inclusion***

Apartheid means exclusion. The 1954 “Bantu Education Act” established for 80% of the population in South Africa a separated educational system. The act was the educational basis for the South African apartheid policy. It denied the black population access to the English/Afrikaans language and culture. Only in 1994, when the apartheid policy ended, the black population was included into the South African general educational system and into an integrated South African society.

“Cry, the beloved country” of 1948 by the South African writer Alan Paton, published in the US and the UK, was the first novel to blame that policy. The novel describes the breakdown of the traditional tribal systems in the “homelands” of the black population, the social disintegration of the black population in the big cities and the criminality which is the consequence. “Cry, the beloved country” was the first literary outcry against the apartheid policy, which was also a language policy, because only Afrikaans and English were the official languages of the country, and the black population was excluded from learning these languages. Many other writers followed, asking for inclusion of the black population, until finally in 1994 the apartheid policy ended.

All six references to fictional literature make clear that there is a close relationship between language and culture, and between culture and political freedom and statehood.

## **III. Principles of Political Philosophy and Linguistic Rights**

### **A. *Federalism***

Federalism means divided sovereignty: the federation is a sovereign state and the member states are also sovereign states. In language policy, the competencies can also be divided, e.g. the federation decides on the national language/s and the member states decide on their official language. And the like for educational policies, e.g. the federation regulates higher education including language learning and the states decide on schooling and the language learning in schools.

Federalism is an ideal philosophical principle for political entities that are composed of regions with different language regimes. There might be difficulties, like the examples of Belgium and Switzerland show, but in principle it is a good regulation of their language conflicts.

Federalism cannot solve the language problems, when within a national state or a member state of a federation some regions differ in their language policy, when minorities or indigenous people claim their language rights. Normally, minorities and indigenous people cannot form member states of federations.

Federalism is completely helpless when it comes to the migration problems. Migration politics tend to become federal matters, because migration problems are highly controversial political issues and do not allow different solutions within a federal state. That is also true for linguistic politics. It is hard to accept that e.g. in one member state the refugees attend the normal schools and in other member states they are kept in special institutions for months or even for years.

Language conflicts in global communication cannot be solved on the basis of the federal principle. They are global, and even national regulation very often is a problem because international regulations are necessary. It is a political scandal when certain states ban TV or radio shows because of their language or content. It would be ridiculous if a member state of a federation would try the same thing.

## **B. *Autonomy***

Autonomy means that within a state – be it a national or a federal state – certain regions enjoy self government, e.g. in language politics. They can have their own radio-stations, journals, schools etc.

Autonomy is an ideal principle to solve language conflicts, when there are linguistic minorities in a state that claim for autonomy in language politics, be it indigenous or traditional national minorities or border populations. But granting autonomy has a price. Linguistic autonomy can promote cultural isolation and backwardness. People who claim self-government will be happy with it. But, what with all the others who are kept in isolation and who are forced to live a life as a minority, which they do not ask for. And what about the minority within the minority? What about the members of the majority who happen to live within the minority area? – Autonomy might be a solution for some linguistic problems, but autonomy also creates new linguistic problems.

As I pointed out already, federalism is not a solution for migration language problems. The same is true for the principle of autonomy, and this for the same reasons. Furthermore: Self government in autonomous regions tends to be “racist”, stressing the interests of the minority and denying the same rights to others.

A certain “backwardness” hinders the self-governed regions to accept the globalisation of the communication systems. Autonomous regions are proud when they can run their own TV and Radio stations, and they would be happy if their youth communicate on social media in their regional language, which sometimes is the case, - but the global minded people will turn their back to their home and become citizens of the world, - speaking English and not some kind of regional dialect.

## **C. *Pluralism***

80

Pluralism seems to be the ideal political idea to organise linguistic plurality. Federalism and autonomy are a kind of expression of the pluralistic principle. Insofar, in federal states and in self – governed regions pluralism in principle does a good job. But what about the pluralistic society within the state or the region? Pluralism means that the societal interests are organised, that corporations and communities group their special interests and represent them within the state. The churches represent the interests of the believers and the unions the interests of the workers, etc. The basic idea of pluralism is that all interests can be represented. But, that is not true, because not all interests are of the same strength and not all interests are transparent. In some societies we will find “language interest groups”, mostly organised within tradition cultural communities, e.g. for centuries you would find German Clubs in the US, in Brazil or Argentina, singing German Folksongs, speaking German and eating Sauerkraut.

