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Minority language rights in contemporary Europe

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A growing number of charters, resolutions and declarations in Europe give some linguistic human rights to traditional regional or national minorities. On the other hand, in binding human rights law, (im)migrant minorities have so far not had any linguistic rights in education to use and maintain their languages. I shall give a short overview of the UN and European instruments on language rights and assess the degree of protection that they grant, especially in education. Education is central in assessing linguistic human rights. Those who are denied linguistic human rights are in most cases minorities (at least in terms of power but mostly also in terms of numbers). Without extensive language rights in education (the right to mother tongue medium education) most minorities will assimilate, i.e. the existing linguistic diversity will be killed.

International instruments

Article 27 of the **UN International Covenant on Civil and Political Rights** (ICCPR, 1966, in force since 1976) still grants the best **binding** minority language protection so far:

"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 group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

This article has been the most important Article in international law so far for the protection of linguistic minorities, as both Capotorti (1979, the UN Special Rapporteur on minorities) and more recent UN reports confirm. Both the **UN Conventions on the Rights of the Child** (1959 and 1989), and several Council of Europe and OSCE documents have used approximately the same formulation. I will come back to the interpretation of Article 27 below.

The five basic UN conventions have **general** provisions, for instance in their preambles, which relate to the exercise of all human rights, and language is in most cases specifically mentioned, at the same level as gender, race, religion, etc., as one of the characteristics on the basis of which individuals cannot be discriminated. This is in contrast with the **education** clauses of the covenants. In many cases language is **not even mentioned** under the **education clauses** of those covenants which are binding. Often all the other characteristics (gender, religion, nationality, social origins, etc) are still there, but language has mysteriously disappeared. Even in those cases where language is mentioned, the rights can be described as no stronger than **half-covert assimilation-oriented toleration** of minority languages. Minorities are allowed to use their languages in private, but not in state-financed schools.

The same is also true in many regional covenants. Despite many many nice phrases about linguistic rights in **non-binding** declarations and resolutions, in those international or European covenants which **are legally binding**, and where there is a complaint procedure, there were until the 1990s almost no linguistic rights. The general policy on educational linguistic human rights seems to be a posture policy, without much content.

The **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**, adopted by the General Assembly in December 1992) goes somewhat further than the important Article 27 above, in its Article 2.1, by replacing "shall not be denied" by "have the right" and by adding that these rights apply "in private and in public, freely and without any form of discrimination" and in Articles 4.1 and, especially, 4.2, which prompt the states to actively promote enjoyment of the rights.

Most of the Articles in the Declaration use the formulation "shall" and have few let-out modifications or alternatives - except where linguistic rights in education (Art. 4.3) are concerned. Here again, just as in the European Charter (see below), the alternatives permit a reluctant state to provide minimalist protection:

4.3. States should take appropriate measures so that, wherever possible, persons belonging to minorities have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. (my emphasis)

Clearly such a formulation raises many questions. What constitute "appropriate measures" or "adequate opportunities", and who is to decide what is "possible"? Does "instruction in" the mother tongue mean "through the medium of the mother tongue" or does it only mean instruction in the mother tongue as a subject? Besides, the Declaration is not binding on the States.

The **UN Convention on Migrant Workers and Their Families** accords minimal rights to the mother tongues and is assimilation-oriented (see Hasenau 1990).

Regional European instruments

Council of Europe has been important in suggesting protection to national minorities. Its **European Charter for Regional or Minority Languages** (22 June 1992), commits, in Article 5, those member states which sign and ratify it, among other things to encourage the use of minority languages, in speech and writing, in public and private life. In education, the teaching and study of regional and minority languages should be encouraged at all appropriate stages.

The **Charter** will enter into force 3 months after minimally 5 member states have ratified it. In the 3½ years since its acceptance, only 3 countries have both signed and ratified it (Finland, Hungary and Norway) while another 11 countries have signed but not ratified¹.

The languages of immigrant minorities are explicitly excluded from the **Charter**. In addition, the countries signing it can decide which minorities they want to apply it to, i.e. even if they accept that a group in their country is a minority, they do not necessarily need to extend the rights to this group. The Charter is full of escape clauses and alternatives which make it possible for an unwilling state to sign and ratify it and still grant very few rights even to a group that the state has promised to apply it to (see Skutnabb-Kangas & Phillipson 1994 for details).

Another relevant **Council of Europe** initiative, drafted by one of its bodies, the European Commission for Democracy through Law, was the "**Proposal for a European Convention for the Protection of Minorities**" (CDL 91 - 7, which was accompanied by a substantial Explanatory Report (CDL 91 - 8).

