Chapter I

INTERNATIONAL AND EU FRAMEWORK

I.1 Introduction

"If a service is provided in a single language,
all users are treated in the same way,
but they are not necessarily treated equally;
in reality, users who speak a different language do not receive a service
which is equally valuable to them, even though,
they have contributed to financing this service according to the same criteria …
The money of the members of a linguistic minority contributes to providing a service
which is culturally optimal for the majority alone" [1].

My research is focused on the rights of speakers of minority languages in their dealings with the public administration and public institutions in order to investigate how, in this important sector, people are entitled to use a minority language under these circumstances. It is important to underline that a right to use a minority language in dealing with the public sector does not necessary mean that the right will actually be used. Public administration is a critical domain especially in modern times where citizens are obliged to complete official forms in order to have benefits from the Government, to apply for a job, to obtain certificates, and, of course, to receive a range of important services from the public sector, whereas, eighty years ago daily contact with the public administration was significantly less. Public administration influences our daily lives and to be denied the use of a minority language in dealing with the public administration is a form of linguistic marginalization since this is a sector which ensures the prestige and development of a language because it is part of the collective domain of a society [2], thus, its use can confer a kind of official status on a language allowing its evolution and increasing its prestige.

[1] B De Witte, 'Le Principe d'Egalité et la Pluralité Linguistique' in H Giordan (ed), *Les Minorités en Europe: Droits Linguistiques et Droits de l'Homme* (Editions Kimé 1992) 57-58.

[2] S Carrel, *Language Rights Individual and Collective: the Use of Lesser Used Languages in Public Administration* (EBLUL 2000).

In the private sector, normally, it is difficult to impose a rule to the effect that a minority language must be spoken. In fact, at home people can do whatever they want and speak the language which they prefer. For example, in Spain, under Franco's dictatorship, minority languages were forbidden but some of them survived because they were spoken at home. It is possible to prohibit the use of a language in the public administration sector but not its use at home. The reverse is also true. The law can have provisions for the protection of minority languages but cannot, for example, force a Scottish family to speak in Gaelic at home; it is up to the individual and the law cannot do a lot except try to incentivise the use of a language.

There are often three levels of public authority: the state, the region and the local authorities. Usually, there are more problems with the central administration since a bilingual public administration needs bilingual public clerks and, at the central level, and in a non-bilingual territory, it is very difficult to provide services in all languages: how is it possible to have French, German, Slovenian, Sardinian etc speaking public clerks in all offices of the public administration in Rome? Or Catalan, Basque, Galician speaking public clerks in all offices of the public administration in Madrid? Or Welsh, Gaelic, Irish speaking public clerks in London? It is clear that linguistic rights are denied, but, at the same time, it is also clear that it would be a very expensive solution to have a pluri-lingual public administration in all the territory of states having linguistic minorities within their borders, considering also that all linguistic minorities would wish to be represented at the central level. It is also practically difficult given the generally small numbers of speakers of such languages in the State; Catalan, spoken by roughly 15-20% of the population of Spain, is a little different, although it is concentrated in just one area, fairly far from the state capital, Madrid.

It is different in the case of central administrations located in the territory where minority languages are spoken; in this case even the central administration should be able to provide services in the minority languages, for example the case of French speakers in Aosta Valley (Italy) or Catalan speakers in Catalonia (Spain) regarding the central state public administration located in the territory of Aosta Valley and Catalonia. Needless to say that this does not always happen since the enrolment of public clerks is done at central level and sometimes it is difficult to guarantee public servants with bilingual skills even in those areas where it has to be provided: a paradigmatic example is the administration of justice in Catalonia. The presence of a bilingual public administration is easier at regional level, since in the regions, the devolution of powers, which has happened recently in several states of the European Union, allowed them to make decisions regarding linguistic issues and, consequently, the protection of minority languages might also depend on the strength of these minority languages in the community. The same for the local authorities which oversee the implementation of a linguistic strategy which is put into practice by the employees of the administration and which is used by the citizens, speakers of a minority language,

in agreement with and with the support of the central Government[3]. In order to incentivise the presence of minority languages in the public sector there needs to be some rules and the legislator can do more in order to have a bilingual public administration since without bilingual public clerks the citizens' linguistic rights cannot be satisfied. Education has some links with this topic since in order to have bilingual public clerks they have to be trained in the minority language. A broader discussion of the education system, administration of justice, media and new technologies in minority languages is beyond the purview of this work.

My research is focused on public administration; the degree of recognition of lesser used languages in this area depends on Constitutions, laws and also the sensitivity of the state in which these minority languages are spoken. For example, Catalan in France does not have the same status as in Spain, the same for Irish speakers in Northern Ireland compared to Irish speakers in the Republic of Ireland. This different protection depends on the political, social and economic situation.

In my research, I undertake a comparative analysis of rights of speakers of minority languages in public administration and public institutions, focusing my attention on three countries of the EU: Italy, which has a variety of minority languages within its borders and a complex system of legislation; Spain which, in my opinion, has developed a rich framework of legislation to protect minority languages; and the UK[4], where, recently, there were significant improvements in this area.

UK is a common law country, whereas, Italy and Spain are civil law countries; it is interesting to study the different approach in the implementation of the laws in the two different systems. Each state has also different approaches to devolution of powers to the relevant regions, which is an important variable.

In addition, the UK and Spain ratified the European Charter for Regional or Minority Languages, an instrument of the Council of Europe, which will be analysed in the following sections, whereas, Italy has not. In Italy, with devolution and the changes of part V of the Italian Constitution, the regions increased their powers in several sectors, including the protection of minority languages. The Italian law is characterised by a hierarchy with the Constitution (art. 6) on the top, followed by National Legislation (law 482 of 1999) and Regional Laws. Regarding the Italian framework, I focus my attention on the five regions with a special statute of autonomy: Aosta Valley, Trentino Alto-Adige, Friuli Venezia Giulia, Sicily and Sardinia.

In Spain, instead of regions, there are autonomous communities and each autonomous community has a special regime in the framework of national law.

---

[3] S Carrel, *Language Rights Individual and Collective: the Use of Lesser Used Languages in Public Administration* (EBLUL 2000) 14.

[4] This research was conducted before the UK referendum of June 2016 in which 51,89% of the population voted to leave the EU (Brexit).

For the purposes of brevity and simplicity I am not able to explore the legislation of all autonomous communities of Spain, of which there are seventeen, but I focus my attention, as in the case of Italy, on the most significant ones: Catalonia, Basque Autonomous Community, Balearic Islands, Valencia, Navarra and Galicia. As a result of the creation of these autonomous communities, the language of a region is an official language alongside Castilian in that region; thus, it has an official use in the public administration to varying degrees. The normalisation of Catalan in all areas of public administration, the controversial 2006 Statute of Autonomy of Catalonia, and the widespread teaching of Basque to public servants in the Basque Autonomous Community are topics which are always of central concern in the doctrine on minority language rights.

In the UK, recently, several steps were made for the protection of its lesser used languages especially with devolution, which gave to the Welsh Assembly, the Scottish Parliament and to the Northern Ireland Assembly some powers. The Scottish Parliament started to legislate in this area to protect its language against the strongest language in the world: English. In April 2005 the Scottish Parliament passed the Gaelic Language (Scotland) Act. In Wales, since 1992, the Government of the UK adopted a law on the Welsh language. In Northern Ireland devolution is in force and some organisations are calling for a Northern Ireland Irish Language Act [5].

In this work, my focus will be also to analyse the gap between the law and reality because, most of the laws which will be examined in the following chapters, stated that services in minority languages have to be offered but sometimes these provisions are only "*flatus vocis*". It is often not yet known the extent to which language rights are actually implemented, consequently, it is difficult to say much about this issue.

In this chapter I will be looking at the International and European Union legal framework on the protection of lesser-used languages because it creates obligations for Italy, Spain and the UK, with regard to minority languages, and their domestic law often implements principles contained in these instruments. As a result, these obligations form a framework for national, regional and local law and policy on minority languages.