It is also true that the “new migrants” stick together, that they organise lobbying and mutual help, that they meet to cook their traditional food and dance their traditional dances, and of course then they also speak their traditional language. But this is just individual and collective freedom in democratic societies. It is not an expression of a pluralistic organisation of the society.

Chinatown was and still is Chinatown, business communication of course is in Chinese, and the same is true for all business corporations in the world. The German business community in China speaks German, and the vietnameese business community in France speaks Vietnamese. Turkish pop-songs in Turkish language sometimes were in front of the international charts, and Bollywood movies in Hindi can be popular not only in India but all over the world. But again, that is not pluralism, that is economic and cultural freedom.

The internet is open and free for all languages. It would be a crazy idea to have a pluralistic organisation of the social media, because they have a capitalistic economic background and the freedom of the



individual user. We cannot imagine a Chinese or Turkish speaking internet, - although some political regimes might dream of something like this.

#### ***D. Identity***

The right to speak your mother tongue or another language of your choice is a fundamental right. It is enshrined in the liberty principle of the western constitutions, and a vital component of human dignity, the basis of all fundamental individual rights. Individual linguistic freedom is an expression of the personal identity and therefore identity politics includes language politics.

When federal states are multi-lingual states they implement in a certain way the identity principle, because they accept the linguistic differences within the federation and thus contribute to the linguistic identity of the people. And the same is true for the autonomy principle. Even more, self – government in autonomous regions is an expression of identity politics. Therefore the Ukrainians stress that Ukrainian is a language of its own and not Russian, and that Catalan is not Spanish, even if the differences might not be that important. The Ukrainian and the Catalan languages are part of the regional or – now – national identity of the country.

The identity principle is the basic principle when it comes to the migration problem. Before we can discuss all other problems and conflicts we have to recognise that migrants have the right to speak their language or not to speak their language but prefer the language of the host country. Both! That is their linguistic freedom which insofar is an expression of the identity principle. And this linguistic freedom is not only an individualistic but also a collective right. This means that migrant groups can use their mother tongue also together that the migrant communities can communicate in their mother tongue. So far – so good! But, the collective linguistic freedom does not necessarily mean that the local community, the educational system and the state must be based on that principle. The common good can restrict the collective linguistic freedom of migrants.

It might not be necessary to mention that the freedom of the net also means language choice. Nobody can be hindered to communicate in the internet in the language of his or her choice. Insofar the internet represents the plurality of the multitude of identities.

#### ***E. Access***

Traditional individual and collective liberal rights are “negative rights”. They prevent state intervention into personal freedom. Thus, linguistic freedom as expression of liberty and dignity means that the state cannot hinder people to make use of their linguistic freedom, which means to use their language or to choose another language. But, this freedom is not a guarantee that they effectively can use that language. The liberal theory of individual rights presumes that private property is the guarantee of personal freedom, if the state is prevented from interfering into the realm of personal freedom. But, in linguistic politics property does not guarantee the use of the personal freedom. A language must be learned and linguistic competence must be aquired. And, here property does not help. Access is necessary, access to language competency. Therefore, like in other fields too (see Richard Rorty’s theory on access), the access to language competency must be guaranteed.

In federal states the member states guarantee that all citizens not only have the right to learn the official language but they find ways and means to effectively make all citizens speak that language. And, the same is true for national minorities in autonomous regions. The self-government has a vital interest in the language competencies of all members of the minority, because only a coherent and active linguistic minority can secure the survival of the minority itself. Unfortunately, the same is not true for indigenous people who often do not actively support the survival of their language.