It is important to note here that the term used in the **Proposal** was simply "minorities", not "**national minorities**". The Proposal had an explicit definition of who belongs to the minorities the Convention was supposed to protect:

Article 2

1. For the purposes of this Convention, the term "minority" shall mean a group which is smaller in number than the rest of the population of a State, whose members, who are nationals of that State, have ethnical, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language.

2. Any group coming within the terms of this definition shall be treated as an ethnic, religious or linguistic minority.

3. To belong to a national minority shall be a matter of individual choice and no disadvantage may arise from the exercise of such choice.

This definition might, in fact, have made it possible for immigrants who have taken the citizenship of the new country, to become minorities, since the existence of a minority would have been decided upon on objective grounds. A state would not have been able to claim that they do not have any minorities if the group claiming minority status would have fulfilled objectively specified conditions. But it was not to be.

At the Vienna Summit Conference (8-9 October 1993), the Heads of State and Government of the Member States of the Council of Europe decided not to proceed with the **Proposal**. Instead, they instructed the Committee of Ministers "to draft with minimum delay a framework convention specifying the principles which the contracting States commit themselves to respect, in order to assure the protection of **national minorities**" (Hartig 1995, 1, my emphasis)ⁱⁱ. The Ad Hoc Committee for the Protection of National Minorities (CAHMIN) completed drafting in October 1994. The **Framework Convention for the Protection of National Minorities** was adopted by the Committee of Ministers on 10 November 1994, a year after the work on it was started. It is also open for non-member States. It has (by 1 October 1995) been signed by 31 statesⁱⁱⁱ but only been ratified by 4 whereas 12 are needed for it to enter into force. The framework **Convention** is, according to Hartig (1995, 2), "the first ever legally binding

multilateral instrument devoted to the protection of national minorities in general". The philosophy behind the **Convention** is that "it is not always enough to provide a legal guarantee of equality" (Hartig 1995, 2) (the establishment of effective equality between persons belonging to national minorities and others in the State being an aim of the **Convention**). Therefore, the **Convention** "also identifies objectives which the States undertake to achieve and which will require positive measures. These measures may entail positive discrimination" (ibid.). As far as the medium of education is concerned, we again find that the Article covering this is more heavily qualified than anything else in the Framework Convention:

In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, **if there is sufficient demand**, the parties shall **endeavour** to ensure, **as far as possible** and **within the framework of their education systems**, that persons belonging to those minorities have **adequate** opportunities for being taught in the minority language **or** for receiving instruction in this language. (Article 14.2; my emphases).

Even international lawyers who are normally very careful seem to consider this provision as "weak" and "unsatisfactory - given the general context of the Convention as a whole as only a "framework" for action by States" (Thornberry 1995, 13).

But again, immigrant minorities are effectively excluded even from this weak provision. This is shown by the changes, as compared to the "**Proposal for a European Convention for the Protection of Minorities**" discussed above. The **Proposal** gave a definition of minorities which would have made it possible for immigrant minorities to be included. The **Framework Convention** has no definition of minorities whatsoever. The **Proposal** talked about "minorities", the **Convention** specifies that it is only for "**national** minorities" - and since these are not defined, the State can still deny the existence of minorities, especially immigrant minorities who can easily be juxtaposed to national minorities.

The Conference on Security and Cooperation in Europe (CSCE) became from the late 1980s a major forum for East-West links and for specifying what human rights should obtain in the member countries. **The (1990) Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE** (now OSCE) states unambiguously that **national** minorities should have the right to maintain their ethnic, cultural, linguistic or religious identity, the right to seek voluntary and public assistance to do so in educational institutions, and should not be subjected to assimilation against their will (CSCE 1990a, 40).

CSCE uses in its definition of minorities one of the clauses which the proposed European Convention for the Protection of Minorities used (see above):

(32) To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice.

One could imagine that this individual choice was also given to immigrant minorities - but they are obviously not included here either. The States are willing to accept that they are some kind of human beings too, but their rights will (hopefully) be examined at some future point:

(22) The participating States reaffirm that the protection and promotion of the rights of migrant workers have their human dimension. In this context, they ...

(22.4) - express their readiness to examine, at future CSCE meetings, the relevant aspects of the further promotion of the rights of migrant workers and their families.

So far, OSCE (earlier CSCE) has not agreed on any binding conventions. An OSCE High Commissioner on **National Minorities** (Max van der Stoep) was appointed in 1992 (my emphasis).