I.1.1 Methodology

This research is a comparative study of the language policy, as reflected primarily in constitutional provisions, language legislation, and international

---

[5] According to the St. Andrews Agreement of 2006 the Government will introduce an Irish Language Act. The agreement also concerned the re-establishment of devolution in Northern Ireland.

obligations, of three EU member states, Italy, Spain and the United Kingdom[6], focusing on the use of minority languages in the public administration. The three states were chosen for a variety of reasons. In all three states, a widely-spoken, prestigious language is the national language and has been the dominant language of civil administration, as well as education, broadcasting, and so forth, for an extended period: in Italy, modern Italian, in Spain, Castilian Spanish, and in the UK, English. However, in all three states, a variety of other languages and a variety of dialects of the dominant language are also spoken, and in all cases, such languages have been weakened by state policies designed to promote the dominant language of the State. Yet, as we shall see, in all three, a fairly extensive legal framework for the protection and promotion of at least some of those languages has been developed. All three states are advanced liberal democracies, and all three are members of important regional international organisations such as the European Union (EU)[7], the Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE), as well as the UN, and are parties to most important international treaties having provisions pertaining to language issues. However, all three States also have somewhat different political histories, especially as regards language policy: while, in all three states, the dominant language has long had a privileged place in public administration, education and the media, in fascist Italy and, especially, under the Franco dictatorship in Spain, use of minority languages was subject to forceful repression. Although all three States have devolved regional governance structures which in some cases coincide with linguistic and ethnic borders, the forms which devolution has taken differ, as do the forms of Government themselves—Italy is a republic, Spain a constitutional monarchy, and the UK is a parliamentary monarchy—and the nature of the legal systems in each: Italy and Spain have a civil law system whereas the UK combines a common law system (England and Wales, and Northern Ireland) and what could be described as a "mixed" system in Scotland, having elements of both a common and civil law tradition.

As we shall see, the legal frameworks with regard to the use of minority languages in the public administration in the three States have both similarities and significant differences. In this context, a comparative approach has the potential first to enhance our understanding of the special characteristics of each legislative approach. It also has the potential to assess the contribution which variables such as recent political history, particular sociolinguistic and demographic characteristics of the linguistic minorities themselves, differences in legal traditions, differences in constitutional structures and structures of the public

---

[6] This research was conducted before the UK referendum of June 2016 in which 51,89% of the UK population voted to leave the EU (Brexit). Brexit can affect the future, but possibly not past legislation inspired by the EU.

[7] This research was conducted before the UK referendum of June 2016 in which 51,89% of the population voted to leave the EU (Brexit).

administration have on the development of language legislation. The fact that many of the same international legal instruments of relevance to minority language policy apply in the three States may allow us to examine the extent to which such instruments have had an impact on the nature of the legal framework and on its implementation. Indeed, as we shall see, the work of monitoring bodies under some of these international instruments has provided a very useful source of information about the implementation of both the treaties and domestic measures, and their wider effects. Ultimately, it is hoped that some judgment can be made about the relative success of different frameworks in ensuring the wider use of the minority language in the public administration, for the benefit of both the speakers themselves and of the vitality of the language more generally, within the context, though, of the territorial integrity of the State itself, something which, as we shall see, all of the relevant international instruments recognise as being inviolable.

While other States may have been chosen, there were a number of practical considerations that were borne in mind in choosing the three States which ultimately form part of this study. The goal was to choose a small number of States which shared a range of similar qualities but also enough differences of the sort described above to allow comparisons that could reveal something about the factors which may contribute to the creation of a legislative framework which is a success, in the terms just mentioned. In addition to meeting the various considerations described earlier in this section, Italy, Spain and the UK had other advantages. First, in doing any comparative research, language is an issue, as much original source material is available only in the official language of the state. The author speaks and is able to understand Italian, Spanish and English (as well as French although France was not included as, unlike the other three jurisdictions, it does not have a developed domestic legal framework in relation to minority languages in the public administration and is not party to many of the most important international instruments). The author is also able to read Catalan, which is an advantage (as is the command of French, in relation to one region in Italy). Second, the author has practical experience of living and working in Italy, her native state, Spain (in Barcelona) and the United Kingdom (in London, as well as having studied in Aberdeen, at the University of Aberdeen), and therefore has a considerable understanding of the broader legal and political context.

It would also be appropriate to describe why it was decided to limit the scope of the analysis to the legislative framework in relation to use of minority languages in the public administration. This is partly due to practical considerations: language legislation often covers a wide range of subject matter, from the education system to media (especially television and radio broadcasting), to the use of languages in political institutions (such as legislatures, the courts, and so forth) as well as the use of languages in the public administration. It would simply not be possible to have covered all of these areas in the context of a single research, and so a decision had to be made. One consideration is that the public administration is a particularly

important area from the perspective of language policy. The ability to use a minority language in dealing with the public administration is of great practical importance to members of linguistic minorities, given the significant role that the public administration plays in the daily life of the citizen in advanced western democracies. In terms of minority language policy, it is also an important area as a considerable amount of prestige is attached to the language or languages through which the State conducts its business. By providing for minority language services, the use of a minority language in the public administration can greatly increase the number of jobs in which the ability to use a minority language is an essential job requirement, thereby further enhancing its prestige and increasing the motivation to learn and use the language. Finally, it is a relatively under-researched area. Notable researchers have previously published on the issue of rights to use and have used minority languages but they have not written extensively specifically on the right to use and have used minority languages in the public administration and in the public institutions.

This study is based primarily on a consideration of relevant legal standards. These include international treaty provisions, including provisions in relevant EU and Council of Europe treaties, as well as international "soft law" commitments of relevance to the subject matter (such as guidelines of the OSCE's High Commissioner on National Minorities). Also considered were national constitutional instruments of relevance, as well as the statutes which created devolved regional Governments, such as the various statutes of autonomy in Spain, the Government of Wales Act 1998 and the Scotland Act 1998. Also considered were all relevant legislation of either national or regional Governments relating to the regulation of language use by and within the public administration. Where any of these legal obligations have been the subject of relevant case law, decisions of international and domestic courts and tribunals have been considered. The monitoring reports of treaty bodies created under perhaps the two most important treaties relating to the protection of linguistic minorities, the Advisory Committee under the Council of Europe's Framework Convention for the Protection of National Minorities and the Committee of Experts under the Council of Europe's European Charter for Regional or Minority Languages, have also been examined. In addition to clarifying some of the relevant provisions of these treaties, these reports contain a considerable amount of information about relevant legislation, about the sociolinguistic and demographic position of the minorities, of wider aspects of state language policy and, crucially, about implementation of both international and national standards, and this information has been used throughout the research. Finally, in order to understand the national context, some reference has been made to the wider literature on constitutional and administrative structures of the state, the general outline and recent history of its language policy and the sociolinguistic and demographic situation of the relevant minorities.

This study was conducted sequentially, generally in the order that it appears. First, relevant international standards were examined, together with any case law or other outputs from treaty bodies which clarified the content of the international

obligations. Second, the domestic context of each state was examined in some detail. The relevant domestic legislative framework needed to be put in its wider context, and this required a consideration of things such as the nature of the domestic legal system and the legal tradition of which that system formed a part, as well as the constitutional and administrative structure of the state, a factor which, as we shall see repeatedly, has had an impact on the legislative framework. The histories of the linguistic minorities in question and, in particular, the sociolinguistic and demographic situation of the languages needed to be considered in order to inform the analysis of the legal provisions themselves. The primary focus, however, was on the content of relevant domestic legislation. Aside from the UK, the relevant legal instruments and case law (as well as relevant scholarly analyses) were not in English, and these had to be located in translation or translated by the author. Given the central importance of these instruments, they then had to be described in sufficient detail to serve as the basis for a fuller commentary and comparison. Finally, a considerable amount of information regarding both the content and, more importantly, the implementation of both international standards and the domestic legislative frameworks was, as noted, contained in the monitoring reports of the two most important treaty bodies, the Advisory Committee and the Committee of Experts, and these reports were closely scrutinised for relevant information.

Finally, some attempt is made to consider the extent to which legislative frameworks have been translated into practice, and the output of treaty monitoring bodies has been used for this purpose, no real attempt was made to assess the impact of legislative models on the vitality of the minority language communities in question. This is an important issue: in many, if not most cases, one of the goals of the legislative framework (and certainly a central goal of the Council of Europe's European Charter for Regional or Minority Languages) is the maintenance and promotion of minority languages, and the extent to which legislation actually achieves this goal is of obvious importance. However, advanced anthropological and sociological methodologies would have to be employed in order to begin to assess this issue, and this goes well beyond the scope of this research.

I.2 Introduction to the Topic: Minority Languages

"I am always sorry when any language is lost
because languages are the pedigree of nations" [8]

Language was always felt to be a problem because it is one of the elements that identifies a population as such since the use of a language is one of the most

[8] S Johnsons, *Tour to the Hebrides* (1775).

important factors which creates identity [9]. For many constitutionalists of the last century there should be a perfect correspondence among "State, language-culture and Nation" [10]. Language is closely associated with the formation and identification of national identities. For example, in Catalonia, Catalan has political implications since it is related to the ambition of independence of Catalans from Spain; the same was true for German speakers in Trentino Alto Adige, for Sardinians and for the Irish of Northern Ireland who desire that Northern Ireland be part of the Irish Republic rather than part of the UK. Their language, Irish, and their religion, Catholicism, also has political implications and is a strong symbol of identity.

