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The legal regulation of language usage

The roots of regulating language usage

Regulating language usage is a novelty of modern times. In the antiquity, language usage was regulated by customs determined by circumstances and, in some cases, customary law. The 1545 Synod of Trident was the first to regulate the supremacy of a language over other languages known and used in an era in a legally binding way: for example, the Bible was only allowed to be read in Latin – and even so only for the representatives of the church, not laymen.

Later, especially at the beginning of modern times – in no small part thanks to typography – law has become the regulator of an ever increasing amount of situations of life. This phenomena has brought with it an increase in value regarding the legal regulation of language usage. In the "age of reform" language usage has transcended its "one-sided" role, and has become the instrument of bi- and multi-lateral communication. For centuries, the goal was not to understand the order (be it a command originating from the church or the emperor), but to follow it. A significant achievement of the age of reform, however, was that the citizen wanted to understand the orders addressed to him.

From a historic point of view it is thus evident that the active and passive knowledge of a common language has been a constitutive element of the modern state – language has become an instrument of exercising power. According to some commentators, famous-infamous French cardinal Richelieu was in fact the first politician to advocate a conscious language policy – and the formula he used was rather simple: state/nation = unified national language (*nationalism*). In the empire-building phase of modern times, the formula has evolved further: a nation's power and significance was measured by the number of remote geographic locations using its language – reference could be made here to the British or French Empires,

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that have introduced its national language as the official language of administration regarding their overseas territories.

Factors determining legal regulations

Evidently, the establishment of the primacy or compulsory usage of a given language has resulted in the marginalization of other languages - and in some cases even the prohibition of their usage. Regarding the past and the present, statistical data can be provided supporting the statement that the activity of a state in the area of language policy and social activity concerning the usage of regional or minority languages present within the territory of the state are inversely proportional. This relationship is embodied in varying – if any – legislation in various states.

Within the remit of this paper, I can not engage in a detailed analysis of the factors determining the legal regulation of language usage. It should be noted that these factors are not static, but dynamic in nature – they are determined temporally and geographically. Furthermore, they may also impact on each other in a strengthening and weakening way as well, possibly even cancelling each other out.

The main factors determining decisions regarding legal regulation of language usage are, in my view, the following:

- experience originating from the history of the state/nation
- the number of languages used within the territory of the state an their relative proportion
- the position of the state in regional an world politics, exigency resulting from internal politics (“prestige politics”)
- the position of the mother countries of minority languages spoken in a state in regional and world politics (where applicable)
- the current economic and social condition of the state
- the form of government and the organization of the establishment of the state
- relevant sources of universal and regional public international law
- the participation of the state in previous and current creation of international documents of hard and/or soft law (legally binding/non-binding) nature, with special emphasis on the bona fides and loyalty principles

- the level of harmony between the state's constitution and its lower level legal norms – the effectivity of law enforcement
- the suitability of the internal legal and institutional system for fulfilling the international obligations undertaken and the political commitments made by the state
- the psychological condition of the state's population.

It is a fact that presently no norm of international law exist that would prohibit (or indeed prescribe) that a state should have an official or a state language. An exact definition of state language/national language/official language is lacking, so these concepts are not necessarily used with the same content and meaning. They have also been regulated in quite diverse ways – most commonly, the official or state language is denominated in the constitution, complemented by a number of lower level legal norms. In some states, the constitution also takes account of the regional or minority languages spoken in the country. In numerous cases, these regulations are the consequences of the fact that a state is, or in fact aims to become a member of a certain (wider or narrower) international 'community' (UN, OSCE, CoE, EU). Frequently, these legal norms remain on a 'theoretical plane' – that is, the written sources of law are readily available, but the state does not guarantee their enforcement. For the sake of completeness, it needs to be mentioned that at the level of regional or universal international law, enforcement and scrutiny of these internationally prescribed norms is also quite weak.

The significance of the goal that language regulations strive to accomplish

It is worthwhile to enumerate the possible aims that regulating language usage may have, with regard being had to the aforementioned determining factors:

- facilitating communication between the state and its citizens
- exercising power and ensuring the leading role of a language
- expressing and preserving identity
- preserving diversity.

The intensity, the instruments, and the sanctions system of legal norms varies according to which goal compels the legislator to issue legislation. Fact is: the law is unable to regulate the full spectrum of every situation of life – e. g. language usage – in its entirety, especially if the legal regulation intends to persuade the persons concerned to behave differently from that which would follow from natural circumstances. As is the nature of things, legal regulation of

language usage is the result of the decisions of the political majority in power at a given time. The purpose is always to safeguard a given language: regulations may, on the one hand, aim to offer protection against the state, by maintaining the right of unrestrained language usage, or, on the other hand, intend to provide state-level protection in order to assist the preservation, maintenance and development of a language.