For migrants access to language learning is the most important way of integration, to get residence, a work permit and possibly citizenship. Therefore, migrants do not only need the possibility to complete their mother tongue competency but also the access to the language of the host country. The language policies of immigrant countries therefore offer as well the possibility to improve the language competencies of their immigrant population in the mother tongue, but they also care for opportunities to learn the official language of the country.

Many studies have shown that there is a class bias in the use of the internet. The lower classes chat and the upper classes learn when they use the internet. For all children and adults equal access to the internet must be guaranteed. Several conditions must be fulfilled: 1. The internet must be accessible everywhere. That is a political and technical problem. 2. Everybody must have the financial means to get access to the net. 3. Everybody must understand the language of the internet. Courses in basic informatics are absolutely necessary. 4. The internet is a source of information and knowledge which must be accessible and useful for everybody.

Access to language competency nowadays no longer means the possibility to learn a language, but to get effective access to the internet.

## ***F. Inclusion***

Access is a necessary condition for the implementation of language rights, the possibility to learn a language, be it your own language, the language of the country where you live or just another language of your choice. But, access is not enough. In the case of migration the principle of identity guarantees that you can maintain your personal life, your identity and access allows to learn and perfect your language competencies, but, access does not guarantee the full membership in a society, does not guarantee that you are accepted, that a member of the community. You have to be included although you might have a different identity. This is particularly difficult and not normal at all. All communities tend to segregate people, to expel people with identities other than their own. The history of the Jewish people is an example for this stigmatisation of the otherness. Language can be a way to get included in the community of the host country.

82

Inclusion is also a condition for the entrance into the communication communities. Trust being one of the main necessities for a functioning communication inclusion is necessary for trust. There are communication communities like boards of trustees or governing boards of big enterprises where mutual trust is a basic functional condition, and a common language makes mutual trust possible. Therefore in these bodies you only get included if you speak the same language. Language in this case does not only mean the mastery of the language literally spoken, but, a common attitude, *l'esprit de corps*, as the French call it. To be included into this "*esprit de corps*" is a necessary condition for the participation in the communication process, - in the case of these bodies.

The same must not be true for other communication communities. Let's take the case of the sciences or the arts. The language of the sciences has always been international. In the medieval ages it had been Latin, in the 19<sup>th</sup> century it was German and now it is English. But, the language as such is not important for the understanding in the sciences. Physicists of all countries in the world understand each other without speaking a word of English. They communicate in scientific terms, they do not need another language to understand each other. And what is true for the sciences is also relevant for the arts. Johann Sebastian Bach is understood all over the world, and no German is needed for that. And the protest of "Pussy Riot" here in Moscow was also understood all over the world and we do not even know whether the three girls performed in Russian or in English. Inclusion in the worldwide communication community in the sciences and the arts asks for a common language, yes, but the sciences and the arts have a language of their own. You get included, if you are willing and able to participate, - a linguistic inclusion is not necessary.

Last point, the internet. The social media are not a well organised chaos, as it is often said. On the internet you will find a multitude of communication communities as well. A very interesting and prominent internet communication community is the community of the sick, of people who suffer from the same illness. They look for information on their illness in the net, and for pharmaceuticals and their effects, but, they also look for the other sick people because they long for compassion and the chance to talk to each other. Another example are the Fan-Clubs in the internet, be it in sports or in pop-music. Fan-Clubs communicate on the net to talk about their stars, and their whereabouts, their clothes and outfits, their lovers and their earnings. For this kind of communication on the net you need a certain competence, the so called internet competence, and you will not get included if you do not have that competence. But, it is not a special language competence what you need. Inclusion by language is not necessary.

## IV. Language Rights in International Law

### A. *Language Rights of National Minorities*

The International Covenant on Civil and Political Rights as of 1966 stipulated in art. 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 other members of their groups, to enjoy their own culture, to profess and practice their own religion, or use their own language.”*

This was the model for several other international guarantees of minority rights, as e.g. in art. 30 of the International Convention on the Rights of the Child, in art.4 of the UN-Declaration on the Rights of Persons Belonging to National Minorities as of 1992, in the United Nations Declaration on the Rights of Indigenous Peoples as of 2007, in art. 12-14 of the European Framework Convention for the Protection of National Minorities and many others. The nineties of the last century were the breakthrough of minority rights based on the idea of cultural pluralism and recognition of the otherness of national minorities.