In the world there are situations where majority languages coexist with minority languages in many communities but minority languages could disappear from such communities for many reasons, for example because the majority language is considered more useful than the minority one or more prestigious. Indeed some linguists argue that, by the end of this century, 90% of the world's languages could disappear [11].

Preserving one's own language is a way to keep and to discover information that would otherwise be irremediably lost: in Australia for example aborigines' words have played a part in the discovery of new vegetable species [12]. Also, preserving minority languages is a way to increase democracy in a state and the spirit of cohabitation of its populations. Financial considerations are always important since it is possible to have bilingual public clerks only if the Government or the institution can afford to have special offices dedicated to speakers of minority languages thus the strongest minorities can achieve quite high standards but the weak minority languages, minorities without power, energy resources or, in general, money, cannot. One's language is important to everybody and the language is a core part of a population; to protect endangered languages is a problem not only in Europe but all over the world.

---

[9] A Vacca, 'A Comparative Approach between the Council of Europe Treaties and the European Union Framework in the Legal Protection of Minority Languages' (June 2010) 53 Revista de Llengua i Dret 111.

[10] About this topic: P Carrozza, 'Nazione', *Digesto Disc Pubbl* X (UTET 1995) 148; S Tierney, 'Reflections on the Evaluation of Language Rights' in A Braen, P Foucher and Y Le Bouthillier (eds), *Languages, Constitutionalism and Minorities/Languages, Constitutionalisme et minorités* (Markham 2006) 8.

[11] D Crystal, *Language Death*, (Cambridge University Press 2000); D Nettle and S Romaine, *Vanishing Voices: The Extinction of the World's Languages*, (Oxford University Press 2000); R Ostler, *Disappearing Language*, (Whole Hearth Spring 2000) http://findarticles.com/p/articles/mi_moger/is_2000_spring/ai_61426207; see also http://news.bbc.co.uk/1/hi/also_in_the_news/7097647.stm.

[12] E M S Belle and G Barbujani, 'A Worldwide Analysis of multiple micro satellites suggests that Language Diversity has a detectable influence on DNA Diversity' (2007) 133 American Journal of Physical Anthropology 1137-1146.

Certainly the problem of managing linguistic diversity in Europe increased after the dissolution of socialism/communism in Eastern Europe, which resulted in the creation of new States and the emergence of repressed identities; see, for example the case of the violent break-up of Yugoslavia. Most of the recent conflicts have an important relationship with minority issues [13]. It is possible to avoid conflicts by respecting minorities [14]. In Italy, Spain and the UK, the devolution of powers was in part a response to the aspirations of much of the population of the devolved territories for greater autonomy and even full independence; thus, in order to avoid conflicts it is important to afford the recognition of some rights to the minorities.

The minority phenomenon must be seen as an element of cultural enrichment for a nation; where several languages are spoken there is development and integration [15].

I.3 Definition of Minority and of Regional or Minority Languages

The definition of minority is important because many rules apply to people who are members of minorities and the international instruments very often do not contain a definition of minority; thus, we have to check the most valuable definitions in order to interpret some rules. The most widely accepted definition of minority was contained in the 1977 report of Francesco Capotorti for a Sub-Commission of United Nations. Minority for Capotorti is

> a group, numerically inferior to the rest of the population of a State, in a non-dominant position, whose members- being nationals of the State- possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language [16].

The definition also includes populations who speak a language similar or identical to the official or majority language of a neighbouring State: for example,

---

[13] C R Fernandez Liesa, *Derechos Linguisticos y Derecho Internacional* (Dykinson 1999) 8.

[14] V Y Ghebali, 'Ethnicity in International Conflicts: Revisiting an Elusive Issue. In Towards the 21st Century: Trends in Post-Cold War International Security Policy' in K R Spillmann and A Wenger (eds), *Studies in Contemporary History and Security Policy* 4 (Peter Lang Publishers 1999) 265 http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?id=6808&lng=en; see also http://ethnic-conflicts.net/model.html.

[15] A Vacca, 'A Comparative Approach between the Council of Europe Treaties and the European Union Framework in the Legal Protection of Minority Languages' (June 2010) 53 Revista de Llengua i Dret 111.

[16] F Capotorti, 'Il Regime delle Minoranze nel Sistema delle Nazioni Unite e secondo l'art. 27 del Patto sui Diritti Civili e Politici' (1992) Rivista Internazionale Diritti dell'Uomo 107.

the German speaking minorities in Italy, Belgium, France and Denmark. In these regions these languages are under pressure but they are not at risk of disappearing because they are spoken as the official language in another State. Catalans are not in a non-dominant position in Catalonia because they are strong but they consider themselves an at-risk minority in Spain; thus, they are in a non-dominant position relative to the overall territory of Spain.

Unlike most international instruments of relevance to speakers of minority languages, the European Charter for Regional or Minority Languages (ECRML), an international treaty adopted in 1992 under the auspices of the Council of Europe, to promote historical, regional and minority languages in Europe, which will be analysed in the following sections, contains a definition of "regional or minority languages", the languages to which the treaty's provisions apply, set out in its art. 1 [17]. This article states that regional or minority languages are the languages traditionally used within a given territory of a state by nationals of that state who form a group numerically smaller than the rest of the state's population and different from the official languages of that state. Dialects and immigrant populations' languages are excluded from the Charter's definition but the definition of dialect too is an academic and artificial one [18]. The Sardinian language, for example, in the past was considered only a dialect but now it is recognized as a language and has received protection through regional laws and Italian (central state) law. The Charter contains no definition of "dialect" and this is precisely the problem.

The definition of minority and of linguistic minority is not an abstract concept but it depends on historical, political and social considerations that could be modified over time [19].

---

[17] Art 1 ECRML states: "For the purposes of this Charter:

a) 'regional or minority languages' means languages that are:

i) traditionally used within a given territory of State by nationals of that State who form a group numerically smaller than the rest of the State's population; and

ii) different from the official language(s) of that State; it does not include either dialects of the official language(s) of the State or the languages of migrants;

b) territory in which the regional or minority language is used means geographical area in which the said language is the mode of expression of a number of people justifying the adoption of the various and promotional measures provided for in this Charter;

c) "non-territorial languages" means languages used by nationals of the State which differ from the language or languages used by the rest of the State's population but which, although traditionally used within the territory of the State, cannot be identified with a particular area thereof".

[18] G Barbina, *La Geografia delle Lingue* (Nuova Italia Scientifica 1993) 140.

[19] E Palici Di Suni Prat, *Intorno alle Minoranze* (Giappichelli 2001) 12; on the relativity of the concept of minority see R Toniatti, 'Minoranze e Minoranze Protette: Modelli Costituzionali Comparati' in T Bonazzi and M Dunne (eds), *Cittadinanza e diritti nelle società multiculturali* (Il Mulino 1994) 279.

I.4.1 International Framework

The first post-Second World War International instrument, which included a reference about the rights of speakers of languages, is the Charter of the United Nations, dated 1945. Among its purposes it referred to respect for human rights and fundamental freedoms, without distinction on the basis of race, sex, language and religion (art. 2)[20].

Also in the International framework, the Universal Declaration of Human Rights, dated 1948, is quite general about this topic and it is only a resolution, not a legally binding instrument, but it has assumed a greater status. It included the struggle against discrimination but did not include positive measures. “Positive measures” mean rights which require the state to take positive steps. The mere prohibition of discrimination is not a sufficient safeguard, different circumstances require different treatment since the same treatment for different situations might be discrimination[21].

Neither, the Charter of the United Nations, dated 1945, nor the Universal Declaration of Human Rights, dated 1948, mentioned linguistic rights of minorities.

Other documents are more specific, for example the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR), which will be discussed further in this chapter, dated 1950, is a Council of Europe Treaty and has been ratified by all COE member states. The ECHR includes art. 5, art. 6 and art. 14 linked with languages topics. Art. 5 and art. 6 concern fairness in a trial not linguistic rights. The case law of the European Court of Human Rights suggests that these rights do not apply when a person speaks the national language too[22].

Art. 14 ECHR states that the rights and the freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Also relevant is the UNESCO Convention against Discrimination in

---

[20] A Milian Massana, ‘Els Drets Linguìstics Reconeguts Universalment en el Dret Internacional’ (1995) Drets linguìstics a la Nova Europa 154.