The dissonant elements of the Slovakian state language act

Sanctioning minorities by fines for the usage of their mother tongue (this deemed being contrary to the state language law) is not a novelty of 2009: the Slovakian interpretation and implementation of the rule of law has acknowledged this regulation quite comfortably already in 1995. The Slovakian state language law was created in 1995, according to the intentions of the Slovakian National Party and the Matica slovenská (Hamberger, 2009, 3), as response to the ratification of the Treaty of Friendship and Cooperation between Hungary and Slovakia by the parliament. It is the modification of this law adopted on the 30th of June, 2009 that aims to restrict the language usage rights of minorities to an unprecedented extent. The already quite tense relations between Hungary and Slovakia were further aggravated by the evidently tendentious Slovakian manoeuvre.

As noted earlier, for Slovakia, one of the political requirements of accession set by the European Union – as an element of the Copenhagen Criteria – called for Slovakia to create the internal legal regulation pertaining to the usage of minority languages. As part of this legislative process, in addition to the adoption of the act regulating the usage of minority languages, various regulations of the 1995 state language act have been amended at the end of the nineties: among other notable elements, the possibility of imposing a fine needs stands out as demanding our attention. In fact, the very purpose of the amendment adopted in June 2009 was to restore this regulation (Hamberger, 2009, 3). Mention needs to be made of the unpleasant feeling that a reader familiar with the interpretation and application of legal regulations gets while studying the amended Slovakian state language act. The wording of the act differentiates between the various minorities living in Slovakia, who are all citizens of the state, but speak different languages. This leads us to believe that the protection of the Slovak language – and through this, the hysterical search for the Slovakian national identity – is for the current Slovakian political elite equivalent with the discriminative treatment of the Hungarian language, one of the minority languages spoken in the country – which results in making the Hungarian minority politically nonexistent. As the usage of the mother tongue of

certain minority groups is an exception to the general rule, the act represents a glaring example of discrimination. Section 3.§ (5) of the language act states that „*Natural or legal persons use, during official communication, the state language […]. A person whose mother tongue fulfils the criteria of basic comprehensibility […] may use his mother tongue during official communication.*"[1] In order not to leave those not 'in the know' in the dark regarding mother tongues fulfilling the criteria of basic comprehensibility, the next sentence of the act adds the following: State authorities, state administration bodies and legal persons created by them "must accept documents as fulfilling the criteria of basic comprehensibility if said documents have been issued or authenticated by the competent authorities of the Czech Republic." Consequently, Slovak citizens speaking Czech as their mother tongue are treated differently than citizens whose mother tongue is Hungarian, but are citizens all the same.

It is hard to shake the thought that this case of language usage regulation is not devoid of an intention to exert psychological pressure – one doesn't need to dig too deep in order to uncover the purpose of inciting fear in minorities among the aims of the legislator. As proof, reference has to made be to the fact that the act unjustifiably distorts the line between private and public affairs, by widening the sphere of public affairs, or "official and public communication" but without giving a clear definition of the subject. That opens up the possibility of arbitrary decisions of the executive, leading to legal uncertainty and the futility of possible national judicial remedies. It should be noted, though, that the language act is obviously of no interest whatsoever to the majority of Slovakian people.

The right to freely choose the language one wishes to use is an organic part of the innermost circle of one's personality rights, and is a fundamental value of European constitutional traditions, bound tightly to human dignity. As part of the fundamental rights of individuals, the constitutions of European states and international treaties agreed upon in recent decades either refer to this right *expressis verbis*, or contain it in an implicit way, deductable by legal practitioners.

Regulating the right to choose between languages in relation to public and private affairs requires a clear definition of public (or official) interactions. European states – especially the Member States of the European Union – have become the members of a legal community wherein certain legal categories – especially as interpreted in connection with fundamental

[1] Non-official translation.

human rights – are not exclusively determined by decisions of state authorities, but are subject to international scrutiny. And the scrutinizing-controlling organisations are state-established European level courts that canalize common European constitutional (and other legal) traditions: the European Court of Human Rights (Strasbourg) and the Court of Justice of the European Union (Luxembourg). Thus, the concept of "public interaction" and its application may not be determined in an arbitrary way by any European state.

It can be expected of a state that it shall strive to achieve and maintain a continuous balance between the spheres of private and public affairs (as the horizontal and vertical dimensions of communication), and that it shouldn't unnecessarily and disproportionately interfere with or restrict its citizens' private sphere of life: for example, it shouldn't prohibit or restrict the right to choose one's language freely. The modern concept of the state and the legal system created and maintained by it – at least the kind of legal regime that is deemed acceptable in Europe – cannot at the beginning of the 21st century present any legitimate aim that would justify the unnecessary and disproportional restriction of the right to choose and use one's language – the most personality-determined instrument of communication – freely.

