

6 FROM THE PRINCIPLE OF LINGUISTIC DIVERSITY TO ENFORCEABLE LANGUAGE RIGHTS IN THE EUROPEAN UNION

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6.1 INTRODUCTION: DIVERSITY AND THE PROLIFERATION OF GUARANTEES

Made up of 27 member states, it is a commonplace to state that the European Union is culturally and linguistically diverse. Historically, this diversity has been accommodated by an extraordinarily permissive language regime in the framework of European integration – international organizations normally restrict the number of their official languages to a minimum in order to guarantee efficient functioning.¹ This permissive approach to languages notwithstanding, with the entering into force of the Lisbon Treaty, we are witnessing a proliferation of the guarantees of linguistic diversity: ranging from the negative obligation to safeguard linguistic diversity² and the principle of non-discrimination³ to the positive obligation of the Union to promote its linguistic diversity.⁴ It seems as though the

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1 A. Károly, ‘Language Policy in the European Union’, 8 *Eger Journal of English Studies*, 2008, p. 130. J. Witt, *Wohin steuern die Sprachen Europas?*, Stauffenburg Verlag, 2001, pp. 69-70. Keeping the number of official languages in international organizations and other entities for transnational cooperation actually serves the gate-keeping efforts of national governments that seek to determine which pieces of information and how it should be transferred to the national public. Archiburgi points out that pressures for democratization, transparency and accountability of intergovernmental entities have intensified forcing such typically closed organizations to rethink their language policies. D. Archiburgi, ‘The Language of Democracy: Vernacular or Esperanto? A Comparison between the Multiculturalist and Cosmopolitan Perspectives’, 53 *Political Studies*, 2005, p. 541.

2 Art. 22 Charter of Fundamental Rights (‘ChFR’).

3 Art. 21 ChFR.

4 Art. 3 para. 3 TEU and Art. 165 paras 1-2 TFEU. Whether or not the linguistic diversity of the Union and the member states encompass immigrant languages remains a question. Grin makes a good case for including immigrant languages into the policies related to linguistic diversity and language rights. François Grin, ‘Combining immigrant and autochthonous language rights: a territorial approach to multilingualism’, in T. Skutnabb-Kangas & R. Phillipson (Eds.), *Linguistic Human Rights*, De Gruyter Mouton, 1995, pp. 31-34.

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expansion of the guarantees⁵ of linguistic diversity brought about by the Lisbon amendments is a reaction to certain deep-lying fears, threats or discontent,⁶ which surfaced as a call to protect and promote Europe's languages against the European Union itself.

The EU's linguistic diversity thus emerges as a value in dire need of protection. But what are the reasons and justifications for such a claim? Is language to be regarded and protected as a particular area of social reality or a value of horizontal nature encompassing the complete socio-political reality? Does linguistic diversity represent an intrinsic value? Is it possibly instrumental to the protection of other values or rights? Although lawyers are normally concerned with the interpretation and application of law it may be of particular interest to take a step back and examine the most likely reasons behind such stipulations, highlighting the possible political and legal interests and choices that have eventually been codified. The underlying theoretical framework thus revealed may finally serve as a starting point for conceptualizing enforceable language rights within the European Union itself.

The present article is divided into six parts. Following the introduction I attempt to define the term linguistic diversity, which shall be the starting point of my investigation. Next, I identify the concrete fears and frustration of different language groups and member states associated with European integration. I then turn to the origins and development of the claim for the protection of linguistic diversity. After reviewing the general theoretical foundations of the principle of diversity and its contribution to the debate on linguistic diversity, I propose an instrumental perspective of language as a possible approach of the EU towards guaranteeing language rights.

6.2 DEFINITION OF LINGUISTIC DIVERSITY

To adequately assess the concepts underlying linguistic diversity, it is appropriate to also define the term linguistic diversity itself. In a broad sense, linguistic diversity may be defined as "the range of variations exhibited by human languages".⁷ Linguistic diversity is

5 It is too early to decide how effective these guarantees shall be and whether they merely represent another attempt at "window dressing", see A. von Bogdandy, 'The European Union as Situation, Executive, and Promoter of the International Law of Cultural Diversity', *EJIL*, Vol. 19, No. 2, 2008, p. 242. As Kraus puts it: "Although Europe's constitutional discourse celebrates diversity in general and abstract terms, the diversity-related elements in the process of European polity-building remain blurred." P. A. Kraus, *A Union of Diversity*, Cambridge University Press, 2008, p. 10.

6 Von Bogdandy 2008, pp. 247-249: "It is important to note, that the influence of European integration on culture is not restricted to the cultural policy of the Community. Even in areas where Community law apparently does not intervene, the processes and consequences of economic integration are at play." M. Király, *Egység és Sokféleség*, Új Ember, Budapest, 2007, p. 265.

7 D. Gorter *et al*, 'Cultural Diversity as an Asset for Human Welfare and Development', position paper, p. 2 <www.susdiv.org/uploadfiles/RT1.2_PP_Durk.pdf>. (2009) (last accessed 18 December 2011).

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therefore an expression of the variety of languages; however, it is also a relative term in the sense that any assessment of linguistic variety has to take place with reference to a particular territory or confined community. Taking the territorial aspect as a starting point, Skutnabb-Kangas asserts that linguistic diversity can be defined from two perspectives. The first perspective relies on ascertaining the number of languages in a given territory or community (for example: Europe, member state, region, etc.). Thus, any reduction that takes place in the number of languages on the territory/community under examination results in a loss of its linguistic diversity (*richness*). Another approach would be to consider the number of speakers of the different languages spoken in a given territory/community and their relative proportion to each other (*evenness*). This approach stipulates that linguistic diversity should be measured on the basis of the percentages of the population speaking the different languages present in the area/group under examination. From this perspective, linguistic diversity is high in regions, member states, etc. where the largest language group represents the smallest proportion of the population.⁸

Linguistic diversity is therefore measurable and as such, may increase or decrease due to different factors of influence. One such comprehensive factor of influence is language policy. The toolkit of language policy⁹ is diverse; language policies – be it on the state or the European level – may serve different aims, from rationalization and the restriction of language use to protecting and promoting linguistic diversity and granting language rights to the speakers of ‘endangered’ languages.¹⁰ As linguists never cease to remind us, the linguistic diversity of Europe is relative, as it ‘is the linguistically poorest continent’, comprising

8 T. Skutnabb-Kangas, ‘Why Should Linguistic Diversity be Maintained and Supported in Europe?’, Reference Study – Council of Europe 2002, <www.coe.int/t/dg4/linguistic/Source/Skutnabb-KangasEN.pdf> (last accessed 18 December 2011), p. 9. For a better understanding, the two approaches are illustrated by Philippe Van Parijs: “Take a population A consisting of three communities, each of them speaking only one language, and another population B consisting of five communities, each of them also speaking only one language. The *richness* of B is then said to be greater than that of A, as the number of distinct *types* – whether species, races or, in this case, native languages –, is larger in B than in A. It may therefore be tempting to infer that population B is linguistically more diverse than population A. But this would be premature. Why?

Suppose that the three communities that make up population A are of about equal sizes, whereas in population B one of the five languages is the native language of 99% of the population? In the light of this additional information, we shall have no difficulty agreeing that population A is, after all, linguistically more diverse than the nearly homogeneous population B. Diversity, we conclude, cannot be only a matter of richness, *i.e.* of number of types, but also of *evenness*, *i.e.* of how equally the population is spread between those types, or of how little the members of the population are concentrated in one or few types. Just as richness will not do without evenness, evenness will not do without richness.” ‘Linguistic Diversity – What is it? And does it matter?’, EURODIV Paper (December 2006), p. 26, <www.susdiv.org/uploadfiles/ED2006-026.pdf>, p. 1 (last accessed 18 December 2011).

9 For a comprehensive assessment of the term language policy, see Witt 2001, pp. 23–29. According to Witt, language policy may cover both national and foreign languages and regulate areas related to cultural, economic and even foreign policy.

10 P.L. Láncoš, ‘Résztvételi jogok és nyelvi sokszínűség az Európai Unióban’, *Miskolci Jogi Szemle*, Vol. 19, No. 2, 2009, p. 112.

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only about 3% of the world's languages.¹¹ With the commitment of the European Union towards preserving its cultural diversity, in particular in the field of languages, European language policy should be aimed at balancing out external and internal factors of influence that may result in a loss of linguistic diversity in the Union.

6.3 FEARS, THREATS AND DISCONTENT: PROTECTING LINGUISTIC DIVERSITY AGAINST THE UNION

Before embarking upon the discussion of the various manifestations of the concept of diversity, it is appropriate to examine the perceived and real threats posed by European integration to linguistic diversity. It is important to bear in mind that although the present article portrays the European Union as a single actor in the context of integration and linguistic assertion, the individual institutions and bodies of the EU assume different – at times even opposing – roles in this process. For example, whereas the European Parliament takes on the role of self-appointed representative of the cultural diversity of Europe¹² and regularly adopts resolutions for furthering linguistic diversity,¹³ the Commission is adamantly opposed to all attempts to expand the range of internal working languages.¹⁴ And while the European Ombudsman suggests that good administrative practice entails due consideration of the linguistic endowments of citizens,¹⁵ the European Court of Justice denies that European law “confers a right on every citizen to have a version of anything that might affect his interests drawn up in his language in all circumstances”.¹⁶ In must also be pointed out that in accordance with the definition given above, the linguistic diversity of the European Union and in fact that of the member states comprises not only the official languages of the EU but also regional and minority languages and, arguably, the non-indigenous languages of immigrant citizens. These three layers of linguistic variety are all affected by European integration, albeit to a very different degree and manner.

11 Skutnabb-Kangas 2002, p. 7. At the same time, thanks to colonization European languages had a lasting impact on indigenous languages of other continents and are still the official language in numerous non-European states.