[21] V Cardi, ‘Regional or Minority Language Use before Judicial Authorities: Provisions and Facts’ (2007) 2 Journal of Ethnopolitics and Minority Issues in Europe http//www.ecmi.de/jemie/special_2_2007.html; according to the author “the main bulk of language rights consists of ‘positive’ rights going beyond the realm of traditional human rights law, “positive” rights that oblige the state to provide certain key public services through the medium of minority languages”.

[22] See R Dunbar, ‘European Traditional Linguistic Diversity and Human Rights: A Critical Assessment of International Instruments’ in E J Ruiz Vieytez and R Dunbar (eds), *Human Rights and Diversity: New Challenges for Plural Societies* (University of Deusto 2007) 90.

Education, dated 1960; art. 1 of the UNESCO Convention, for example, states that "for the purposes of this Convention, the term "discrimination" includes any distinction, exclusion, limitation or preference which being based on race, colour, sex, language, religion, political or other opinion, national or social origin".

A very important provision, because it is legally binding, is art. 27 of the International Covenant on Civil and Political Rights, adopted by the UN General Assembly in 1966 (ICCPR). It says "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". Nevertheless, this article is still unclear because there are no obligations on the states to provide education or services in the minority language and it does not require states to take any positive measures. The Human Rights Committee, instead, in its General Comment n. 23 on art. 27, states that art. 27 imposes positive measures but did not clarify which kind of measures; consequently the article still remains vague and generic [23].

The Helsinki Agreement, dated 1975 and the Helsinki Final Act, also dated 1975, are also relevant. The latter created CSCE (Conference on Security and Cooperation in Europe) which became a stable organisation with the name of OSCE (Organisation for Security and Cooperation in Europe) [24]. The aim of this organisation is to prevent conflicts, to cooperate for the rehabilitation of post-conflict situations and to understand the reasons that may give rise to a conflict. There were some meetings (Continuation of Helsinki) to ensure the protection and security in Europe and especially the protection of human rights. After these

[23] The Office of the United Nations High Committee on Human Rights based in Geneva (Switzerland) observed about this article: "The Committee observes that the art 27 establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individual in common with everyone else they are already entitled to enjoy under the Covenant, although art 27 is expressed in negative terms, that article, nevertheless does recognize the existence of a "right" and requires that it shall not be denied consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against the act of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party" www.unhchr.ch/tbs/doc.nsf/o/fbzfb12c2fb8bb21c12563ed004df1111?; see R Dunbar, 'Preserving and Promoting Linguistic Diversities: Perspectives from International and European Law' in A Braen, P Foucher and Y Le Bouthillier (eds), *Languages, Constitutionalism and Minorities/Languages, Constitutionalisme et Minorités* (Markham 2006) 72; R Dunbar, 'European Traditional Linguistic Diversity and Human Rights: A Critical Assessment of International Instruments' in E J Ruiz Vieytez and R Dunbar (eds), *Human Rights and Diversity: New Challenges for Plural Societies* (University of Deusto 2007) 96.

[24] OSCE www.osce.org/hcnm. The OSCE has six working languages: English, French, German, Italian, Russian and Spanish.

meetings the Vienna Concluding Document (1989) and the Document of the Copenhagen meeting of OSCE (1990)[25] were drafted. The last one is not a treaty, so it is not legally binding, but was an inspiration for the Framework Convention for the Protection of National Minorities which will be discussed further in this chapter in some detail. It provides that persons belonging to a national minority have the right to use freely their mother tongue in private as well as in public.

The Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM) are important in terms of languages issues. In 1992 the High Commissioner on National Minorities (HCNM) was established which has a very sensitive duty to prevent conflicts, through diplomacy, at the earliest possible stage. This mandate was created especially for the situation of the former Yugoslavia since there was the fear that this could be repeated elsewhere in Europe.

The HCNM is an independent and impartial actor. It is not a supervisory mechanism; rather, it utilises the international standards and has developed a range of guidelines. The HCNM's guidelines include: The Hague Recommendations Regarding the Education Rights of National Minorities of 1996, The Oslo Recommendations Regarding the Linguistic Rights of National Minorities of 1998, The Guidelines on the use of Minority Languages in the Broadcast Media of 2003[26]. The Oslo Recommendations (1998) established some measures to preserve minority languages, for example that persons belonging to a national minority shall have a right to acquire civil documents and certificates in both the national language(s) and the language of the minority, but only from "regional and/or public institutions" so not from national and central Governmental ones, and only where persons belonging to the minority "are present in significant numbers" in such areas and where "the desire for it has been expressed", administrative authorities shall ensure that public services are provided also in the language of the national minority when it is possible. "Administrative authorities shall, wherever possible, ensure that public services are provided also in the language of the national minority. To this end, they shall adopt appropriate recruitment and/or training policies and programmes"[27]. Also the elected members of regional and local Governmental bodies can use the language of the national minority during activities relating to these bodies.

The UN General Assembly Declaration on the Rights of Persons Belonging to

[25] Document of the Copenhagen meeting http://www.osce.org/documents/odihr/1990/06/13992-en-pdf, para. 32.1 provides that persons belonging to a national minority have the right to use freely their mother tongue in private as well as in public; Document of the Helsinki summit www.osce.org/documents/mcs/1992/07/4046-en.pdf.

[26] Guidelines on the use of Minority Languages in the Broadcast Media 2003 http://www.osce.org/hcnm/documents.html?Isi=true&limit=10&grp=45.

[27] Oslo Recommendations Regarding the Linguistic Rights of National Minorities http://www.unesco.org/most/ln2pol7.htm.

National, Ethnic, Religious and Linguistic Minorities[28], adopted in 1992, also contains provisions relating to language. Art. 2, for example, says: “Persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination”. This declaration does not make any specific reference to the use of minority languages in the public administration, but art. 2, para. 3[29] and art. 4, para. 2[30] may imply the need to provide minority language public services.

The Universal Declaration of Linguistic Rights, approved by the World Conference on linguistic rights in Barcelona on the 6th June 1996, is a significant but not legally binding instrument, in which the International PEN (Human Rights Organisation) and other organisations, supported by UNESCO, affirmed principles such as this: “Everyone has the right to carry out all activities in the public sphere in his/her language”. This Declaration, although it is not legally binding is particularly interesting because it included a systematic cataloguing of linguistic rights, many of which are not found in any international instrument. It was written in cooperation with several NGOs and they hope that UNESCO considers linguistic rights as human rights. Barcelona’s Declaration asserts that all linguistic communities are equal in law[31].

In addition to International Instruments of general application as those described, International law is also relevant because under bilateral treaties, international legal obligations can also be created, and where a bilateral treaty

---

[28] UN General Assembly Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities http://www.un.org/documents/ga/res/47/a47r135.htm.

[29] “Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation” http://www.un.org/documents/ga/res/47/a47r135.htm; see also http://www.ohchr.org/EN/Issues/Minorities/Pages/MinoritiesGuide.aspx; “Effective participation requires representation in legislative, administrative and advisory bodies and more generally in public life. Persons belonging to minorities, like all others, are entitled to assemble and to form their associations and thereby to aggregate their interests and values to make the greatest possible impact on national and regional decision-making” http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/133/85/PDF/G0513385.pdf?OpenElement, para. 44.

[30] “States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards” http://www.un.org/documents/ga/res/47/a47r135.htm; “The creation of favorable conditions requires active measures by the State… These measures may require economic resources from the State” http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/133/85/PDF/G0513385.pdf?OpenElement, para. 56.

[31] In the original language, Catalan ‘Totes le comunitats linguistiques son iguals en dret’.

deals with language, it forms part of the international framework for a State. Such treaties have been important in the context of Italy, where the basics of the legal regime for German in Trentino Alto Adige, French in the Aosta Valley and Slovene in Friuli Venezia Giulia were set in the first instance by treaties. The Framework for Irish in Northern Ireland was also set to a significant degree by provisions in the Good Friday Agreement and, more recently, the St. Andrew's Agreement. These treaties will be discussed in some detail in the context of the later chapters on Italy (Chapter II) and the UK (Chapter IV).