For language rights of linguistic minorities this corpus of international law meant:

- the right to speak one’s own language in the family, in the neighbourhood, in school and in public, including public broadcasting and the internet,
- the right to learn the national language in school,
- the right to establish private schools, where the instruction is given in the minority language,
- the obligation to establish public schools where the instruction is given in the minority language and where the national language is taught as a second language.

These core linguistic rights of national minorities were and are recognised and supervised by several international organisations, as e.g. the United Nations Human Rights Council which supervises the implementation of Art. 27 of the 1966 Covenant on Civil and Political Rights, or the Committee on the Rights of the Child which is responsible for the implementation of Art. 30 of the UN Convention on the Rights of the Child, and not to forget the European Court of Human Rights, which accepts human rights complaints from every citizen of Council of Europe member states.

## B. *Language Rights of Migrants*

This is the solution offered by international law for the linguistic problems of national minorities typically in borderlands, in the Sorb case for the Sorb minority. But, what about the Turkish population in Germany? And for all the other “new migrants”? There are 60.000 Sorbs, but there are approximately 6 Million “new migrants” in Germany. Do these other minorities have the same linguistic rights under international law? Are they also “national minorities” in this sense?

No, they are not. The term “national minority” refers to the ethnic, religious and linguistic divide in the times after World War I and World War II. The migratory movements in the sixties, seventies and eighties of the last century created a completely new situation in Europe: 1. Labour migration within the European Union is completely free. 2. The European Union opened up its borders towards the East, particularly in relationship to Russia. 3. The European Union tried to protect its territory from refugees from Africa and the Orient by a very strict asylum law, but without great success. The result now is that all European cities have a foreign minority population of approximately 10%. This new migrant population is not homogeneous on the basis of ethnicity, religion and language, but highly diverse, and their settlements are not consolidated, because the housing patterns depend on the housing market and on the neighbourhoods. The situation can be compared to the big American cities.

The United Nation tried to apply the international language law also to the new migrant minorities by a definition of the term “national minority” which includes not only “national minorities” in the traditional sense but all ethnic, religious and linguistic minorities (see Art. 2 of the UN Declaration on the rights of Persons belonging to --- minorities), but, this new “language regime” might work in the family, in a private context and at the workplace, but it does not apply in the educational system. So, the new migrants have the right to speak their language in private and in public, to run private learning and training establishments, and to use the media for communication in their languages, - and they do so. But, the organisation of the public school system cannot be based on linguistic diversity. There are mainly two arguments against this: 1. The new migrants came to the European countries for work, and they and their families are expected to integrate into the European societies, language competency being the essential condition for integration. 2. The language groups of the new migrants are too diverse for a rational organisation of the educational system, because you need sufficient numbers for the instruction in their mother tongue.

84

Therefore, for the new migrants “linguistic mainstreaming” became the official policy in education. After some transitional bilingual education the instruction in public schools is given in the national language. Unlike the traditional national minorities the new migrants do not have the right to a “maintenance bilingual education” in the sense that proficiency in both languages is the aim of the educational system.

The European Framework Convention for the Protection of National Minorities as of 1995 has been signed and ratified by the member states of the European Council. The convention regulates the organisation of the educational system in its art. 14 as follows:

*“(1) The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.*

*(2) In areas inhabited by persons belonging to a national minority traditionally or in sufficient numbers if there is sufficient demand the Parties shall endeavour to ensure as far as possible and within the framework of their own educational systems that persons belonging to these national minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.*

*(3) §2 of this article shall be implemented without prejudice to the learning of the official language or the learning and teaching of this language.”*

In signing the convention the German Government has made the following reservation: As the Convention does not define the notion of “national minority” itself, this definition is up to the member states, and the German government defines only two groups as national minorities, the Danes and the Sorbs as far as they have the German Nationality, and the governments declares to apply the convention also to the Frisians and the Sinti and Roma if they are of German Nationality. Therefore, the convention does not apply to the so called New Migrants e.g. the population of Turkish origin even if they have the German Nationality, although they count for 5% of the German population. Therefore, the German states can organise their educational systems with German being the language of instruction without violating the European Framework Convention.