12 “Whereas Parliament itself, as the Community institution which has been democratically elected and therefore represents the cultural diversity of Europe.” Resolution on racism, xenophobia and anti-semitism and the results of the European Year against Racism (OJ C 55/17, 24.2.97).

13 EP Resolution of 11 February 1983, OJ C 68, on Measures in Favour of Linguistic and Cultural Minorities, EP Resolution of 30 October 1987, OJ C 318, on the Languages and Cultures of Regional and Ethnic Minorities in the European Community, EP Resolution of 29 February 1994, OJ C 61, on Linguistic and Cultural Minorities in the European Community.

14 Case T-185/05, *Italy v. Commission* [2005] ECR I-10217.

15 3191/2006/(SAB)MHZ, 2.5.

16 Most recently reiterated in Case T-117/08, *Italy v. European Economic and Social Committee* [2011] ECR 00000 at p. 71.

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6.3.1 *The Invisible Hierarchy of Languages: The Institutional Language Regime of the EU*

One of the most obvious restrictions on linguistic diversity posed by European integration is inherent in the failure of the official institutional language policy of the EU: although formally the European institutions use all 23 official languages in their work, reality looks strikingly different. Indeed, according to Ahn, the Union's "respect for linguistic diversity in its institutional language policy is rather a symbolic policy statement, which does not carry much weight".¹⁷ Only a handful of languages, most prominently English but also French and German, are employed in everyday work, whereas other official languages are largely neglected.¹⁸ Of course, it may be pointed out that the dominance of English in Europe is not necessarily attributable to a conscious European language policy but much rather to the international influence of the United States in the area of economy, politics and popular culture.¹⁹ This notwithstanding, the threat to linguistic diversity in Europe (and elsewhere for that matter) is presented as the threat of Englishization of other languages.²⁰ As Phillipson points out: "English is influential and popular worldwide because this brand of language connotes pleasure, employment, influence, and prestige."²¹ This trend is reinforced by the fact that the more people speak English as their mother tongue or as a foreign language, the more incentive non-speakers shall have to learn English too, due to probability-sensitive language learning to maximize their economic and social opportunities.²²

The unequal status of the official languages in the European public sphere leads to a deep-lying discontent among certain linguistic groups, especially as Regulation 1/58 on

17 E. Ahn, 'A Region Divided/United: Language Policy Developments in the European Union', cited by Károly 2008, p. 133.

18 Károly 2008, p. 131. According to Phillipson "there is unofficial acceptance of a linguistic hierarchy with French and English at the top": R. Phillipson, 'English for the Globe, or Only for Globe-Trotters?', in: Ch. Mair, *The Politics of English as a World Language*, ASNEL Papers 7, Rodopi, B.V. Amsterdam – New York, 2003, p. 21.

19 Károly 2008, p. 134. In the figurative description offered by Phillipson "English may be seen as a kind of linguistic cuckoo, taking over where other breeds of language have historically nested and acquired territorial rights, and obliging non-native speakers of English to acquire the behavioral habits and linguistic forms of English". R. Phillipson, *English Only Europe?*, Routledge, London 2008, p. 4. For further reasons see Phillipson, 2003, pp. 24-26.

20 Vividly illustrated by volume titles such as 'English-Only Europe?'. Phillipson 2008, 'The Politics of English as a World Language: New horizons in postcolonial cultural studies'. Mair 2003.

21 Phillipson 2008, p. 7.

22 P. Van Parijs, 'Linguistic Diversity as a Curse and as By-product', in: X. Arzoz (Ed.), *Respecting Linguistic Diversity in the European Union*, John Benjamins Publishing Company, Amsterdam, 2008, p. 22. Speaking English, the global lingua franca opens up employment opportunities, especially for native-speakers, P. J. Weber, *Kampf der Sprachen*, Verlag Krämer, Hamburg, 2009, p. 12. At the same time, this also "has serious adverse effects on civil society and democratic participation in the political process. English is the language of the powerful. For the majority, lack of proficiency in English closes doors". Phillipson 2008, p. 7.

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language use in the institutions does not make any differentiation between the official languages of the Union.²³ According to Mayer and De Witte, the ‘principle of the equality of languages’ may be derived from the Regulation, which forms integral part of the European constitutional construct.²⁴ However, in its ruling on *Kik*, the European Court of Justice (hereinafter ‘ECJ’) found that nothing in the Treaty or the case law of the ECJ supports the existence of such a principle.²⁵ The Court reiterated its position in *Italy v. Commission*.²⁶ According to settled case law, there is a possibility of introducing a gradual system among the languages – *i.e.* to exclude certain official languages from the category of working languages. Inherent in such a system is the possibility of a disadvantage to the speakers of languages thus excluded. For example, Union citizens speaking an official language which does not belong to this privileged circle or the speakers of minority vernaculars may not, or only at a considerable cost or effort participate in certain administrative procedures of the Union. Further, the speakers of such disadvantaged languages have less chances of employment on the ‘Union job market’ than the speakers of English, French or German. Weber asserts, that the

status of English is no doubt related to the dominance of the English speaking (Anglophone) cultures – for example persons speaking English as their mother tongue are often in a preferential position when applying for certain vacancies.²⁷

According to Grin, the supreme status of the English language results in an overall social advantage for the UK and its citizens, with approximately 17 billion Euros in savings and income per annum.²⁸ Such a privileged position of the English language is not even justified by the proportion of the English tongued population in the EU: English is only the third largest linguistic group in the Union. Thus, not only are minority, regional and immigrant languages excluded from the European communicative space, but in practice, communication with and within the institutions and bodies of the Union is restricted to just a few of the official languages resulting in an unappealing linguistic hierarchy.²⁹

23 Regulation No. 1 determining the languages to be used by the European Economic Community.

24 B. De Witte, ‘Language Law of the European Union: Protecting or Eroding Linguistic Diversity’, in: R. Crauford Smith (Ed.), *Culture and European Union Law*, Oxford University Press, 2004, p. 221.

25 Case C-361/01, *Kik v. OHIM* [2003] ECR I-8283, p. 87.

26 “[I]t should be noted that there is no provision or principle of Community law requiring that such publications should routinely be made in all the official languages.” Case T-185/05, *Italy v. Commission* [2008] ECR II-3207, at p. 115.

27 Weber 2009, p. 6.

28 F. Grin, ‘Principles of policy evaluation and their application’, in: Arzoz 2008, p. 80.

29 F. Palermo, ‘Linguistic Diversity within the Integrated Constitutional Space’, *European Diversity and Autonomy Papers* (‘EDAP’), No. 2, 2006, p. 6.

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We may witness an emergence of 'language cases' not only before the Court, but also the European Ombudsman,³⁰ signalling the discontent of the Union citizens with such a European linguistic set up. In particular, the European Ombudsman examined a complaint related to the published communications and internal documents of the Commission, complaining that these are often only made available in English.³¹ Although Regulation 1049/2001³² grants Union citizens the right of access to documents of the European Parliament, Council and Commission, it is silent on the issue of which language versions have to be made available to the applicants, enigmatically (and perhaps contradictorily) stating: "Documents shall be supplied in an existing version [. . .] with full regard to the applicant's preference."³³ According to the Ombudsman, although there is no legal obligation to draw up a new document containing the information the applicant requests, "it is good administrative practice to provide information when requested." In particular, "the principle of good administration requires the institutions to be citizen friendly", implying that it is the interests of the citizens that have to be given priority rather than internal institutional aspects and difficulties, and thus, institutions should, as far as possible provide "information in a language that the interested person requests, even when this information [is] only available in a different language."³⁴

A very topical example for the struggle of official languages against privileged languages of the EU is the newly authorized enhanced cooperation of 25 member states on the establishment of a unitary patent protection. The EU has long strived to establish a unitary patent protection system in order to drastically cut back on the costs of patent applications which were very expensive due to translation requirements. The high costs of patent protection in the EU made the European market uncompetitive from a global perspective, therefore, member states started working on a solution to reduce the number of languages in which the patent applications have to be made. For about a decade the negotiations on the unitary patent dragged on because certain member states were not willing to give up the compulsory use of their official languages in the patent system. Finally, the majority of the member states decided to side step Italy and Spain and launched an enhanced cooperation for the unitary patent system based on the language regime of the European Patent Office (comprising English, French and German).³⁵

30 Decision of the European Ombudsman closing his inquiry into complaint 3147/2006/IP against the European Personnel Selection Office (EPSO); Decision of the European Ombudsman on complaint 3191/2006/(SAB)MHZ against the European Commission.

31 3191/2006/(SAB)MHZ.

32 EP and Council Regulation of 30 May 2001, 1049/2001, OJ L 145, regarding public access to European Parliament, Council and Commission documents.

33 *Ibid.*, Art. 10 para. 3.

34 3191/2006/(SAB)MHZ, 2.5.

35 <www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/119732.pdf> (last accessed 18 December 2011); B. Cordery, 'An EU Patent? Proposal for Enhanced Cooperation', *Kluwer Patent Blog* (12 January 2011), <<http://kluwerpatentblog.com/2011/01/12/an-eu-patent-proposal-for-enhanced-cooperation/>> (last accessed 18 December 2011).