The European Parliament's **Directive on the education of the children of migrant workers** (77/466/EEC of 25.7.77) is fraught with difficulties of interpretation and implementation (as the Parliament's own **Report drawn up on behalf of the Committee of Inquiry into RACISM and XENOPHOBIA** (A3-195/90, PE 141.205/FIN, 111) indicates). It only recommends a few hours of teaching of the mother tongue as a subject. Having signed it, for instance the Danes have still several times suggested that the teaching of migrant minorities mother tongue should be stopped after the fourth grade or stopped altogether - and it seems that the Social Democratic Party may now succeed in getting a parliamentary majority for their suggestion of converting the mother tongue lessons to Danish lessons.

Future...

Many countries are, actively or passively, trying to prevent the acceptance of linguistic human rights. For instance Greece and Turkey, have not signed the ICCPR (containing the important Article 27). Of the almost 120 States which **have** ratified ICCPR, the United States and Haiti are the only ones who have **failed** to ratify the UN Covenant on Economic, Social and Cultural Rights (Eide 1995a, 23), which contains **some** linguistic and educational rights. Germany and Britain have not ratified its Optional Protocol which gives access to the complaint procedure. At the OSCE Copenhagen meeting on the Human Dimension in June 1990, France, Greece and Turkey did not go along with some far-reaching formulations for the benefit of minorities. When the Council of Europe's European Charter for Regional or Minority Languages was accepted (June 1992), France, Turkey and United Kingdom abstained, Greece voted against (**Contact Bulletin** 9:2, 1992, 1), and until now only 3 states have ratified it as stated above. Thus the United States, Britain, France, Greece and Turkey have often prevented or tried to prevent the granting of linguistic human rights. This has not prevented Britain, France and the United States from presenting themselves as protectors of human rights and minorities, and criticizing other countries for **their** treatment of minorities. There is not much reason for optimism - except, maybe, in one sense ...

In the customary reading of the UN ICCPR Article 27 above, rights were only granted to individuals, not collectivities. And "persons belonging to ... minorities" only had these rights in states which accept that the minorities exist. This has not helped immigrant minorities in any countries because they have not been seen as minorities in the legal sense by the states.^{iv} So far, the Article has been interpreted as

- excluding (im)migrants (who have not been seen as minorities);
- excluding groups (even if they are citizens) which are not recognised as minorities by the State (in the same way as the European Charter does);
- only conferring some protection from discrimination (= "negative rights") but not a positive right to maintain or even use one's language.
- not imposing any obligations on the States.

Recently (6 April 1994) the UN Human Rights Committee adopted a General Comment on Article 27 which interprets it in a substantially more positive way than earlier. The Committee sees the Article as

- protecting all individuals on the State's territory or under its jurisdiction (i.e. also immigrants and refugees), irrespective of whether they belong to the minorities specified in the Article or not;
- stating that the existence of a minority does not depend on a decision by the State but requires to be established by objective criteria;
- recognizing the existence of a "right";
- imposing positive obligations on the States.

What are the possible implications of the General Comment on the educational linguistic human rights of (im)migrant minorities? The answer is that we do not know yet. Neither does the Human Rights Committee (Eide 1995b). It remains to be seen to what extent this General Comment will influence the State parties. If the Committee's interpretation ("soft law") becomes the general norm, and if the Western European countries where migrant and refugee minorities live start observing this norm, the educational linguistic rights might improve.

The questions at stake which I propose for our discussion are, how states can be persuaded to see the obvious three points

- that a linguistic nation-state ideology (believing in a necessary and beneficial congruence between state, nation and language) is irrational and harmful,
- that granting linguistic human rights to everybody, including minorities, is an antidote to ethnic conflict, not its cause, and
- that the maintenance and development of linguistic and cultural diversity is as important for the future of the planet as biodiversity.

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i These countries were (by 1 October 1995) Austria, Cyprus, Denmark, Germany, Liechtenstein, Luxembourg, Malta, the Netherlands, Romania, Spain and Switzerland (Hartig 1995, 4).

ii In addition, the Committee of Ministers was instructed "to begin work on drafting a protocol complementing the European Convention on Human Rights in the cultural field by provisions guaranteeing individual rights, in particular for persons belonging to national minorities" (Hartig 1995, 2).

iii Of the member States, the following have not yet signed: Andorra, Belgium, Bulgaria, France, Greece and Turkey. Ukraine has signed, despite not being a member State.

iv Finns in Sweden have tried and the Swedish response has so far been negative - see Skutnabb-Kangas, in press a. In October 1995 the Prime Minister accepted to at least **receive** the Sweden Finnish minority declaration - after more than 3 years...