I.4.2 United Nations Declaration on the Rights of Indigenous Peoples

While the international legal norms of most relevance to the various minorities which are present in the three States examined in this study are those relating to the protection of minorities, it would be appropriate to make brief reference to the emerging international standards on the rights of indigenous peoples. The only binding international legal obligations are contained in two conventions of the International Labor Organization (ILO), Convention No. 107, "Indigenous and Tribal Populations Convention", of 26 June 1957, and Convention No. 169, "Indigenous and Tribal Peoples' Convention", of 27 June 1989. While Convention No. 107 is still in force, it was meant to be replaced by Convention No. 169, which is a fundamentally different treaty in aims and content. Only 22 states have ratified Convention No. 169, which came into force in 1991, and only one of the three States which are the subjects of this study, Spain, has ratified it (on 15 February 2007); none of the three States considered here ratified Convention No. 107.

Although it does not, strictly speaking, create binding international legal obligations, United Nations General Assembly Resolution 61/295 [32], on the Rights of Indigenous Peoples (the "UNGA Resolution"), of 13 September 2007, is nonetheless an important expression of principles on the rights of indigenous peoples. Italy, Spain and the United Kingdom were amongst the 143 States which supported the resolution; only four states voted against it, and eleven abstained [33].

Both ILO Convention No. 169 and the UNGA Resolution contain important provisions on language, and in particular on the teaching of and on education through the medium of indigenous languages. For example, in part VI of Convention No. 169, para. 1 of art. 28 provides that children belonging to indigenous peoples shall be taught to read and write in their own indigenous language or in the language most commonly used by their group. More generally, para. 3 of art. 28 provides that measures be taken by States "to preserve and promote the development and practice of the indigenous languages of the peoples

---

[32] A/Res/61/295.

[33] http://www.un.org/News/Press/docs/2007/ga10612.doc.htm.

concerned", and this would appear to be a general obligation that would extend well beyond the education system and might include the use of such languages in the public administration. Art. 13, para. 1 of the UNGA Resolution provides that Indigenous Peoples "have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures", and para. 2 of that article provides that States

> shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Para. 1 of art. 14 of the UNGA Resolution provides that Indigenous Peoples "have the right to establish and control their educational systems and institutions providing education in their own languages", and para. 3 of that article provides the following:

> States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

However, it is highly unlikely that any of the long-standing "autochthonous" minorities in the three States being examined here would qualify as "indigenous peoples" for the purposes of either Convention No. 169 or the UNGA Declaration; indeed, it would appear that only the Sami, amongst the various minorities within EU member states, are considered to be indigenous. This becomes evident from the definitions in these instruments of the peoples to whom they apply. Art. 1, para. 1 of Convention No. 169 provides, for example, that the Convention applies to two types of peoples:

> (a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
> (b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

None of the minorities considered in this study could reasonably be considered to be "tribal peoples"; although aspects of the cultural characteristics of peoples such as the German-speakers of South Tirol, or of Welsh speakers in the UK, or Catalans or Basques in Spain differ from those of the rest of the state—most

notably, their language and cultural traditions related to the language—it is difficult to argue that their social or economic conditions differ in any significant way from the rest of the population, and although they benefit, as we shall see, from a range of laws and other measures, it is difficult to argue that their status is *regulated* in any significant way by these, and in particular by their own customs and traditions. It is equally difficult to argue that any of these minorities are "regarded as indigenous", and although such minorities have been present in the States in question at least from the time that their present State boundaries were established—again, it is difficult to argue that the peoples from whom these minorities descend were "conquered" or "colonised"—and although they may retain some of their "cultural institutions", it is doubtful that they retain many, or indeed any, of their own "social, economic and political institutions". While the UNGA Declaration does not actually define "indigenous peoples", it is doubtful that the term would be understood in a much different way than it is under Convention No. 169. The preamble to the declaration, for example, contains this reference: "indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources". While space does not permit a detailed consideration of the history of the minorities in question, it would, however, be most difficult to argue that they have been subject to "colonization" or "dispossession of their lands, territories and resources". Similarly, the preamble refers to things such as the "inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies". Again, there is nothing particular about the "political, economic and social structures" of the minorities being considered in this study, nor of their "spiritual traditions" and "philosophies", at least. The declaration clearly has in mind indigenous peoples of the New World, rather than long-standing minorities of Western European states (except, again, for the Sami). Thus, while the developing international law relating to indigenous peoples is interesting and important, it is generally not relevant to the minorities being considered in this study.

I.5.1 The Council of Europe Treaties: the European Convention for the Protection of Human Rights

The Council of Europe, founded in 1949, seeks to develop throughout Europe common and democratic principles. The European Convention for the Protection of Human Rights and Fundamental Freedoms (the "European Convention on Human Rights", or the "ECHR"), dated 1950, is an important Council of Europe Treaty and has been ratified by all COE member states. The ECHR established the European Court of Human Rights; consequently any person who feels his/her rights have been violated under the Convention by a State party of the Convention

can apply to the Court. The decisions of the Court are legally binding and the Court has the power to award damages[34]. The ECHR includes art 5, art 6 and art. 14 which are linked with the topic of language. Art. 5 states that everyone who is arrested shall be informed in a language which he understands of the reasons for his arrest. Art. 6 states that everyone charged with a criminal offence has the right to be informed promptly, in a language which he understands, of the nature and cause of the accusation against him and has the right to have the free assistance of an interpreter, if he cannot understand or speak the language used in court. These articles concern procedural fairness in the context of criminal law processes rather than being focused on linguistic issues per se. The case law of the European Court of Human Rights suggests that these rights do not apply when a person speaks also the national language[35]. For example, in the case *Isop v Austria*[36] a Slovenian speaker, who was also able to speak German, asked, in a criminal proceeding, to speak in his mother tongue but this request was refused. Normally the citizens of a State who speak minority languages are able to speak also the official language of that State because they received education in this majority language; thus, these provisions could be helpful to migrants who are not able to speak the official language but do little to advance the rights of speakers of regional or minority languages to use their language in criminal processes[37].

Art. 14 ECHR states that the rights and the freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. It clearly includes a right of non discrimination based on language[38]. Also art. 1 of

---

[34] "Art 41 ECHR- Just satisfaction: If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party" www.echr.coe.int. In the case *Podkolzina v Latvia* appl no 46726/1999, the Court awarded the applicant 7500 Euros for non pecuniary damage and 1500 Euros for legal costs and expenses. In another judgment, *Lautsi v Italy* appl no 30814/2006, under art 41 of the Convention, the Court awarded the applicant 5000 Euros in respect of non pecuniary damage.

[35] R Dunbar, 'European Traditional Linguistic Diversity and Human Rights: A Critical Assessment of International Instruments' in E J Ruiz Vieytez and R Dunbar (eds), *Human Rights and Diversity: New Challenges for Plural Societies* (University of Deusto 2007) 90.

[36] Appl no 808/60, 5 YBECHR (1962) 108.

[37] A Vacca, 'A Comparative Approach between the Council of Europe Treaties and the European Union Framework in the Legal Protection of Minority Languages' (June 2010) 53 Revista de Llengua i Dret 111.

[38] R Dunbar, 'Minority Language Rights in International Law' (2001) 50 International and Comparative Law Quarterly 90, in this article the author asserts that the European Convention for the Protection of Human Rights and Fundamental Freedoms provides linguistic rights only in the negative way, a kind of right of non-discrimination because of the language. This kind of

Protocol n. 12[39] of the Convention, on the General prohibition of discrimination, states that the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. All these provisions are generic.

The Council of Europe has, however, been very important in terms of the respect of minority protection, and this has had significant implications for the protection of the languages of such minorities. Two treaties are of particular relevance: the European Charter for Regional or Minority Languages (1992) and the Framework Convention for the Protection of National Minorities (1995). Both treaties contain provisions relating to minority languages and, as treaties, they are legally binding for the states which have signed and ratified them. These documents have become a point of reference for national legislation of those states that have subsequently ratified these treaties.

I.5.2 Court of Human Right's Jurisprudence on Minority Languages

The European Charter on Human Rights contains few language rights but there are some judgments of the Court of Human Rights related to this topic. The European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities do not have a system with a Court; consequently, it is not possible to use as a parameter their detailed provisions on minority languages in the judgments of the Court. Indeed, even if it were possible, as we will see, several of the European countries did not ratify these documents, especially the European Charter for Regional or Minority Languages, and, consequently, it is not possible to apply provisions to states which did not ratify it. The Court has, as a parameter for its judgements, only the provisions of the ECHR, which are not really specific and full of details for minority languages.

Despite this, there are some ECtHR judgments relating to this topic. For example, in the *Belgian Linguistic Case* of 1968[40], some French-speaking parents, who were living in the Flemish area, claimed that the fact that their children did not receive education in French violated art. 2 (right to education) of

---

rights could be useful in the countries with a repressive regime but they do not provide positive measures; R Dunbar, 'Language Rights in Comparative Perspective: Europe' in J E Magnet (ed) *Official Languages of Canada: New Essays* (Markham 2008) 431, 448; A H Català Bas, 'Minories, Drets Linguistics i Conveni Europeu de Drets Humans' in *Linguistic Rights in the New Europe* (International Symposium II of the European Languages and Legislation, Gandia 2-4 March 1995) 190.