It seems neither Union citizens nor member states are ready to accept the decline of the significance of their languages in the European political, cultural and economic space and are increasingly challenging such discriminatory practices. This also proves that language disputes are never just disputes over language. “[. . .] [W]hen a language group fights to preserve its language, it is never just preserving a tool for communication: It is also preserving certain political claims, autonomous institutions, cultural products and practices, and national identities”.³⁶

Thus, the issue of linguistic diversity may also be perceived as a struggle for political assertion. Looking towards the future, Weber even suggests, that “with the deepening of European harmonization, the cultural and linguistic power struggles between the different peoples shall intensify, as local and regional vernaculars will increase in importance for the population”.³⁷

The increasing dominance of English has several important consequences, all to the detriment of linguistic diversity. Firstly, on the global and EU level linguistic diversity is reduced due to the shrinking of the number of speakers and the territories where ‘unpopular’ smaller languages are spoken. This phenomenon is not exclusively induced by the spread of English, it is but one important factor in the process. Skutnabb-Kangas somewhat bleakly declares: “big languages turn into killer languages, monsters that gobble up others, when they are learned *at the cost of* the smaller ones”.³⁸ Secondly, languages become ‘infiltrated’ by English terms, expressions and syntax,³⁹ which reduces the diversity or richness of other languages. A well-known example is the emergence of ‘franglais’, persecuted by prominent French linguists and politicians.⁴⁰ Thirdly and ironically, the English language itself becomes affected and distorted in the process of its massive employment by non-native speakers, as exemplified by the emergence of ‘Euroenglish’. According to Jankojć, Euroenglish even has dialects, regional variants and professional jargons, all resulting in a

36 W. Kymlicka & F. Grin, ‘Assessing the Politics of Diversity in Transition Countries’, in: F. Daftary & F. Grin (Eds.), *Nation-Building, Ethnicity and Language Politics in Transition Countries*, ECMI/LGI Series on Ethnopolitics and Minority Issues, Open Society Institute, Budapest, 2003, p. 11.

37 Weber 2009, pp. 13-14.

38 T. Skutnabb-Kangas, ‘Linguistic Diversity and Biodiversity – The Threat from Killer Languages’, in: Mair 2003, p. 33.

39 “Reduced linguistic diversity so understood is a direct and unavoidable consequence of the spreading of a lingua franca. [. . .] Whenever natives of some language learn another language, this expands the possibility of borrowing and other forms of influence. However, as most native speakers of a given language become competent in the same non-native language, this possibility becomes a strong probability, and the language they all learned will tend to exert a lasting influence on their native tongue – most obviously through the import of vocabulary, sometimes also morphological and syntactic changes.” Van Parijs 2008, p. 21.

40 P. Thody, *Le Franglais: Forbidden English, Forbidden American – Law, politics and language in contemporary France*, The Athlone Press, London 1995, pp. 34-37. Thody points out, that the animosity towards imported English words are also fed by Anglophobia present especially on the French political right. See also R. Munday, ‘Legislating in Defence of the French Language’, 44 *Cambridge Law Journal* 2, 1985, pp. 218-219.

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process which changes English from within.⁴¹ Fourthly, linguistic diversity is especially reduced on the territories of states where the official language is English, as the more people speak English within and outside the home country, the less incentive English speakers will have to learn a foreign tongue. This leads to massive monolingualism in the respective states and conversely, an even greater demand for other language speakers to learn English to accommodate monolingual English speakers.⁴²

6.3.2 *Forces of the Internal Market: The Free Movement of Languages*

As regards the threats and frustration posed by European integration to linguistic diversity, another point of departure may be the area of market freedoms within the internal market and the possibility of the restriction of free movement based on legitimate language goals. Here, the threat does not necessarily lie in the unimpeded spread of the English language and often it is not the official national language that is endangered, but the minority and regional languages of the different member states. In the area of the free movement of goods and services, the problem is usually captured by the so-called 'trade-linkage-debate', which centres around the issue of cultural values and their commodification in the process of free trade.⁴³ Although the 'culture and trade quandary' is typically marked by US dominance in the audiovisual sector⁴⁴ – and a concomitant dominance of American culture and English as the language of such products, a phenomenon against which the EU attempts to step up as a united front in the framework of the WTO⁴⁵ – the internal market may be another (though arguably more confined) battlefield for invoking cultural justifications to restrict trade in goods and services threatening linguistic diversity. As Toggenburg points out, "de iure the 4 market freedoms may considerably constrain national language policies".⁴⁶

41 According to Jankojć *Euroenglish* "is a very bare language, but it is also a supranational language which does not belong to any specific country; it is the language used at international conferences, in world trade and international finance. The non-native speakers who use this language have 'tainted' it: it contains and accepts mistakes that would be unacceptable for a native speaker". Z. E. Jankojć, 'University, Students, Plurilingualism, Euroenglish and Society of Knowledge in the Context of European Integration', <www.up.krakow.pl/ktime/ref2009/jankojc.pdf>, p. 16 (last accessed 18 December 2011).

42 Phillipson 2008, p. 63.

43 R.J. Neuwirth, 'The 'Cultural Industries': A Clash of Basic Values? A Comparative Study of the EU and the NAFTA in the Light of the WTO', *EDAP*, No. 4, 2004, pp. 7, 12-13.

44 J. Shi, 'The "Specificity" of Cultural Products versus the "Generality" of Trade Obligations', *Yale Law School Legal Scholarship Repository, Student Scholarship Papers*, paper 104, Spring 2010, pp. 3-4.

45 M. Burri, 'Cultural Diversity as a Concept of Global Law: Origins, Evolution and Prospects', *Diversity* 2, 2010, p. 1060-1062.

46 G.N. Toggenburg, 'Die Sprache und der Binnenmarkt im Europa der EU: Eine kleine Beziehungsaufstellung in 10 Punkten', *EDAP*, No. 1, 2005, p. 15.

The internal market established within the framework of European integration is based on the premise of free trade, where possible cultural justifications restricting the free movement of goods and services must be construed extremely narrowly.⁴⁷ Member states are not free to protect their cultural and linguistic diversity at their own discretion, but must adhere to the imperative of free movement.⁴⁸ The commodification of cultural values and their impact on national, regional, minority and other cultural and linguistic communities is thus very apparent in the framework of the internal market.⁴⁹ And while the EU generally heralds itself as the guardian of cultural values, it attempted to introduce a so-called disconnection clause to the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions to rule out the effects of the agreement within the internal market⁵⁰ to prevent member states from invoking the Convention against European law. It is also worth reiterating, that applications and procedures before European offices and bodies related to the functioning of the internal market – such as

47 PL. Láncoş, 'A kultúra fogalmának és védelmének alakulása az UNESCO és az Európai Közösség jogforrásainak fényében', 3 *Iustum Aequum Salutare* 4, 2007, pp. 126-127.

48 For example, although the ECJ adopts a seemingly strict approach to labeling by compelling shop owners to at least use 'languages easily understood' by the consumers of the member state when selling products not labeled in the official language of the member state, in essence, the ECJ and the Art. 14 of Council Directive 79/112/EEC of 18 December 1978 are opening the door to speculation about which languages are "easily understood" in a member state and more importantly: the possibility of not using native languages in, e.g. product labeling. In *Piageme II* the ECJ stipulated: "The expression 'a language easily understood' used in Art. 14 of the Directive is not equivalent to 'the official language of the Member State' or 'the language of the region'. It is designed to ensure that the consumer is provided with information rather than to impose the use of a specific language." This wide-reaching formulation would in practice typically result in a reduction of possible language versions (Case C-85/94, *Piageme v. Peeters* [1995] ECR I-2955; C-385/96. European Court reports, 1998, p. I-04431). At the same time, it is difficult to ascertain which languages may be prescribed for labeling purposes by the members states in the individual cases. As Cosmas points out: "If the easily understood language is neither the official language nor the language of the region, what language is it? [. . .] Are member states still authorized, or are they no longer authorized, to legislate on matters of language? Where an assessment is made by the national court on a case-by-case basis, who is the 'purchaser' to be taken into account when it assesses whether the language is easily understood?" (Opinion of Advocate General Cosmas in Case C-385/96, *Goerres* [1998] ECR I-4433 at p. 39). Thus, although members states are free to determine their individual language policies, these must conform to – among others – the imperative of free movement as the example of the Toubon law and the issues of French labeling show. See also Case C-33/97, *Colim v. Bigg's* [1999], ECR I-3175; Case C-366/98, *Yannick Geffroy and Casino France* [2000] ECR I-6579.

49 "Processes of market integration in an unbounded economy have homogenizing consequences. [. . .] Thus, unsurprisingly, the identity of the citizens of the European Union largely coincides with the identity of market participants and consumers." P.A. Kraus, 'A one-dimensional diversity?', in: *Arzoz* 2008, p. 92. For a better understanding of the complexity of European identity, see M. Szabó, 'Európai identitás és a Lisszaboni Szerződés', 8 *Iustum, Aequum, Salutare* 2, 2012, pp. 261-266.

50 S. von Schorlemer, 'Kulturpolitik in Völkerrecht verankert', in: *Deutsche UNESCO-Kommission, Überinkommen über den Schutz und die Förderung der Vielfalt kultureller Ausdrucksformen* 2006, pp. 40, 57; M. Smrkolj, 'The Use of the "Disconnection Clause" in International Treaties: What does it tell us about the EC/EU as an Actor in the Sphere of Public International Law?', GARNET Conference, "The EU in International Affairs", Brussels, 24-26 April 2008, Available at <<http://ssrn.com/abstract=1133002>>, p. 2.