A self-assured and assertive state in Europe has no need to constrain people's right to choose and use their language, regardless whether the private or public sphere is concerned. Proof supports the statement that most states have either learned their lesson, or are on the right path to learning their lesson: as living, autonomous and ever changing natural entities, languages – like numerous other elements of people's natural surroundings – react only with very low efficacy to any kind of artificial (human) intervention and (legal) regulation. In relation to this, mention needs to be made of the theory that actual equality between citizens can only exist if no citizen has to learn any language other than his mother tongue in order to be able to make use of his basic citizens' rights. Such a situation is natural for the majority population of a state, but speakers of minority languages should be entitled to this right as well (Vizi, 2004, 3).

The state obviously has a right – to an extent essentially required for its functioning – to determine the language (or languages) that may be used as a means of communication with its citizens in the course of everyday administration (let us refer to this plane as "public life"). Raising a given language (for example the state language) to a pedestal via legal instruments goes way beyond this necessity. Expanding the sphere of "language usage in public life" to the detriment of private language usage is unnatural and unnecessary, and indicates that the legislating state misinterprets its own role, and misunderstands (or perhaps purposefully *wants*

to misunderstand) the applicability and effectiveness of legal norms in general and in particular as well.

Internal legal norms that aim to regulate language usage – in states where such legislation exists as part of the legal system – are formulated as *lex imperfecta:* they typically lack any kind of sanction ensuring conformity with these norms. Instead, states rely on the application of the norms via voluntary compliance – on behalf of state authorities, legal persons and natural persons as well. The possibility of imposing a fine is – to put it mildly – an unusual and surprising solution (Hamberger, 2009, 8). Especially as the basis for imposing the fine is scrutiny by means of a sort of "language police" – as is the case with the Slovak state language act, in a situation where neither the criteria of scrutiny, nor the available judicial remedies against such decisions are clarified.

Regulations that require the compulsory usage of a given language regarding various areas of social life; and burden natural persons with financial expenditure in connection with the usage of the state language are disquieting.

Such legal regulations are not in conformity with general norms of international law that prescribe the requirement of non discriminative treatment and the encouragement of the usage and development of minority languages (while forbidding its discouragement). These norms are present in a number of universal and regional international treaties, in recommendations of various international organizations, and are also contained in the Treaty on Good-neighbourly Relations and Friendly Co-operation between Hungary and Slovakia.[2] Detailed rules are to be found in the Council of Europe's Framework Convention for the Protection of National Minorities, the The European Charter for Regional or Minority Languages[3], or recommendations of the OSCE. It can be assumed that the amended regulations of the Slovak state language act do not comply with Slovakian constitutional requirements either.[4]

Without aiming to achieve comprehensiveness, let us list the most important international documents of relevance:

- The International Covenant on Civil and Political Rights (1996, New York) – Article 27

[2] Treaty on Good-neighbourly Relations and Friendly Co-operation between the Republic of Hungary and the Slovak Republic (Paris, March 19, 1995), Articles 14-15.

[3] The gravitiy of the referral to these treaties is considerably weakend by the fact that the Republic of Slovakia has made, when ratifying the Treaty, a number of reservation-like statements in relation to numerous articles of the Convention (e. g. the 20% threshold) – the Convention allows for reservations to be made, but not regarding all of its Articles.

[4] Constitution od the Republic of Slovakia, Article 34.

- The European Convention on Human Rights – general of prohibition of discrimination – Article 14
- The 12th additional protocol to the ECHR – general prohibition
- The European Charter for Regional or Minority Languages
- The Framework Convention for the Protection of National Minorities – language usage – Articles 9-11 and 14
- The Charter of Fundamental Rights of the European Union – Article 21
- The United Nations General Assembly Declaration No. 47/135. on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
- The Universal Declaration on Cultural Diversity (UNESCO 2001)
- The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Commission on Security and Cooperation in Europe (Copenhagen, June 29, 1990)
- Recommendation No. 1201 (1993) of the Parliamentary Assembly of the Council of Europe
- The Charter of Paris (1990)
- The European Stability Pact (1995)
- The Hague Recommendations Regarding the Education Rights of National Minorities (1996)
- The Oslo Recommendations Regarding the Linguistic Rights of National Minorities (1998)
- The Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999)

Possibilities of Legal Protection within the system of the European Union

Duly, the question arises whether there are any material and procedural legal instruments (apart from traditional – but legally ultimately irrelevant – diplomatic negotiations and pressurization from the international community) at the disposal of the regional international community, a member state of which – Slovakia – has created – and aims to enforce – a language regulation system contrary to the aforementioned principles.