[39] Rome, 04 November 2000.

[40] Series A no 6, judgment 23 July 1968 http://www.echr.coe.int/ECHR/EN/Header/CaseLaw/HUDOC/HUDOC+database.

the First Optional Protocol. The ECtHR rejected the claim because this article does not give the right to receive the education in a particular language but only the right of education. In any case the parents could send their children to a French school in the French area.

In *Cyprus v Turkey*[41] there was a claim in order to receive, in the Turkish-controlled area in Cyprus, secondary education in Greek since the children who received primary education in Greek were not able to understand Turkish and because of the sensitive situation it was not possible to send the children across the border. The ECtHR accepted the claim but did not make a statement about the interpretation of art. 2 Protocol 1 as the right to receive the education in a specific language but only considered the real situation and the impossibility for the pupils to understand the lesson in Turkish and the impossibility to go to a school beyond the country's borders. This judgment also suggests that there is not a right to receive the education in a particular language thus it is not so supportive of a minority language policy.

In *Podkolzina v Latvia*[42] a member of a political party was included in the list of the candidates for the 1998 Latvian parliamentary elections. All the required documents, including a copy of the certificate attesting to the fact that Mrs Podkolzina knew the state's official language, Latvian, were supplied by the applicant. An examiner from the State Language Inspectorate went to the applicant's place of work and examined her to assess her knowledge of Latvian with the result of cancelling her from the list of candidates. The knowledge of Latvian, the official language, was compulsory to stand for election. The ECtHR in this case emphasised that the validity of the applicant's certificate was never questioned by the Latvian authorities. In particular, the additional verification to which the applicant was subjected was carried out by one examiner instead of a board of experts without respecting the procedural safeguards. In addition the applicant was also questioned about the reasons for her political affinities. The Court therefore found a violation of art. 3 of Protocol n. 1 (right to free elections) and ordered Latvia to pay to Mrs Podkolzina 9000 Euros[43]. The objection was about the discretion in the way the knowledge of the language was certified not about the Latvian language requirement itself; the requirement must pursue a legitimate aim and be proportionate.

In *Fryske Nasjonale Partij v Netherlands*[44] the applicants claimed that their right to freedom of expression had been violated when they were prevented from

---

[41] Appl no 2578/94, judgment 10 May 2001.

[42] Appl no 46726/99, judgment of 9 April 2002.

[43] A Vacca, 'A Comparative Approach between the Council of Europe Treaties and the European Union Framework in the Legal Protection of Minority Languages' (June 2010) 53 Revista de Llengua i Dret 111.

[44] Appl no 11100/84, 45 Decisions and Reports (E Comm HR) 243, (1986).

standing as candidates for election because their registration for the election was not in Dutch but in Frisian. The ECtHR decided that the right to freedom of expression does not guarantee the right to use one's chosen language in dealing with the public administration. The implication of the case is that the European Court and the ECHR actually give a very broad discretion to states in their choice of language policies and one of the implications of this is that the court is unlikely to impose a duty to provide services in a particular minority language if the state was not willing to do so. Consequently, these cases are not helpful in order to find a legal basis to guarantee the right to use one's chosen language in dealing with the public administration.

In 1993, in *Informationsverein Lentia and Others v Austria* [45] a violation of art. 10 (freedom of expression) and art. 14 (non-discrimination) was claimed. In this case the monopoly of the Austrian Broadcasting Corporation made it impossible to establish private radio and television stations. This fact resulted in discrimination of the Slovenian minority in Carinthia. The Court of Human Rights established that a violation of art. 10 was produced, since the freedom of expression and the pluralism in information are fundamental elements of a democratic society; a violation of art. 14 was not apparent, since the discrimination was not in relation to a particular minority.

In *Mathieu-Mohin and Clerfayt v Belgium* [46], the applicants claimed that there had been a violation of art. 3 of the First Protocol of the Convention regarding free expression in the choice of legislature in conjunction with the non-discrimination provision of art. 14. The applicants had been elected to the Belgian Senate and the House of Representatives respectively, in the bilingual region of Brussels and also in an administrative district which was under the Dutch-language council for certain matters. The applicants had to swear a parliamentary oath in Dutch as part of an eligibility test for the Council, but would only swear the oath in French. Therefore, they were not allowed to sit on the Council. The Court concluded that art. 3 of the First Protocol had not been violated and then went on to consider the discrimination issue under art. 14. The Court decided that the applicants could invoke art. 14 but that there had been no discrimination because the aim of the distinction was reasonable. In addition, regarding the protection of the rights of linguistic minorities in this case, on the basis of art. 3 (right to free elections) of Protocol 1, the ECtHR decided that this article does not create any obligations to introduce a specific system such as proportional representation or majority voting with one or two ballots [47]. This decision seems

[45] 13914/88, 15041/89, 15717/89, 15779/89, 17207/90, judgment 24 November 1993.

[46] Appl no 9267/81 Series A no 113, judgment 2 March 1987 http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/1d4d0dd240bfee7ec12568490035df05/047.

[47] A Van Bossuyt, 'Fit for Purpose of Faulty Design? Analysis of the Jurisprudence of the European Court of Human Rights and the European Court of Justice on the Legal Protection of

consistent with many of the others because, here like in the other judgments mentioned above, the European Court of Human Rights gives quite a wide discretion to states which wish to support a minority language through the requirement that the states provide services in a minority language but also seems to imply that the ECHR and the court would not require a state to provide such support if the state did not wish to do so.

The jurisprudence of the European Court of Human Rights shows that the ECHR does not guarantee specific rights for minorities and minority languages but has shown also a particular sensibility towards minorities [48]. However, the ECtHR has been elusive regarding the topic of choice of language as a component of freedom of expression [49] and in some judgments has underlined that the right to freedom of expression would not include the right to linguistic freedom as regards administrative matters [50].

Indeed, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, which impose requirements in respect of the use of minority languages, are more important for linguistic minorities. Unfortunately the European Charter for Regional or Minority Languages is not taken into account for the ECtHR, and even if it were, since it is not ratified by all countries, it is not possible to apply provisions to states which did not ratify it.

I.5.3 The Council of Europe Treaties: the Framework Convention for the Protection of National Minorities

A Committee of Experts was required to propose specific legal standards in the area of protection of minorities, giving attention to several documents, including the proposal for a European Convention for the Protection of National Minorities drawn by the Venice Commission [51] and the Austrian proposal for an

---

Minorities' (2007) 1 Journal of Ethnopolitics and Minority Issues in Europe 13 http://www.ecmi.de/publications/detail/issue-12007-60/.

[48] A Vacca, 'A Comparative Approach between the Council of Europe Treaties and the European Union Framework in the Legal Protection of Minority Languages' (June 2010) 53 Revista de Llengua i Dret 111.

[49] N Higgins, 'The Right to Equality and Non-discrimination with regard to Language' (March 2003) 10(1) Murdoch University Electronic Journal of Law http://www.austlii.edu.au/au/journals/MurUEJL/2003/7.html.

[50] For example in *Fryske Nasjonale Partij and others v Netherlands*, mentioned before, it is underlined that articles 9 and 10 do not guarantee linguistic freedom as such, in particular, these articles would not guarantee the right to use the language of one's choice in Administrative matters.

[51] www.venice.coe.int.

additional protocol to the ECHR[52]. In the Council of Europe in Vienna in 1993 a committee was established to draft a framework convention specifying the principles which contracting states have to respect[53].

The Framework Convention for the Protection of National Minorities[54] was written under the auspices of the Council of Europe, was opened for signature in Strasbourg on the 1st of February 1995 and came into force on the 1st of February 1998[55]. It is the first legally binding multilateral instrument concerned with the protection of national minorities. Italy, Spain and the UK signed it on 1st February 1995 but while Spain ratified in the same year (1 September 1995) Italy did so two years later (3 November 1997) with the law 28 August 1997, n. 302 and the UK ratified in 1998 (26 January 1998). The total number of ratifications/ accessions at the moment is 39[56] from 47 member states of the Council of Europe. The Parliamentary Assembly of the COE now generally requires States applying for membership to ratify the Framework Convention.