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the Office for Harmonization in the Internal Market or the European Patent Office – are typically constrained by a judicially confirmed restrictive language regime.⁵¹

In relation to the internal market, the issue of possible language restrictions on the free movement of persons plays an important role. In its jurisprudence the European Court of Justice maintained that “in the context of a Community based on the principles of free movement of persons and freedom of establishment, the protection of the linguistic rights and privileges of individuals is of particular importance.”⁵² Whereas in the *Groener* case the ECJ acknowledged the efforts of national governments to promote the use of a certain language expressing national identity and culture and recognized the legitimacy of policies aiming at “the protection and promotion of a language of a Member State which is both the national language and the first official language,”⁵³ it was silent on the question whether this also holds true for other, for example minority languages as well.⁵⁴ It is interesting to note that the exercise of free movement and intra-community migration may actually contribute to the flowering of linguistic diversity in the member states.⁵⁵ For example in the *Garcia Avello* case, the ECJ found Belgian rules governing persons’ surnames to be discriminatory and held: “it is common ground that, by reason in particular of the scale of migration within the Union, different national systems for the attribution of surnames coexist in the same Member State”⁵⁶ a phenomenon which potentially increases the diversity of languages and linguistic traditions in the member states.⁵⁷ In this sense the free movement of persons within the internal market is much rather a catalyst, than a constraint of linguistic diversity. However, as Julie Bernier remarks, the principles of non-discrimination and proportionality inherent in internal market rules “circumscribe significantly the range of language policy measures available to Member States. [. . .] This highlights the tension between the EU’s expressed commitment to linguistic diversity and

51 Case C-361/01P, *Kik v. OHIM* [2003] ECR I-8283.

52 Case C-137/84, *Ministère Public v. Mutsch* [1985] ECR 2681 at p. 2695; later also in Case C-274/96, *Bickel and Franz* [1998] ECR I-7637.

53 Case C-379/87, *Groener* [1989] ECR 3967.

54 N.N. Shuibhne, ‘The European Union and Minority Language Rights’, 3 *International Journal on Multicultural Societies* 2, 2001, p. 71. Shuibhne points out that in the aftermath of the *Kik* judgment the position of non-official languages in the internal market seems particularly frail. ‘Does the Draft EU Constitution Contain a Language Policy?’ II Mercator International Symposium: Europe 2004: A new framework for all languages? <www.ciemen.cat/mercator/pdf/simp-shuibhne.pdf>, p. 5 (last accessed 18 December 2011).

55 P. Hansen, ‘A Common Market, a Common “Problem”: Migration and European Integration Before and After the Launching of the Single Market’, Center for Ethnic and Urban Studies, 2005, p. 29.

56 Case C-148/02, *Carlos Garcia Avello v. Etat Belge* [2003] ECR I-11613, at p. 42.

57 “Names are intensely individual and mark identity both of the unique person and of the person as a member of a group. [. . .] In regard to the public use of names, the state may recommend and more or less vigorously enforce that people register their children with names of a particular form in a language or with names only in certain languages. [. . .] [H]uman rights are likely to be violated when the state intervenes in the relationship between individual’s names and group identity.” B.H. Jernudd, ‘Personal Names and Human Rights’, in: Skutnabb-Kanga & Phillipson, 1995, pp. 121, 130.

its commitment to secure internal market freedoms”.⁵⁸ For example, similar to the 1994 French Carignon law, the new Hungarian media law shall prescribe a compulsory ratio of at least 50% of the broadcasting time of community radios and 25% of broadcasting time for other radio agencies to be filled with Hungarian songs.⁵⁹ Although member states may require media service providers to comply with rules on national content on the basis of sustaining cultural diversity, the proportionality of such a measure may certainly be disputable.

6.3.3 *Responding to the Language Question: The EU's Efforts to Safeguard and Promote Linguistic Diversity*

The EU itself seems to acknowledge the perception of European integration as a threat to linguistic diversity, as illustrated by the European Commission's paper on multilingualism: “Anyone who feels that his or her cultural identity, and that means primarily language, is protected, will not feel that identity threatened. Such a threat would have been anathema to the founding fathers of the European Union”.⁶⁰

In this vein, the European Union initiated various programmes, enacted legislation and set up institutions for promoting multilingualism and the safeguarding of linguistic diversity.⁶¹ Most prominently, the establishment of a *European Agency for Linguistic Diversity and Language Learning* was considered,⁶² however, the idea was later abandoned in favour

58 J. Bernier, ‘EU Economic Integration and National Language Policies: An Overlooked Tension’, delivered at the Conference: Debating Language Policies in Canada and Europe, University of Ottawa, 31 March-2 April 2005, pp. 6-7.

59 Law No. CLXXXV of 2010. On media service providers and mass communication, Art. 66 para. 4 item h and Art. 21 para. 2.

60 European Commission: Multilingualism: The Key to Success, <http://europa.eu.int/comm/scic/multi/multi_en.htm> 2002, quoted by Kraus, 2008, p. 118.

61 Schilling sums up the activities of the EU in this field as follows: “On the one hand, by a soft-law approach, the EU promotes language-learning by its citizens. [...] On the other hand, one could claim that it strives to make language-learning by its citizens superfluous, aiming ‘to give citizens access to European Union legislation, procedures and information in their own languages’. This aim is pursued by a hard-law approach: indeed, similar to the situation in a multilingual State without a *lingua franca*, many of the languages spoken within the EU are made official languages of the EU.” T. Schilling, ‘Language Rights in the European Union’, 9 *German Law Journal* 10, 2008, pp. 1224-1225. For the promotion of language learning and multilingualism, the EU has launched several youth and adult projects, such as SOCRATES I (including LINGUA, ERASMUS, COMENIUS). In the field of preserving lesser used languages, most recently the three-year project European Language Diversity for All (ELDIA) was launched, which aims at developing a general system for measuring and evaluating effects of changing balances between European languages. Previous efforts include the establishment of the European Bureau for Lesser Used Languages and the Mercator Network for the recognition and protection of regional and minority languages.

62 The relevant feasibility study may be downloaded from: <http://ec.europa.eu/education/languages/pdf/doc445_en.pdf> (last accessed 18 December 2011).

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of a network-approach building on existing structures and developing 'Language Diversity Centres' promoting multilingualism and linguistic diversity.⁶³ It is worth addressing the issue of multilingualism, as it is an important pillar of the language policy of the European Union besides the respect for linguistic diversity.⁶⁴ The Commission asserts, that a successful multilingualism policy can strengthen life chances of citizens: "it may increase their employability, facilitate access to services and rights and contribute to solidarity through enhanced intercultural dialogue and social cohesion. Approached in this spirit, *linguistic diversity* can become a precious asset, increasingly so in today's globalised world"⁶⁵

Apart from the fact that employability, access to services etc. may only be enhanced through learning an *official* language of the EU, preferably English, French or maybe German, the project of a multilingual Europe actually *undermines* linguistic diversity, because the more languages people have in common, the more the linguistic evenness of Europe – and therefore also its diversity is reduced.⁶⁶ The problem is exacerbated by the fact that in Europe multilingualism is predominantly 'Englishization', as English is by far the most popular 'foreign' language learned in order to communicate effectively beyond borders.⁶⁷ Thus, multilingualism cannot be seen as a tool for increasing linguistic diversity. Apart from the (limited) efforts of the European Union to sustain its linguistic diversity, the new guarantees introduced by the Lisbon amendments also deserve attention. However, it remains to be seen, what effect these new guarantees shall have on European legislation and the jurisprudence of the European Court of Justice in possible cases related to the clash of languages and the imperative of rationalization, harmonization and free movement.

6.4 DIVERSITY CONCEPTS AND THEIR ORIGINS

6.4.1 *You Have the Right to Remain Silent: Linguistic Diversity in the Nation-State*

The fears, threats and discontent associated with European integration are the concrete manifestations of how a common government willingly or unwillingly encroaches upon

63 COM/2005/0596 final, Communication from the Commission to the Council, the European Parliament, the European Economic and Social committee and the Committee of the Regions – A New Framework Strategy for Multilingualism, at II.1.2.

64 See e.g., COM(2003) 449 final, Promoting Language Learning and Linguistic Diversity: An Action Plan 2004-2006, Brussels, 24 July 2003. On p. 5 it reads: "The range of foreign languages spoken by Europeans is narrow, being limited mainly to English, French, German, and Spanish. Learning one *lingua franca* alone is not enough. Every European citizen should have meaningful communicative competence in at least two other languages in addition to his or her mother tongue."

65 COM(2008) 566 final, Multilingualism: an Asset for Europe and a Shared Commitment Brussels, 18 September 2008, 3 (emphasis added).

66 Van Parijs 2008, p. 20.

67 T. Berchem, 'Deliberations on a European Language Policy', in: R. Ahrens (Ed.), *Europäische Sprachenpolitik*, Universitätsverlag Winter, Heidelberg 2003, pp. 29-30, Phillipson 2008, pp. 64-66.

rights, interests and sentiments related to language use in a linguistically diverse setting. Although the concrete reservations and problems may be different, governments of multilingual societies face very similar challenges.

Multilingual states and the need to accommodate the interests of language groups with that of the general interest is not a novelty, indeed, classic examples include the Roman Empire from antiquity,⁶⁸ the Ottoman Empire and the Holy Roman Empire of the middle ages or the Austro-Hungarian Monarchy of modernity. For example, as a consequence of the political assertion of the different national groups in the Habsburg Monarchy, the Basic Law of 1867 provided that all ethnic entities of the empire enjoy equal rights, along with the “inviolable right to the preservation and fostering of [their] nationality and language”.⁶⁹ However, it is the 18th and 19th century movement for the building of nation-states that is generally taken as the starting point for the analysis of the emergence of diversity policies, as these had a lasting impact on the linguistic setting of contemporary states and societies (a), which in turn gave rise to the different concepts and policy options related to the management of linguistic diversity (b).

a) Indeed, Anderson suggests that there is an intrinsic relationship between linguistic diversity and the nation-state. In analysing the emergence of national consciousness, Anderson points out that the convergence of capitalism and print technology on the fatal diversity of human language created the possibility of a new form of imagined community, which in its basic morphology set the stage for the modern nation.⁷⁰

Thus, linguistic diversity is seen as the starting point for the emergence of the nation-state, soon to be quenched in the process of nation-state building⁷¹ through a variety of assimilationist policies. Linguistic diversity poses a challenge to the idea of the unitary and efficient modern nation-state, because the multiplicity of languages renders government less efficient while the political basis of the state is fragmented along the lines of a defining factor of

68 Another example is mentioned by Fidrmuc, Ginsburgh and Weber related to the “*Rosetta Stone*: a royal decree inscribed into a large stone slab in 196 BC to announce the royal cult of King Ptolemy V on the first anniversary of his accession to the Egyptian throne. As Egypt was ruled by the (Greek speaking) Ptolemaic dynasty at that time, the inscription was rendered both in Greek and Egyptian (the latter being in two versions, the traditional hieroglyphic script and the simpler contemporaneous *demotic script*)”. J. Fidrmuc *et al*, ‘Economic Challenges of Multilingual Societies’, <www.eea-esem.com/files/papers/EEA-ESEM/2006/2456/Fidrmuc-Ginsburgh-Weber.pdf>. 2005, p. 52 (last accessed 18 December 2011).