As the European Framework Convention on the Rights of Persons Belonging to National Minorities only protects the members of these minorities, members of the other minorities can be discriminated against because of their language. Their children have to go to school being taught in the majority language and not in their mother tongue. This could be a violation of their right to education and linguistic discrimination. But, is there an individual right to be taught in public schools in the mother tongue? If this were so, the European Framework Convention would be in contradiction to this fundamental right.

The International Law is not very clear. Undeniably individual linguistic rights can be found in international law, as there is

- the right to learn a minority language as well as the majority language and
- the right to use a minority language as well as the majority language

and these rights are not restricted to national minorities or indigenous peoples, all minorities can claim these rights. These rights imply also the right to set up and manage private schools where the instruction is given in a minority or an indigenous language. Insofar there is a right to choose a private school for linguistic reasons. But, when it comes to public schools the individual linguistic rights can be restricted, first in the interest of the child and second in the interest of other children.

The instruction in public schools has to be given in the best interest of the child. But, what is the best interest of the child? Who has to decide? – the school authorities or the parents or the children themselves? The so called Cummins hypothesis says that learning a second language can only develop if progress is made in learning the first language. This hypothesis means that it would be in the best interest of the child to learn the mother tongue first and the second language later when enough progress has been made in the mother tongue. This hypothesis would back the minority language approach, to learn the minority language first and the national language later. But, although hundred of studies have been undertaken, there is no proof for a general hypothesis like the Cummins hypothesis, and the construction of an educational system cannot be based on unproven hypotheses. Therefore, choice is the only solution, choice as the European Framework Convention in Art. 14 §2 suggests, but, choice under certain conditions:

- It has to be a traditional minority or a minority of sufficient numbers
- There must be sufficient demand.
- There should be adequate opportunities for being taught in the minority language and for receiving instruction in this language.
- This shall be implemented without prejudice to the learning of the official language.
- As far as possible, which means that there is a feasibility limit and finally
- The solution must be found within the framework of the educational system.

The educational authorities have to make the decisions on the framework of the educational system, and choice is only possible within this framework of the educational system.

### C. *Language Rights in the Educational System*

When European Educational Authorities make decisions on their educational systems, they have to take into account the language rights which are guaranteed by international law as fundamental human rights:

- Linguistic human rights of national minorities
- The rights of children to learn a minority language as well as the national language, be it in private or public schools
- Parent's rights to choose a language of instruction for their children within the framework of the educational system
- The linguistic rights of children and parents of all minority groups which have to be respected as well as the national interest in a national as well as in a European Lingua Franca, which for the time being is the English language.

Having all this in mind, it seems to me that four main models emerge:

- A. The French Model: In public schools the instruction is in French only, because French is the national language. There are national minorities in France as in Alsace and in the Bays Basque where a bilingual instruction is given in French and in the minority language and where the parents can choose a secondary school which teaches courses partly in the minority language. Foreign languages are taught as second languages depending on parents' and students' choice, mostly on the basis of the regional distribution, e.g. Spanish in the South-West and Italian in the South-East. In public schools there is no instruction in the languages of the new migrants as in Arabic or Turkish, although the French government tries to promote particularly Arabic as language of instruction, but, without great success.
- B. The German Model: In public schools the instruction is in German only, because German is the national language. There are national minorities in Germany as the Danish minority in the North and the Sorbian minority in the East, where the parents can choose a primary and a secondary school with Danish or Sorbian as the language of instruction. Foreign languages are taught as second languages within the curriculum depending on the parents' and the students' choice, and these second or third languages can be one of the immigrant languages as Turkish or Russian. On a voluntary basis many schools offer additional language courses for the new migrants in their languages.
- C. The Belgian Model: The Belgian model is based on the territorial principle which is typical for multilingual federal states like Switzerland. In Flanders the school language is Flemish, in Wallonia the school language is French, in bilingual Brussels the school language is either Flemish or French and the parents can choose a Flemish or a French speaking school. In Flanders in public schools parts of the curriculum can be taught in French or in Turkish, Italian or Spanish, and in Wallonia parts of the curriculum can be taught in Flemish.
- D. The Diasporadic Model: In public schools the instruction is given in the immigrant language, and the national language is taught as a second language. This model applies only to the national minorities in a diasporadic situation. No European state until now has implemented it as a normal language regime.