France, Turkey, Andorra and Monaco did not want even to sign the Framework Convention. Belgium, Greece, Iceland and Luxemburg have not yet ratified the Convention, although they have signed it. It is interesting to note that there are some members of the EU among these countries which have not ratified: France, Belgium, Luxembourg (EEC members since its origins), Greece, and a candidate country, Turkey. It is also interesting that some of them are countries which have several minorities in their borders.

The Convention promotes the effective equality of national minorities by creating appropriate conditions enabling them to preserve and develop their culture[57].

The Framework Convention has a preamble and it is divided into five sections: Section I contains general provisions, Section II contains a catalogue of specific

---

[52] Framework Convention for the Protection of National Minorities: Explanatory Report http:/conventions.coe.int/Treaty/en/Reports/Html/157.htm.

[53] In the Vienna Declaration Appendix II "The persons belonging to national minorities must be able to use their language, both in private and in public and should be able to use it, under certain conditions, in their relations with the public authorities".

[54] http://conventions.coe.int.

[55] The condition to entry into force was at least to have 12 ratifications.

[56] The 39 States that have ratified are: Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Ukraine, the United Kingdom and Serbia and Montenegro http://www.coe.int/t/dghl/monitoring/minorities/ 1_AtGlance/PDF_MapMinorities_bil.pdf.

[57] Framework Convention for the Protection of National Minorities http://conventions.coe.int/ Treaty/en/Summaries/html/157.htm.

principles, Section III contains provisions regarding the application of the Framework Convention, Section IV contains provision on the monitoring process, and Section V contains the standard final clauses. The word "framework" in a legally binding Convention recalls soft law and gives a margin of discretion to the States in its implementation[58]. The Framework Convention contains mostly programme-type provisions which are not very specific, leaving to the States discretion in the implementation of the objectives that they want to achieve[59] especially the maintenance and further realisation of human rights and fundamental freedoms[60]. It does not contain a definition of the notion of national minority but in other documents it is possible to find assistance, for example in Capotorti's definition, in any case, in the Framework Convention, the definition is open and the minorities are a question of fact not of law. The term "national" suggests that these persons have to be citizens of a state and some states have made reservations declaring that they do not have minorities or that minorities are citizens of that state or that they have to have a territorial basis, raising the problem of nomadic groups[61], or making a distinction between national minorities and recent migrants, asking for the exclusion of the latter from the protection offered by the treaty. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such without disadvantage[62]. The approach is individualist since it does not recognise collective rights but it has to protect persons belonging to national minorities as individuals who may exercise their rights individually and in community with others. The Framework Convention is an open Convention which may be signed by States which are not members of the Council of Europe.

Its Preamble finds inspiration in the Vienna Declaration of the Council of Europe, the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and other documents of UN (United Nations Declaration on the Rights of Persons belonging to the National or Ethnic, Religious and Linguistic Minorities and International Covenant on Civil and Political Rights, art. 27) and CSCE (the Copenhagen Document). The Preamble shows that the main aim of the Framework Convention is to ensure the effective protection of

[58] P Thornberry and M A Martin Estebanez, 'The Framework Convention for the Protection of National Minorities' in *Minority Rights in Europe* (Council of Europe Publishing 2004) ch 2, 91.

[59] http:/conventions.coe.int/Treaty/en/Reports/Html/157.htm.

[60] A Vacca, 'A Comparative Approach between the Council of Europe Treaties and the European Union Framework in the Legal Protection of Minority Languages' (June 2010) 53 Revista de Llengua i Dret 111.

[61] P Thornberry and M A Martin Estebanez, 'The Framework Convention for the Protection of National Minorities' in *Minority Rights in Europe* (Council of Europe Publishing 2004) ch 2 94.

[62] Art 3 (1).

national minorities and of the rights of persons belonging to those minorities. In Section I, it is specified that the protection of national minorities, which forms an integral part of the protection of human rights, does not fall within the domain of states but is an integral part of the international protection of human rights. There is no competence for the interpretation of the Convention for the organs created by the ECHR but the provisions have to be interpreted considering the general norms in human rights. No collective rights of national minorities are envisaged[63]. The joint exercise of rights and freedoms is possible, although this is not a collective right. The Framework Convention leaves to every person belonging to a national minority the freedom to decide whether or not he or she wishes to enjoy the Convention's protection. Any individual does not have the right to choose arbitrarily to belong to any national minority; his/her choice is related to objective criteria. Section II states that every person belonging to a national minority has to be guaranteed fundamental freedoms (some provisions like this appear too in the ECHR) and effective equality between persons belonging to a national minority and those belonging to the majority requires the Parties to adopt special measures adequate to the situation respecting the principle of proportionality. The principle of non-discrimination and equality is guaranteed for people belonging to national minorities. They must be protected against involuntary assimilation. The development and preservation of their culture in accordance with a general integration policy is guaranteed. The fact that there are differences does not imply the existence of a national minority. The traditions of a population have to respect public order. The Convention seeks to promote the spirit of tolerance and intercultural dialogue, mutual respect and cooperation. Education, culture, public administration and media are important to obtain these aims. The licensing of radio, television broadcasting and cinema should not be subject to discrimination. The recognition of the right to use the minority languages without interference is important because a language is an expression of identity, culture and it is linked with the freedom of expression.

Measures aimed at restricting the rights guaranteed by the Framework Convention are prohibited[64]. The rights of the Framework Convention which have a corresponding provision in the Convention for the protection of Human Rights and Fundamental Freedoms must be interpreted in accordance with the latter.

In Section IV it is established that the Committee of Ministers is charged with monitoring the implementation of the Convention. The first report must be

---

[63] Framework Convention for the Protection of National Minorities: Explanatory Report http:/conventions.coe.int/Treaty/en/Reports/Html/157.htm, see P Thornberry and M A Martin Estebanez, 'The Framework Convention for the Protection of National Minorities' in *Minority Rights in Europe* (Council of Europe Publishing 2004) ch 2 89-135.

[64] Framework Convention for the Protection of National Minorities: Explanatory Report http:/conventions.coe.int/Treaty/en/Reports/Html/157.htm.

submitted within one year of the entry into force of the Framework Convention. An Advisory Committee has to help the Committee of Ministers in the monitoring process; its members shall have recognised expertise in this area. For transparency purposes the publication of these reports is envisaged. From these reports, published on the COE website, it is possible to obtain interesting information, especially about Italy[65], which did not ratify the European Charter for Regional or Minority Languages, consequently, the Framework Convention is the only instrument which incentivises Italy to make progress in the minority languages field.

Art. 10[66], regarding public services, is particularly important in the context of this study. It recognises the right to use a minority language freely and without interference, in private and public[67], orally and in writing.

Para. 2 ensures the possibility of using the minority language with administrative authorities, in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, as far as possible. The term "administrative authority" does not include, literally, all public authorities. It has been worded very flexibly, leaving parties a wide measure of discretion[68]. In addition, there are financial, administrative and technical difficulties, in particular

---

[65] Framework Convention for the Protection of National Minorities, State Reports, Opinions, Comments and Resolutions http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp.

[66] Art. 10, para. 1 and 2 are crucial for my topic: "1) The parties undertake to recognize that every person belonging to a national minority has the right to use freely and without interference his or her minority language in private and in public, orally and in writing. 2) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities. 3) The parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter".

[67] It is a strong achievement to use minority languages dealing with the public administration but from the explanatory report it is not clear. It looks that in public means in a public place and not with the public authorities; the Advisory Committee interpreted this provision as if there was not the possibility for the State to prohibit the use of minority languages in signage and to use a specific alphabet. In the X International Conference on minority languages held in Trieste in 2005, the jurist Fernand de Varennes asserted that the Convention was weak but become stronger because of the effort of the body which monitors the implementation of the treaty, the Advisory Committee.

[68] Framework Convention for the Protection of National Minorities: Explanatory Report http:/conventions.coe.int/Treaty/en/Reports/Html/157.htm.

financial ones can limit the applicability of these provisions but they are not an excuse for a non-implementation. All this gives discretion on the applicability of the provision because of its vagueness. Phrases such as “real need” and “as far as possible” make the nature of the obligation unclear.

This article is not very detailed and has some weaknesses but the Advisory Committee has strengthened it through their interpretations[69].