69 Art. 19 of Staatsgrundgesetz vom 21 Dezember 1867, über die allgemeinen Rechte der Staatsbürger für die im Reichsrate vertretenen Königreiche und Länder (StGG), RGBl Nr. 142/1867.

70 B. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, Verso Books 2006, p. 48.

71 Kymlicka and Grin point out an interesting aspect of the exclusive language policy of some European nation-states. Although such a language regime is restrictive on other languages, it may also “be interpreted as protecting an endangered language. [...] Policies aimed at privileging the Estonian language over the Russian language within Estonia are, in part, an attempt to privilege a majority titular language over a minority language. But they are also an attempt to protect a small, potentially threatened language confronted by a world language”. Kymlicka & Grin, 2003, p. 6.

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personal and group identity.⁷² Adopting a single official language or restricting official communication to a selected few vernaculars is thus justified by two reasons: first, by the pursuit of a single ‘nation’, and second, by the need to communicate efficiently with the citizens.⁷³ Many authors refer to the fact that nations are in fact “imagined communities”,⁷⁴ more or less artificially construed entities, the building of which relies on, among others, a restrictive language policy.⁷⁵ The construction of the nation-states followed the principle of *cuius regio eius lingua*,⁷⁶ where “language turned into a symbol of political and national identity and belonging”.⁷⁷ Thus national identity and unity is forged by the “formation of linguistic and cultural homogeneity via the establishment of a common, usually single, hegemonic ‘national’ language”.⁷⁸ Illustrating the significance of language in the formation of identity, Andrásy romantically observes: “Language shows us who and what we are, it is the bearer and expression of our identity and culture: in a sense language is our home, our spiritual fatherland.”⁷⁹ However, the significance of language is not purely cultural – the political aspect of language lies in its prominent role in enabling political participation.⁸⁰ The indispensability of language as a means of political participation also justifies rationalization and the restriction of the number of languages used in the official sphere, in order to render political communication between the state and the citizens more efficient.⁸¹ Several studies on this subject refer to the notorious quote by John Stuart Mill, who analysed the relationship between linguistic diversity and political participation and came to the conclusion that:

Free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion, necessary to the

72 J. Edwards, *Language and Identity*, Cambridge University Press, 2009, p. 21. States where there is no dominant language group (Switzerland, Belgium) or where large linguistic communities are present (Italy) the identity shaping force of language is ever so apparent.

73 Toggenburg 2005, p. 6.

74 “It is imagined because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion. [...] Nationalism is not the awakening of nations to self-consciousness: it *invents* nations where they do not exist.” Anderson 2006, p. 6.

75 D.M. Weinstock, ‘The Antinomy of Language Policy’, in: W. Kymlicka & A. Patten (Eds.), *Language Rights and Political Theory*, Oxford University Press, 2007, p. 253; Toggenburg 2005, pp. 5-6. L. Trócsányi, ‘Az anyanyelv használatához való jog a nemzeti alkotmányokban’, 4 *Romániai Magyar Jogtudományi Közlöny*, 2006, p. 7; Weber 2009, p. 12.

76 Kraus 2008, p. 93.

77 E. Shohamy, *Language Policy – Hidden agendas and new approaches*, Routledge, 2006, p. 27.

78 *Ibid.*, p. 29.

79 Gy. Andrásy, ‘Az anyanyelv használatához való jog jellege’, 4 *Romániai Magyar Jogtudományi Közlöny*, 2006, p. 14.

80 P. L. Láncoš, ‘Résztvételi jogok és nyelvi sokszínűség az Európai Unióban’, 4 *Miskolci Jogi Szemle* 2, 2009, pp. 115-117.

81 P.A. Kraus, ‘A one-dimensional diversity?’, in: Arzoz 2008, p. 86; Toggenburg 2005, p. 6.

working of representative government, cannot exist [. . .]. One section does not know what opinions, or what instigations, are circulating in another⁸²

b) However, centralization and restrictive language policies associated with nation-state building gave rise to similar fears and sentiments as described above in relation to the European Union. May draws attention to the power structures behind national language policies stating that ‘state-mandated’ languages are clearly political acts which advantage certain groups over others.⁸³ As such, the nation-state asserts or cements the power position of typically the majority language group. Language as a means of domination is even more apparent in states, where “the ‘dominant’ national language has not been the language of the majority of the population, but the language of the groups holding power”.⁸⁴ Inherent in such language regimes was the discrimination and degradation of large parts of the population. As a result of the struggle of linguistic minorities for recognition, the rise of human rights and the principle of self-determination in the 20th century, the one-sided, centralizing approach of the nation-state towards languages became outdated. The respect for cultural and linguistic identities and the guarantees of language rights acquired the status of fundamental rights.⁸⁵ For example, the 1966 International Covenant on Civil and Political Rights foresees, that in those States in which [. . .] linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, [. . .] or to use their own language. It must be however pointed out that the Covenant merely protects the linguistic rights of *minorities*. It is important to note, that according to the jurisprudence of the Permanent Court of International Justice, to achieve a veritable equality of minorities, it may be useful to grant them special rights unavailable to the majority population (affirmative action).⁸⁶ According to the Permanent Court of International Justice, the rationale for minority protection treaties was to “ensure that members of racial, religious and linguistic minorities

82 D. Schnapper, ‘Linguistic Pluralism as a Serious Challenge to Democratic Life’, in: P. Van Parijs (Ed.), *Cultural Diversity versus Economic Solidarity*, De Boeck, Brussels, 2004, p. 213.

83 S. May, ‘Misconceiving Minority Language Rights: Implications for Liberal Political Theory’, in: Kymlicka & Patten 2007, pp. 126-127.

84 Such as in the case of Paraguay where Spanish was introduced and installed as the official language by the colonizers. Today, the local vernacular Guarany spoken by the vast majority of the population is a co-official language of Paraguay. Archiburgi 2005, p. 540.

85 I. Ernszt, ‘Ébresztő a (látszólagos) csipkerózsika álomból? – nyelvi jogok a nemzetközi jogban’, 4 *Romániai Magyar Jogtudományi Közlöny* 2, 2006, p. 23. Of course, the status of ‘fundamental right’ may be disputed – even the most fervent supporters of linguistic rights formulate very carefully: “linguistic rights *should be* considered basic human rights” and “restriction on these rights *may be* considered and infringement of fundamental LHRs” (emphasis added), R. Phillipson, M. Rannut & T. Skutnabb-Kangas, ‘Introduction’, in: Skutnabb-Kangas & Phillipson 1995, p. 1, 2.

86 *Minority Schools in Albania; Greece v. Albania*. Advisory Opinion 26. PCIJ, Ser. A./B, No. 64, 1935; P. Kovács, ‘Az európai kisebbségvédelmi kodifikáció legújabb eredménye’, 5 *Regio – Kisebbség, politika, társadalom* 4, 1994, p. 153.

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should be placed in every respect on a footing of perfect equality with other nationals of the state". There are also developments towards the adoption of a separate legal document solely related to linguistic rights. The so-called Barcelona Declaration (Universal Declaration of Linguistic Rights) of 1996 signed by UNESCO and several non-governmental organizations proposes setting up various bodies to ensure the protection of such rights, while numerous prominent linguists are also urging the adoption of a binding charter on linguistic rights.⁸⁷ Such a Charter is the European Charter for Regional and Minority Languages, which came into force in 1998, however, the rights enshrined in the charter are not enforceable and do not extend to speakers of immigrant languages.

A classic example for a modern multilingual political community would be India, with 114 different languages spanning the peninsula.⁸⁸ The language policy introduced in this culturally, linguistically and religiously diverse country reflects the multilevel and decentralized organization of the state itself.⁸⁹ Hindi serves the function of national 'official language' with the role of unifying the different language groups and forging national identity. English was retained as the language of administration for a provisional period of 15 years, however, due to its widespread nature and resentment towards Hindi, English remains an important common language of the country.⁹⁰ On the state level, the majority languages serve as official regional languages while minority speakers are afforded constitutional protection. There are three important trends in this linguistically diverse country: the 'nationalist agenda' of cultural unification and the promotion of Hindi through the 'Bollywood' film industry, the importance of the elite language English as the link to education and wealth, and finally the economic drawbacks related to the efforts of preserving linguistic diversity. In order to accommodate its linguistic diversity and at the same time benefit from its economic potential, India instituted a tri-language education system based on the instruction of a regional vernacular, Hindi as the national tongue and a European language as a window to the international community. The inclusiveness of preserving regional and minority languages and at the same time promoting a 'national', unifying language and a European tongue as the language of world economy represents an attempt to balance social, political and economic interests arising on all levels of the state.⁹¹

87 The Declaration may be downloaded from: <www.unesco.org/cpp/uk/declarations/linguistic.pdf> (last accessed 18 December 2011). Skutnabb-Kangas & Phillipson, 'Towards the formulation of a universal declaration of linguistic human rights', in: Skutnabb-Kangas & Phillipson 1995, p. 98.