### D. *Language Rights of Refugees*

In international law there are no specific provisions for the language rights of refugees. The UN Refugee Convention as of 1951 does not mention linguistic rights, but it forbids discrimination on the basis of race, religion and origin, and one can add also language. But, an anti-discrimination clause does not give positive, only negative rights. The international conventions on human rights (UDHR, ICCPR, ICESCR, etc.) mention the right to asylum, but, asylum means right of residence and

finally citizenship. In international law the right to asylum does not justify a special status during the recognition procedure.

The rights of refugees are individual rights, whereas language rights mainly are collective, are group rights. If asylees do not assimilate in the host country, it might be that they become “new migrants”, like the “labour migrants” in the past. Then, they would acquire the same status as the groups of “new migrants” and the question of the linguistic collective rights would come up (s.above No. III). But, at least in the past that was untypical. Political refugees, who got asylum, either returned to their home country when the political situation changed or they assimilated easily in the host country. This time, regarding the massive influx of refugees in 2015/2016, it might be otherwise. Therefore, we will have a look at the language law situation of the refugees.

Refugees are not a “minority” in the sense of art. 27 ICCPR or art.14 of the European Framework convention for the Protection of National Minorities, nor of art.2 of the UN Declaration on the Rights of persons belonging to ---minorities. As refugees they are not homogeneous as an ethnic, religious or linguistic group. They are from many many different ethnic, religious or linguistic backgrounds. Therefore, their human rights primarily are individual rights:

- The freedom of expression (art. 19 UDHR, art. 19 ICCPR and art. 13 ICC) gives the right to express oneself in a freely chosen language.
- The right to take part in cultural life (art. 27 UDHR and art. 15 ICESCR) assumes a participation in the mother tongue or a common language.
- Art. 29 al.1a (ICC) asks the states to respect the language of the child in education, but, according to art.30 ICC the right to use the mother tongue is only guaranteed for national ethnic, religious and linguistic minorities.
- The right to education in general (art. 13 al.2d ICESCR) for adults only asks for a promotion of adult education without mentioning linguistic rights at all.

87

The result of a search for individual linguistic rights of refugees in international law finally is very poor. The use of the mother tongue in private and in public, that 's nearly all.

The European Union regulates the immigration to the Union, the right of asylum and the border controls (art. 77 – 79 TFEU), - as we all know the so called Dublin Regulations (III) as of 2013 broke down in 2015/16. But, these regulations are restricted to the access to the union, they do not regulate the legal status of the asylum seekers within the member states of the union. Therefore, it is up to the member states to regulate the rights and duties of the asylum seekers, beginning in the moment when they enter the national territory. This is also true for their language rights.

The first linguistic right of an asylum seeker is the right to a hearing in a language which is understood by the asylum seeker or a right to an interpreter. The decision on the application and the statement of its grounds also are in the language of the applicant or in the language he or she understands. As this is a very time and money consuming procedure, the waiting time for a decision can be several months, but, the language rights of the asylum seekers are observed.

When asylum is granted, the asylee for 3 years has the right of residence and a work permit. He or she has a right to an integration course (§25 Aufenthaltsgesetz). The integration courses are organised by the migration office and given by private schools and certified teachers. They comprise 660 hours, 600 hours being a language course. As a preparatory course for school or university admission the course can be expanded up to 900 hours. The participants have to pass an entrance test as well as a final test. The integration course is not only a right, it is an obligation. The aim of the language course is the competence, to get along in the everyday environment, to have a talk according to age and education and to express oneself in writing (Level B1 of the Common European Reference Frame for Languages). For asylees the language course is free. So, the second language right of refugees is the right to an integration course which includes a language course from 600 – 900 hours.