In my view, the system of the European Union, of which Hungary and Slovakia are both members of since 2004, contains more than one legal instrument that allows for the interpretation of the situation from a legal point of view. The question of whether the Slovak

state language law and the legal system of the European Union/European Community are in conformity or not can be contested before multiple institutions of the EU. These possible instruments may be categorized according to whether they have a legally binding result or are "advisory" in nature.

Among the legally non-binding (soft law) instruments, the Charter of Fundamental Rights of the European Union[5], the Vienna-based Fundamental Rights Agency of the EU, political pressurization on behalf of the European Parliament, the Commission's new framework strategy for multilingualism definitely deserve a mention – and the list could go on.

Regarding legally binding instruments (a court judgement or binding Council decision), the following should be noted.

As part of the legal system of the European Union, Community law rests upon the principles of equal treatment and the prohibition of discrimination (and includes secondary norms providing detailing regulation regarding the principles), the possibility of a judicial remedy before the European Court of Justice may be opened up, for example in the form of an infringement procedure against Slovakia (Kardos, Majtényi, Vizi, 2009). This procedure is, as a general rule, initiated by the European Commission – additionally, a member state may bring another member state before the Court directly – when it notices the (supposed) infringement of Community law on behalf of a member state. Realistic chance of action by the Commission arises if an action by a member state – in this case a provision of the Slovak state language act – renders the (economic) activities of a group of individuals more difficult or impossible.

Furthermore, an additional – and relatively new – instrument also exists within the legal order of the European Union, one that is treated with the utmost caution on behalf of politicians and legal scholars/practitioners as well. This instrument was essentially established in 1999 via the Treaty of Amsterdam, and refined in 2003 by the Treaty of Nice: Article 6 of the Treaty on European Union defines a system of monitoring and sanctions regarding the respect for fundamental human rights. Interpreted together, Articles 6 and 7 of the Treaty on European Union may result in the voting rights of a member state being suspended in the case of a serious and persistent breach of the principles of democracy, rule of law or respect for human rights.

[5] If and when the Treaty of Lisbon comes into force, it will bestow a legally binding nature upon the Charter – although it will not provide an autonomus legal remedy connected to it.

The Treaty of Lisbon, which is currently in the process of ratification, modifies Articles 2 and 3 of the Treaty on European Union. By means of this amendment, member states have widened the scope of rights that are to be protected, referencing not only human rights but the rights of individuals belonging to minorities as well. This is a clear indication that the rights of minorities are to be treated as fundamental rights and values at the Union level.[6] Article 3 paragraph (3) specifies the respect for linguistic diversity as an aim of the European Union: "[The EU] shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced."

The version of Article 7 of the Treaty on European Union currently in force regulates the mechanism that allows the EU – essentially the community of the member states – to ascertain that a member state is in serious and persistent breach of fundamental rights, in this case the right to use one's mother tongue. This mechanism of scrutiny contains multiple steps, and the final instrument available to the Union is to suspend the concerned member state's rights arising from the Treaty – for example its voting rights in the Council, the main decision making body in the EU. To my best knowledge, no use has been made of this scrutiny mechanism, except for an "almost" case. The sanctions regarding Austria in 2001 (Szalayné, 2001) were introduced without the aforementioned mechanism, but have nevertheless demonstrated the disapproval of the 14 other EU-member states at that time, on the grounds of a member state action presumed to be infringing fundamental rights. At that time, the member states have reduced their diplomatic relations with Austria to a technical minimum. In that case no actual infringement of fundamental rights was confirmed. The situation would be considerably different if, for example in connection with the Slovak state language act, a definite infringement of fundamental rights could be determined. Such a declaration of non-approval on behalf of the member states (as in the case of Austria) is obviously a possibility, independently from the scrutiny and sanctions mechanism. The application of Article 7 would evidently only become a real possibility in a very serious diplomatic and legal situation.

Instead of a conclusion

[6] Article 2 of the Treaty on European Union as amended by the Treaty of Lisbon reads as follows: „The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

Today it is apparent that there is a tendency regarding states' approach to the question of minority languages, as states tend to treat these not as contenders or endangering elements, but regard them as parts of the 'mainstream' cultural heritage and as components of the principle of equality of all citizens, which accordingly need to be respected and protected – if necessary, by means of law.

The scientific, diplomatic and political turmoil surrounding the Slovak state language law doesn't allow for any kind of conclusion to be drawn at the moment. So finally, I would just like to exercise my right to choose my language freely and – allowing for a bit of sarcasm – conclude this paper with a proverb. This proverb has been chosen by the European Commission as the motto of the framework strategy for multilingualism: "Koľko jazykov vieš, toľkokrát si človekom." Translated to english, the proverb means „The more languages you know, the more of a person you are." As fate would have it, this is a Slovakian proverb.

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