88 G. Mahajan, 'Negotiating Cultural Diversity and Minority Rights in India', in: *Democracy, Conflict and Human Security*, International Institute for Democracy and Electoral Assistance, Publications Office, Stockholm, 2006, p. 111.

89 *Ibid.*, p. 115.

90 *Ibid.*, p. 113. Although the language of colonialism, today, English is perceived as 'neutral' as opposed to oppressive Hindi. Linguistic resentments led to the movement of 'Hindi Never, English Ever' where "English was considered at least an equalizer between the various languages". A.R. Fullman, *Legacies and Limitations: Legislating Linguistic Diversity in India*, graduate work at George Mason University, Fairfax 2005, pp. 5-6.

91 Fullman 2005, pp. 5-7; Witt 2001, pp. 72-73.

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The case of India as well as the developments described above entail important messages not only for multilingual states but also for the European Union, as they face the same challenges and dilemmas: on the one hand, there is a general interest related to intensifying and securing internal trade as well as communicating sufficiently with the citizens which requires the restriction of language use and the introduction of a single official language, on the other hand, intercultural dialogue, the respect for personal identity and equality requires the promotion of linguistic diversity and granting special language rights.

6.4.2 *Diversity-Speak: The Language of Linguistic Diversity*

Whereas the nineteenth century and its fervid attempts at nation-state building put assimilation and homogeneity to the fore, the twentieth century has elevated diversity to the unchallenged value of the millennium. Diversity has become the buzz-word of Western democracies and conquered both culture and politics on the regional, national and international level.⁹² There are two basic concepts of diversity at work which (instinctively and scientifically) inform and influence the debate on linguistic diversity: biodiversity and multiculturalism.

6.4.2.1 **A Green Thumb for Languages: Bringing Languages into the Biodiversity Discourse**

The first concept is directly linked to the term *biodiversity*. Biodiversity is an expression employed to describe the biological (species, ecosystems or genetic) diversity of a defined area.⁹³ Biodiversity in a certain region may be high or low, representing richness in variety or a lack thereof. The aspiration to protect biodiversity linked with the equally popular term of sustainable development evidences a shift in global consciousness towards preserving our common natural heritage in its abundance and variety. The protection of biodiversity is justified and indeed promoted based on the realization that any reduction in the diversity of an ecosystem results in instability and possibly further changes, reductions and extinction.⁹⁴ Such a result is perceived as a loss due to the fact that for example a

92 X. Arzoz, 'The protection of linguistic diversity through Art. 22 of the Charter of Fundamental Rights', in: Arzoz 2008, p. 152.

93 <<http://plato.stanford.edu/entries/biodiversity/>>

94 A nuanced approach is offered by Giulio A. De Leo and Simon Levin: "In reality, all natural ecological systems change over time, and it is extremely difficult to determine a normal state for communities whose measurable properties are often in flux, either because of natural disturbance or because of internal ecological mechanisms." 'The Multifaceted Aspects of Ecosystem Integrity', <www.ecologyandsociety.org/vol1/iss1/art3/> (1997) (last accessed 18 December 2011). Perhaps this perspective is also useful for studying the natural changes and shifts in languages and their use. For example, Mamadouh highlights some natural shifts in the ecology of languages. She points to the fact that while European integration had almost no effect on the member states' language policies, the latter were indeed effected by the global intensification of communication, especially in English, the enhanced use of regional languages due to administrative devolution as well as migration. V. Mamadouh, 'Dealing with Multiculturalism in the European Union', *Journal of Comparative Policy Analysis: Research and Practice*, Vol. 4, 2002, p. 330, cited by Károly, 2008, p. 134.

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reduction in genetic diversity leaves mankind less resources to draw upon. Thus, the value of diversity in this sense is based on its utility to human beings. In a similar vein, for the purposes of linguistic diversity, Van Parijs cites a common conviction according to which maintaining linguistic diversity is advantageous, as all languages incorporate a specific knowledge about the surrounding world⁹⁵ and culture as a way of life allowing for collective experimentation, all for the benefit of mankind.⁹⁶ As Boran points out, languages may bear scientific value possibly fostering technological advancement as well as aesthetic value, due to their unique way of conveying emotions in the form of art. Both aspects may deem languages *public goods* worthy of protection.⁹⁷ A final argument related to the biodiversity jargon and arguments, yet appropriated for the purposes of justifying the claim for linguistic diversity, is the argument that diversity (including linguistic diversity) increases the potential for adaptation and innovation by providing flexibility and creativity.⁹⁸ Leaving the ambit of utility in the biodiversity discourse, Callicot goes further and proposes that there is an inherent worth, an *intrinsic*, *i.e.* non-instrumental value of “nature (or some of nature’s parts)” and that mankind has a moral responsibility to safeguard it.⁹⁹ Transferring the idea to the field of languages Weinstock quotes Réaume who characterized the intrinsic value of languages as follows: “it is a human accomplishment, and end, in itself, because it is a ‘cultural inheritance’ and a ‘marker of identity.’”¹⁰⁰ MacPherson also takes the leap from utility to inherent worth and claims: “an ethical position would be to go one step further and recognize [. . .] the intrinsic value of languages [. . .] because they are entangled in the quality of lives of people adapting to places through time.”¹⁰¹ Some authors even assert that linguistic diversity is in fact a precondition for sustaining biodiversity due to the unique knowledge enshrined in the various languages about the

95 “Diversity is an implicit value by virtue of the enhanced biological and cognitive information it avails to future generations”, S. MacPherson, ‘TESOL for Biolinguistic Sustainability: The Ecology of English as a Lingua Mundi’, 20 *TESL Canada Journal* 2, 2003, p. 5.

96 Van Parijs 2008, pp. 27-28.

97 I. Boran, ‘Global Linguistic Diversity, Public Goods, and the Principle of Fairness’, *in: Kymlicka & Patten*, 2007, pp. 193-199.

98 Skutnabb-Kangas, 2002, p. 14.

99 J. Baird Callicott, ‘Intrinsic Value in Nature: a Metaethical Analysis’, *The Electronic Journal of Analytical Philosophy*, Vol. 3, Section 9, Spring 1995.

100 “What would it mean for language to have intrinsic value? It would mean that languages have value independently of the instrumental roles they perform in the lives of their users (or, indeed, non-users). [. . .] Inasmuch as particular languages have intrinsic value, the interests which people have in them cannot be reduced to their various instrumentalities as communicative tools and as ‘contexts of choice’”. Weinstock 2007, p. 254.

101 MacPherson 2003, p. 5. In line with the view of the intrinsic value of linguistic diversity, Blake asserts that “Each language represents a way of viewing the world as well as a unique human achievement; when any language is destroyed, something of great beauty has gone out of the world”. M. Blake, ‘Language Death and Liberal Politics’, *in: Kymlicka & Patten* 2007, p. 216.

speakers' immediate environment.¹⁰² As Boran points out, stipulating moral prescriptions in analogy to the preservation of the environment may yield insights, however, basing normative claims on the assumption of a strong correlation between the two and presenting linguistic diversity as an integral part of biodiversity has yet to be substantiated.¹⁰³ Based on the foregoing, we may conclude that the burgeoning of the term and concept of biodiversity in public debate has certainly contributed to the fact that: firstly, diversity has become widely thematized and is in itself recognized as a value (even in spheres unrelated to the ecosystem),¹⁰⁴ second, there are arguments for recognizing the value of diversity (and as such, linguistic diversity) irrespective of its utility,¹⁰⁵ assuming an intrinsic value thereof and thirdly, the terms and concepts related to biodiversity inform the diversity debate related to the socio-political sphere (status of linguistic communities, preservation, promotion).¹⁰⁶

6.4.2.2 Speak for Yourself: Multiculturalism and the Promotion of Language Rights

The second strand of diversity concepts is rooted in the notion of the equal dignity of the person as well as the equality of cultural communities. The rise of the political theories of both liberalism and multiculturalism is also a product of the twentieth century: the horrors of World War II led to the codification and universal recognition of human rights and equal dignity as well as the prohibition of discrimination based on race, ethnic origin, culture, etc.¹⁰⁷ Although multiculturalism is perceived as a rival theory to liberalism, both are in fact aimed at supporting the recognition of identities and difference based on equality,

102 "So striking is this correspondence between linguistic and biological diversity that these researchers coined a common term: biolinguistic diversity. As with the use of language extinction and death, such terms are needed to shift our perception to appreciate the deep interconnection between language, culture, and biology." MacPherson 2003, p. 3; for a detailed account on this interdisciplinary approach, see Skutnabb-Kangas 2003, p. 37; Skutnabb-Kangas 2002, pp. 13-14; Boran 2007, p. 192.

103 Boran 2007, p. 193.

104 "There is a degree of social consensus over the notion that diversity is, by and large, a 'good thing', albeit perhaps a costly one. This is borne out by frequent examples of official discourse and international treaties extolling the virtues of diversity, or by the fact that the preservation of linguistic diversity is sometimes presented as a policy objective in its own right", F. Grin, 'Diversity as Paradigm, Analytical Device and Policy Goal', in: Kymlicka & Patten 2007, p. 170. This conviction was present already in the nineties: "a basic assumption is that preservation of linguistic and cultural diversity is important". D. Gorter, 'Information, Documentation and Research on Bilingual Education for Regional or Minority Languages in the European Union', Helsinki Citizens', Assembly of Moldova 1996, p. 21.

105 Weinstock, 2007, p. 253.

106 "Linguistic diversity bears a striking resemblance to environmental utility, suggesting that the type of policy issues that arise in language and in environmental matters are analytically related", Grin 2007, p. 172.

107 This phenomenon is captured by Arts. 21 and 22 of the ChFR, which prohibit discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation and oblige the Union to respect cultural, religious and linguistic diversity.