The right to education applies also to refugees kids. It is the right to go to school, and up to age 21 there is an obligation to go to school, after 10 years of fulltime schooling it is part time vocational schooling. The right to education according to international law applies the very first day, when the kid is under the jurisdiction of one of the German states. The German states are in breach with this right, because in 14 of the 16 states schooling for refugee kids begins only 3 months after arrival, in 2 states even 6 months after arrival. The justification is organisational problems of distribution of the refugees between the states and the local communities. Only after 3 – 6 months refugees are supposed to have a permanent residence, so that a change of the school can be avoided, for the sake of the kids, as the administration argues. But, there is no such exception in international law.

For several months the children are taught in so called integration classes or welcome classes as they are called euphemistically. The reason is that there is no right to a mother tongue class for the refugees. They have to attend the schools where the instruction is given in German, and the refugee children will be transferred to the regular classes as soon as they can follow the instruction in the German language. Nobody knows exactly when this is the case. The integration classes are of course multilingual classes. Therefore, the children do not have any contact to German speaking classmates and so the informal language learning is extremely restricted, and it is so important. Therefore, the integration classes should not last too long, not more than 6 – 12 months depending on the progress of the children. So, the third result is, that there is no right of refugee children to attend a school where the instruction is given in their mother tongue.

For university admission the applicants have to pass a language test. A provisional admission is possible. As the courses are mostly in German, the students have to understand the German language. As medical interns the students must be able to understand the patients; the patients rely on the information given by the medical personnel. After the first medical exam the young doctors have the right to practice medicine in private practice or in a hospital. German language understanding is absolutely necessary.

88 After three years, successful asylum seekers can apply for German citizenship. They have to pass the citizen test which is a test on the living conditions in Germany and on language proficiency in German. The test is not easy. I gave it to my German students a couple of years ago, and most of them failed. So, the fourth result in the search for language rights of refugees, is that proficiency in German is a condition for the application for German citizenship.

The linguistic rights of refugees are completely different, if the application for asylum is rejected. The decision and its justification is in the language of the applicant or in a language he or she can understand. Because of the hearing the migration office knows about the language competencies of the applicant. The rejected applicant then has four weeks to sue the office and try to get a positive decision in court. The court proceedings are in the language of the applicant, in a language he can understand or there will be translation by a professional interpreter. After a negative court decision the asylum seeker is up for deportation, if he does not deserve the so called subsidiary protection. Subsidiary protection is for one year and can be extended up to 7 years. During this time of subsidiary protection the asylum seeker has a right to a reduced social security, but he has no work permit, and no linguistic rights, particularly no right to the integration course and the language course. Children have to go to school, but, they do not have the right to vocational training or higher education. So, fifth, the linguistic rights of rejected asylum seekers are minimal.

The existing international conventions on linguistic rights do not cover the legitimate interests of the “new migrants” and the refugees, because their aim is the protection of linguistic minorities in national states. This was a legitimate political interest after World War I and also World War II. After the end of the Cold War the world has changed. Global labour migration and political persecution have changed the world, and worldwide communication changes it even more every day. 244 million international migrants are living abroad, if we believe the UN statistics, and the UNHCR supports 15 Mill. political refugees just now. What about their linguistic rights?



My analysis in this paper makes clear, that we have to look at three different situations, if we try to define the linguistic rights of minorities, migrants and refugees:

1. Linguistic rights in the every day life, including the audio-visual and the social media.

In private as well as in public everybody should have the right to speak the language of his or her choice. Linguistic freedom and autonomy should be guaranteed.

2. Administrative procedures and court litigation

International conventions should guarantee the right of access as linguistic right, and access means immigration, asylum, social security, education, and citizenship. Not only minority people but also migrants and refugees should have the right of access in their language or with the help of an interpreter.

3. Integration

Language, education and training as well as occupation are the key of integration. They ask for access to the majority language of the country. Therefore, a new international convention should guarantee the right to learn and to speak the majority language of the host country, not only for linguistic minorities but also for the new migrants and the refugees.