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albeit from a different perspective and in a different manner. Whereas liberalism stipulates equal citizenship premised on individualism, equality and universalism applying the neutral 'one size fits all' principle of non-discrimination,¹⁰⁸ multiculturalism contends that the same rule will have a different impact on members of different groups¹⁰⁹ and thus leads to unfair results compromising the material equality of the formally equal citizens.¹¹⁰

Kraus suggests that the liberal perception of the neutral state is premised on the view of a culturally homogenous nation-state where diversity is a non-issue.¹¹¹ In such a setting, speakers of minority/non-official languages are granted the same rights as speakers of majority/official languages – the speakers of the different languages are thus formally equal. However, it is important to see that the effect of a majority/official language on political, economic and cultural life is overwhelming. For example, in order to exercise their political rights in an informed way, minority/non-official language speakers would have to be able to access official or media-spread information in the majority/official language. In the field of economy, it is easy to see that the employment chances of a minority/non-official language speaker shall be lower, especially in the area of white collar jobs where intensive communication skills are required. Finally, although culture is perceived as an expression and necessary element of the identity of a (linguistic) community, cultural events performed in a minority/non-official language shall attract a smaller number of viewers and consequently less, or no private funding. Minority/non-official language speakers are not only 'forced' to become multilingual, but must experience the deterioration of their culture and language due to non-use. At the same time, until they become assimilated they can only access politics, 'higher' professions and popular cultural events at a greater effort and cost. As Grin observes: "Once we recognize that language serves these multiple

108 Scholars of linguistic rights theories stress that even liberal states could not remain neutral in the face of a multilingual society – the introduction of an official language always results in discrimination. Archiburgi 2005, p. 540. S. Vertovec & S. Wessendorf, 'Migration and Cultural, Religious and Linguistic Diversity in Europe: An overview of issues and trends', *International Migration, Integration and Social Cohesion (IMISCOE)* 2004, p. 30.

109 B. Barry, 'Liberalism and Multiculturalism', 4 *Ethical Perspectives* 2, 1997, p. 4; U. Wattal, 'Understanding "Spanglish" and "Flemch": A Comparative Analysis of American and Belgian Language Politics', 22 *Macalester International*, 2009, p. 229.

110 "Formal equality means equality in the form of the law. It requires that the law treat persons similarly who are situated alike. [...] More recently, this notion of formal equality became associated with classical liberalism. This political philosophy presumes that individuals are free to compete with each other and that all can make their own choices. [...] Material equality encompasses both formal equality and economic, social, and *cultural equality*. As such, the notion of material equality acknowledges the importance of both personal and environmental barriers that inhibit the equal participation of certain members of groups in society. In the material equality perspective, society is obliged to modify those differences that deny or impair the right of each individual to be an equal member of society." A. Hendriks, 'Disabled Persons and their Right to Equal Treatment: Allowing Differentiation While Ending Discrimination', 1 *Health and Human Rights* 2, 1995, pp. 157-159.

111 Kraus 2008, p. 93.

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functions, the liberal strategy of trivializing language issues as simply technical questions of communicative reach will not work.¹¹² It may be concluded, that language actually spans the whole socio-political and even economic reality and thus although speakers of minority languages are formally equal to the members of the majority population, without active support from the state, the opportunities enjoyed in the economic, social and cultural sphere will be different to the detriment of the speakers of the minority/non-official languages.¹¹³ Liberalism and its requirement of non-discrimination thus fails to achieve material equality as in the equality of opportunities of citizens, for the remedy of which multiculturalism proposes special rights to express the minority identity and to promote participation.¹¹⁴

6.5 THE EU LEGAL CONTEXT: PROTECTING LINGUISTIC DIVERSITY THROUGH AN INSTRUMENTAL PERSPECTIVE OF LANGUAGE

As we have seen above, linguistic diversity may be considered a value worthy of protection based on its utility or its intrinsic nature as well as equal dignity or equal opportunities of the different language speakers. Herein lay the justifications of the normative guarantees for linguistic diversity. The protection and promotion of languages and linguistic diversity may be achieved through various language policy means. In the European Union, safeguarding linguistic diversity is based on a negative approach of non-interference and respect for linguistic diversity and a positive, active promotion of multilingualism through language learning. As outlined above, the promotion of multilingualism actually backlashes upon the project of protecting linguistic diversity, because the more languages Union speakers have in common, the more linguistic diversity is reduced (not to mention that in practice probability-sensitive language learning favours learning English as a foreign language). As a result, multilingualism policy should be separated from the efforts of safeguarding linguistic diversity, as it furthers different aims: it promotes the benefits related to enhanced and efficient communication between the speakers of the different member states. At the same time, safeguarding linguistic diversity must rely on a possible preservation of 'endangered' vernaculars, the negative approach of non-interference and language rights guaranteed by the Union.

112 Kymlicka & Grin 2003, p. 11.

113 As Kraus remarks: as language serves as an instrument to express the individual identities, the state "may pretend to be 'blind' (regarding religion, for instance), yet it cannot possibly behave like a 'deaf-mute' (when it comes to language), Kraus 2008, p. 84.

114 J.E. Fossum, 'Identity-Politics in the European Union', *ARENA Working Papers*, WP 01/17 (2001), <www.sv.uio.no/arena/english/research/publications/arena-publications/workingpapers/working-papers2001/wp01_17.htm> at note 19 (last accessed 18 December 2011).

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6.5.1 *Legal Framework of EU Language Policy***6.5.1.1 Non-Enforceable Goals and Values**

The primary law of the European Union related to linguistic diversity includes provisions which are non-enforceable and may be deemed as goals, values and constitutional aspirations. These provisions can also be seen as horizontal principles which are to be taken into consideration when framing EU legislation also in other areas.

The Protection and Promotion of Linguistic Diversity

According to Article 3 paragraph 3 TEU: “(The Union) shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced.” Based on its placement the provision may be interpreted as a sort of constitutional aspiration with no enforceable rights attached to it. As such, it is merely an instrument guiding the interpretation of the Treaty.

At the same time, it may also be interpreted as a positive obligation of the Union to actively endorse the circumstances facilitating the existence of the vast varieties of languages. Thus, linguistic diversity may be perceived as a ‘constitutional value’¹¹⁵ in itself, which secures the context for both language rights and cultural rights.¹¹⁶ In this sense, the Union is obliged to protect and endorse linguistic diversity in the framework of its other goals and values and within the constraints of its institutional and financial possibilities. Such an active stance of the Union is also supported by the wording of the Treaty which speaks of safeguarding and enhancing.¹¹⁷ Positive measures aiming at protecting and enhancing linguistic diversity may be based on Article 167 para. 1 TFEU, regulating the cultural policy legislation of the EU. Based on its cultural competence the Union has implemented the Culture 2000 and Cultural Programme, which also contained instruments related to the “protection and promotion of regional and minority languages and cultures”.¹¹⁸

The Union also has a negative obligation to respect linguistic diversity: according to the horizontal principle in Article 167 paragraph 4, the Union is to take into account cultural considerations in the course of all of its activities. Thus, the EU must examine the impact of its activities on culture in general and linguistic diversity in particular.¹¹⁹ If a planned measure should be detrimental to linguistic diversity, it is not to be enacted.

115 B. de Witte, ‘The protection of linguistic diversity through provisions of the EU Charter other than Art. 22’, *in: Arzoz 2008*, p. 177.

116 G. Halmi, E. Polgári & P. Sólyom, ‘Távol Európától – Az alkotmánybíróság a bejegyzett élettársi kapcsolatról’, 52 *Élet és Irodalom* 21, 2009, <www.es.hu/print.php?nid=22995>.

117 Emphasis added.

118 De Witte 2008, p. 183.

119 Gabriel N. Toggenburg, ‘A Rough Orientation Through a Delicate Relationship: The European Union’s Endeavours for (its) Minorities’, 4 *EIoP* 16, 2000, pp. 11-12.

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The important question regards the material scope of the provision, *i.e.* which languages are to be protected and promoted by the EU? As there are no restrictive provisions, the widest possible interpretation of the material scope of the provision may also be asserted. This means, that possibly even immigrant languages must be protected (and promoted) by the EU. However, a more plausible solution is that the material scope covers official, regional and minority languages, as these are the only languages explicitly or implicitly referred to in the Treaty.

Promotion of Multilingualism

Promoting language learning and multilingualism is an important part of the language policy of the European Union.¹²⁰ Speaking many languages “can strengthen life chances of citizens: it may increase their employability, facilitate access to services and rights and [...] enhanced intercultural dialogue and social cohesion.”¹²¹ Here again, it must be pointed out that multilingualism actually undermines linguistic diversity. For one, those wishing to enhance their employability shall typically learn the privileged languages English, French and German. At the same time, the more languages people have in common, the more the linguistic diversity (evenness) of Europe is reduced.¹²² Thus, multilingualism cannot be deemed as a tool for increasing linguistic diversity.

6.5.1.2 Enforceable Rights

The provisions referred to below give rise to enforceable language rights, however, the material scope, that is the languages covered by these provisions as well as their personal scope vary.

Information Rights

Article 41 paragraph 4 of the Charter of Fundamental Rights (hereinafter ‘ChFR’) provides that “everyone has the right to turn to the institutions in writing in any of the languages of the Treaties and to receive an answer in same language.” This language right is thus actually instrumental to exercising information rights related to EU governance and administration in order to enable Union citizens to fully participate in the democratic life of the Union. Although codified under the Title ‘Citizens’ rights’, according to the wording

120 See *e.g.*, “Promoting Language Learning and Linguistic Diversity: An Action Plan 2004-2006”, Brussels, 24 July 2003 COM(2003) 449 final. On p. 5 it reads: “The range of foreign languages spoken by Europeans is narrow, being limited mainly to English, French, German, and Spanish. Learning one *lingua franca* alone is not enough. Every European citizen should have meaningful communicative competence in at least two other languages in addition to his or her mother tongue.”

121 COM(2008) 566 final, 3 of 18 September 2008, Multilingualism: an Asset for Europe and a Shared Commitment Brussels (emphasis added)

122 Van Parijs 2008, p. 20.

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of the provision ('everyone has the right') third country nationals are not excluded from exercising this right. However, there are serious constraints to this right, since it may only be enforced in the languages of the Treaties, that is, the official languages, excluding minority, regional and immigrant languages. Further, it relates only to correspondence with the institutions of the Union, excluding offices, bodies and agencies which may well bring decisions impacting on interests, rights and duties of Union citizens and third country national.

The Prohibition of Discrimination Based on Language

Article 21 paragraph 1 of the Charter of Fundamental Rights explicitly prohibits discrimination based on language. This new provision affords protection to not only Union citizens but all persons falling under the personal scope of EU law. This means, that even speakers of non-official, minority and immigrant languages may enforce their right to non-discrimination under EU law. However, linguistic discrimination may be justified by overriding imperatives if these are applied in a proportionate manner. What is interesting that for example racial discrimination may hardly be justified, but the same does not hold true for discrimination based on language. Language discrimination may be justified based on overriding reasons relating to the public interest, thus, there is a potential threat of masking racial discrimination against those racial or ethnic groups which are simultaneously language groups (Roma, Jews) in the justifiable cover of language discrimination.

The (Possible) Prohibition of Interference in Language Use by Members of Minority Groups

According to Article 22 of the Charter of Fundamental Rights, "the Union shall respect cultural, religious and linguistic diversity". Based on the *travaux préparatoires*, the antecedents of the codification and the context of the provision, numerous authors regard this as a *per se* minority protection clause.¹²³ It protects the core characteristics which define minorities, at the same time it does not explicitly refer to minorities which made it possible for member states negating minority rights to accept the clause.¹²⁴ Should we accept this interpretation, it entails that the provision obliges the Union to refrain from interfering in the most defining elements expressing the belonging to a minority: culture, religion and language. At the same time, there are also constraints to this right. Article 22 of the Charter creates an enforceable, albeit negative right, based on which the Union is only obliged to non-interference, but has no obligation to take positive action to promote minority languages. This status negativus is an individual right, as may be inferred from Article 2 TEU, which only mentions "rights of *persons* belonging to minorities", disregarding any

123 X. Arzoz, "The protection of linguistic diversity through Article 22 of the Charter of Fundamental Rights", in: Arzoz 2008, pp. 147-152.

124 *Ibid.*, pp. 149, 152, 160.

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possible collective rights. Finally, only “persons belonging to *minorities*” may invoke this right – while the term ‘minority’ as well as its scope is largely left unclear. Are those official language speakers to be qualified as persons belonging to a minority, who are nationals of a member state where the official language differs from their mother tongue (for example German speakers in Hungary)? However, if the provision is of general scope, then that would mean that the obligations of the Union under this provision are identical to the obligation of protecting linguistic diversity under Article 3 paragraph 3 TEU.

6.5.2 *Conceptualizing Instrumental Language Rights in the European Union*

In the legal context of the European Union, one is hard pushed to find enforceable guarantees of linguistic diversity. For example, Article 3 paragraph 3 of the TEU declares, that the Union shall respect its rich cultural and linguistic diversity and Article 22 ChFR with its almost identical wording may be appropriately deemed a constitutional aspiration rather than an enforceable right. However, individual ‘language rights’ are enshrined in primary law which do contribute to preserving and respecting linguistic diversity in the Union. Such examples include the right to apply to certain institutions and bodies of the Union and to receive an answer from these in any official language of the EU (Art. 24 TFEU, or with an almost identical wording: Art. 41 para 4 ChFR) or the prohibition of discrimination based on language (Art. 21 ChFR). However, such language rights vary highly as regards their material scope and the status of the speakers protected. This results in a patchwork-like quilt of linguistic guarantees without an overarching concept and adequate protection in all language situations where legitimate concerns for the protection of the speakers’ rights arise.

A seemingly straightforward perspective on the conceptualization of the protection of linguistic diversity could be based on the intrinsic value of the languages in their abundance and variety. Such an approach would however blur the exact limits of the EU’s responsibilities in the ambit of language protection and promotion and would thus render the scope of its potential obligations boundless – and therefore also unenforceable. The intrinsic value inherent in the diversity of languages is now well reflected in the obligation of the Union to respect its linguistic diversity, which, by its nature is much rather a ‘constitutional aspiration’ of the Union contained in the ChFR as well as a principle of horizontal nature guiding EU legislation, than an enforceable linguistic right. Consequently, a perspective of the intrinsic value of linguistic diversity does not yield insights as to which concrete rights may be enforced in order to secure individual language use under EU law.

A further point of departure for the protection of linguistic diversity could be based on an instrumental view of languages, or with other words, stipulating the right related to language use as a precondition for exercising other rights laid down in primary law.

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As Phillipson, Rannut and Skutnabb-Kangas point out, “people who are deprived of [linguistic human rights] may thereby be prevented from enjoying other human rights, including fair political representation, a fair trial, access to education, access to information and freedom of speech, and maintenance of their cultural heritage”.¹²⁵

Such a perspective deems language rights auxiliary rights facilitating the enforcement of other, in the present case: human rights. This way, without having to elaborate whether language rights are human rights or not, their instrumentality for the exercise of other, codified human rights may be affirmed. Thus, for the scope of EU law certain rights contained in the founding treaties as well as the Charter of Fundamental Rights may be the enforceable rights to which language rights may adhere. In this regard it is important to note, that exercising rights in a language different from the mother tongue makes the exercise of such rights impossible or extremely difficult. According to the Commission publication *Speaking for Europe*, the “EU ensures that there is no discrimination between citizens whose languages are spoken by a large number of people and others using less widely spoken ones.”¹²⁶ Around 10% of the Union citizens speak a non-official language of the Union.¹²⁷ Moreover, as we have seen above, the use of even official languages is restricted in practice, putting not only non-official language speakers, but potentially also speakers of non-privileged official languages at a disadvantage for being forced to exercise certain rights under EU law in another language. As such, they could be excluded from exercising their rights under the Charter of Fundamental Rights, especially those contained under the heading ‘Freedoms’ comprising among others, basic communication rights and ‘Citizen’s Rights’ related to political participation.¹²⁸ This way, an indivisible connection between language and the exercise of human rights may be struck, obligating the European Union to protect and promote language use as a concomitant of the enforcement of human rights by Union citizens. As Schilling puts it: “autonomy means a person’s authority to dispose of her own legal sphere, especially the ability to protect her interests by speech acts. [. . .] [I]t must be considered an inadmissible violation of a person’s human dignity to forbid her to use the language(s) she knows [. . .] incapacitating her to protect her interests other than by raw force.”¹²⁹

125 Phillipson, Rannut & Skutnabb-Kangas 1995, p. 2.

126 <http://ec.europa.eu/education/languages/pdf/doc3275_en.pdf> p. 3 (last accessed 18 December 2011).

127 “Almost 10% of the EU-citizens speak a minority language, which means that in some very real aspects of their lives they are in a secondary position. In other words they cannot, by definition, be regarded as fully equal citizens. This is a serious shortcoming in the practice of European citizenship.” H. Lax, ‘Minority Languages in Europe – Importance and Future’, speech – Brussels (15 October 2008), p. 4.

128 As Cunningham points out it is “vital to democracy that Community legislation should be available to Europe’s citizens in their own languages, as a guarantee of equality before the law. Ignorance of law is no defence so the law cannot be imposed on anyone in an incomprehensible foreign language”. K. Cunningham, ‘Translating for a Larger Union – Can We Cope with more than 11 Languages?’, *2 Terminologie et Traduction*, 2001, p. 24.

129 Schilling 2008, pp. 1227-1228.

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The perspective of limiting the commitment of the European Union to respect linguistic diversity to a negative approach of non-intervention and the guarantee of a short list of enforceable rights is very restricted. Its appeal lies in the fact that this perspective lays out the precise obligations of the European Union, rendering efforts in the field of safeguarding linguistic diversity more transparent. Also, the personal scope of such rights would encompass all Union citizens with languages ranging from official to minority/regional and immigrant languages in the EU. The disadvantage of limiting the EU's responsibility for safeguarding linguistic diversity to such a confined field of activity is that it does nothing for the active promotion of linguistic diversity, language use and third country nationals language rights. At the same time, it must be pointed out that the status of non-official or non-privileged language speakers and the protection of linguistic diversity do not even reach the level of protection outlined above.

6.6 CONCLUSIONS

With the Lisbon amendments the European Union is more than ever committed to the protection and promotion of linguistic diversity. There are serious reasons for such an engagement of the Union: although the language regime employed by the EU is far more permissive than those of international organizations, and indeed, of most member states, the speakers of autochthonous or immigrant minority languages and even certain official languages perceive the forces of European integration as a threat to linguistic diversity in general and the flowering and utility of their vernaculars in particular. The intensifying diversity debate in the last century conceived several concepts of diversity which also informed the discussion of linguistic diversity and language rights. Such concepts include the equal dignity of Union citizens as well as the instrumental perspective on languages which may serve as a starting point for determining the scope of the obligations of the European Union related to safeguarding linguistic diversity. One possible solution could be the protection of linguistic diversity with reference to civil rights and fundamental rights contained in the founding treaties and the Charter of Fundamental Rights presupposing concomitant language rights as auxiliary rights for the enforcement of fundamental rights and general rights of Union citizens. Although this perspective leads to rather limited obligations of the Union, the reality of the protection of linguistic diversity does not even reach this slim target.