In the reports and opinions about Italy, Spain and UK[70] there is interesting information on the situation of minority languages, also in the public administration, especially for Italy. Regarding the UK and Spain, the reports and opinions are focused more on Gypsies, Travellers and Roma, than on indigenous linguitic minorities, since the latter are monitored under the European Charter for Regional or Minority Languages and also by the Committee of Experts of CoE regarding the protection of minority languages, whereas, the Italian reports are focused also on minority languages, and especially on the Slovenian one, because Italy has not yet ratified the European Charter for Regional or Minority Languages. This is the only way for the CoE to call the Italian Government to account on minority language issues. In these reports the border minorities (French, German and Slovenian) are the most considered. However, the Advisory Committee has noted that Sardinians do not have services in the public administration on a regular basis[71], whereas, the inclusion in public competitions for public clerks with knowledge of French, Slovenian and German, respectively in Valle d’Aosta, Friuli Venezia Giulia and Trentino Alto Adige, makes their use with the public administration more common compared to Sardinia and the other regions. In the Aosta Valley the staff of local or decentralised public institutions are required to demonstrate their knowledge of French when they are recruited. A French Language Office based in Aosta is at the disposal of the Administration and the general public[72]. Usually projects include the establishment and implementation of linguistic helpdesks in the municipalities where the minorities live, thereby ensuring the use of the minority language in their relations with the

---

[69] A Vacca, ‘A Comparative Approach between the Council of Europe Treaties and the European Union Framework in the Legal Protection of Minority Languages’ (June 2010) 53 Revista de Llengua i Dret 111.

[70] Framework Convention for the Protection of National Minorities, State Reports, Opinions, Comments and Resolutions http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp.

[71] Framework Convention, Council of Europe, 3rd Cycle Opinion Italy 15 October 2010 http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_Italy_en.pdf, 29-30; Framework Convention, Council of Europe, 1st Cycle Opinion Italy 14 September 2001 http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_OP_Italy_en.pdf, 20.

[72] Framework Convention, Council of Europe, 1st Cycle State Report Italy 03 May 1999 http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Italy_en.pdf, 7.

public administration[73]. From the Advisory Committee report[74] the use of Slovenian in the public administration was at the beginning limited and a dispute over the demarcation of the territorial scope of application hampered the implementation of law 38 of 2001 on the Slovene minority for long time.

The Italian framework for protecting minority languages is asymmetrical; minorities living in some regions enjoy special autonomy, with the border regions of the Aosta Valley, Trentino Alto Adige and Friuli Venezia Giulia enjoying much better protection not only than the regions with ordinary statutes but also than the other two regions with special statutes, Sicily and Sardinia. The Advisory Committee notes, in its second opinion on Italy adopted on 24 February 2005[75], that a range of laudable initiatives has been taken at municipal level to encourage the use of minority languages but, at the same time, minorities like Catalans and Sardinians report that, although linguistic desk offices have been foreseen in nearly all communes concerned, some of these offices are, for some reason, not least the financial one, still not operational[76]. The use of minority languages in official dealings also requires a stronger commitment by civil servants. The Advisory Committee recommends further developing the use of minority languages in official dealings, including through the opening of desk offices in all municipalities concerned, administrative brochures and forms in minority languages[77].

Further analysis of these reports will be developed in Chapter II regarding specifically the protection of minority languages in Italy.

Regarding the UK, the Advisory Committee found that the use of minority languages in private and public and with administrative authorities is much less developed in Northern Ireland than in Wales and Scotland[78] and also noted that

---

[73] Framework Convention, Council of Europe, 3rd Cycle State Report Italy 21 December 2009 http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Italy_en.pdf.

[74] Ibidem. See also Framework Convention, Fourth Opinion on Italy adopted on 19 November 2015 https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806959b9 and Framework Convention, Comments of the Government of Italy on the 4th Opinion https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806959b7.

[75] Framework Convention, Council of Europe, 2nd Cycle Opinion Italy 24 February 2005 http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_Italy_en.pdf.

[76] Ibidem.

[77] Ibidem.

[78] Framework Convention, 2nd Cycle Opinion UK 06 June 2007 http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_UK_en.pdf, para. 178; Resolution on the implementation of the Framework Convention for the Protection of National Minorities by the United Kingdom adopted by the Committee of Ministers on 9 July 2009 https://wcd.coe.int/wcd/ViewDoc.jsp?id=1324161&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.

there are problems in relation to the availability of interpretation in health care[79].

Regarding Spain the reports focus on the Roma population and their languages[80]. A detailed analysis of minority languages in public administration in Spain and UK, also with the support of CoE reports, will be developed in Chapter III and IV dedicated respectively to Spain and UK.

I.5.4 The Council of Europe Treaties: the European Charter for Regional or Minority Languages

The European Charter for Regional or Minority Languages (ECRML)[81] was adopted by the Committee of Ministers of the Council of Europe on 25 June 1992 and opened for signature in Strasbourg on 5 November 1992. It entered into force on 1 March 1998[82].

There are, as noted, 47 members of the Council of Europe but only 25 have ratified the ECRML[83]. This means that almost half of the members of the Council of Europe are not legally bound by the ECRML, and that its provisions cannot apply to these countries. In addition, among the countries which have ratified, only slightly over half are members of the European Union, meaning that many EU states have not done so. France and Italy, have not ratified it. Belgium, Greece, Ireland, Portugal (EU members) and Turkey (candidate country) have not even signed the ECRML. The Parliamentary Assembly of the CoE now generally requires States applying for membership to ratify the ECRML.

Italy signed the ECRML on 27 June 2000 but has not yet ratified it, even

[79] Framework Convention, 1st Cycle Opinion UK http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_OP_UK_en.pdf, para. 74.

[80] Framework Convention, 3rd Cycle State Report Spain 23 August 2010 http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Spain_en.pdf.

[81] http://conventions.coe.int/Treaty/en. See also J Triadu Vila-Abadal, 'Perspectiva Constitutional I Carta Europea de les Llengues Regionals o Minoritaries' (September 2002) 37 Revista de Llengua i Dret 129.

[82] The condition to enter in force was to have at least 5 ratifications.

[83] Armenia, Andorra, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Denmark, Finland, Germany, Hungary, Liechtenstein, Luxembourg, Montenegro, Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, United Kingdom have already ratified. The other countries are in different phases of the process of ratification and did not complete for now the process of ratification. Italy signed but did not ratified yet. See S Oeter, 'Introduction: Minority Languages Policy: Theory and Practice' (2007) 2 Journal of Ethnopolitics and Minority Issues in Europe 1 http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Oeter-Introduction.pdf 'The question arises: is it worth looking to the Language Charter if so many states are not willing to accept its rules as a common standard for language policy in Europe?'.

though it has several minority languages inside its borders. There were several projects for ratification, for example, at the beginning of 2008, but due to the failure of the Prodi Government, this proposal was stopped, the same happened later on under Monti's Government. The reason might be that Italy, even if it has several laws for the protection of minority languages, does not want to report to the Council of Europe in some detail regarding this topic [84].

The UK signed the ECRML on 2 March 2000 and ratified on 27 March 2001 and it entered in force on 1 July 2001 [85]. Regarding the implementation of the ECRML in the United Kingdom, the languages protected under it are: Cornish, Irish, Manx Gaelic, Scots, Scottish Gaelic, Ulster Scots, and Welsh.

Spain signed on 5 November 1992, ratified on 9 April 2001 (almost 10 years later), and it entered in force on 1 August 2001. Regarding the implementation of the ECRML in Spain the languages protected under it are: Arabic, Aragonese, Aranes, Asturian/Bable, Basque in the Basque Autonomous Community, Basque in Navarra, Berber, Catalan in Aragon, Catalan in the Balearic Islands, Catalan in Catalonia, Galician in Asturias, Galician in Castilla y Leon, Galician in Galicia, Portuguese and Valencian.

An explanatory report is appended to the ECRML. The preamble of the Charter states that the right to use a regional or minority language in private and public life is an inalienable right, conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Conventions and having regard to the work of CSCE.

The protection and promotion of regional or minority languages, in the different countries and regions of Europe, represents an important contribution to the building of a Europe based on the principles of democracy and cultural diversity within the framework of national sovereignty and territorial integrity [86].

The ECRML comprises twenty-three articles, some of which are subdivided into paragraphs and sub-paragraphs. It is divided into five parts: part I with general provisions, included the definition in art. 1 of "regional or minority languages"; part II, regarding objectives and principles pursued in accordance with art. 2, para. 1; part III regarding measures to promote the use of regional or minority languages in public life in accordance with the undertakings entered into under art. 2, para. 2; part IV, about the application of the Charter; and part V, which contains the final provisions.

---

[84] A Vacca, 'Evolution of the EU law with respect to public access to documents and transparency: the Treaty of Lisbon', 5, 2012, Int. Journal Liability and Scientific Enquiry, 83.

[85] Mercator Linguistic Rights and Legislation www.ciemen.org/mercator/index-gb.htm.

[86] A Vacca, 'A Comparative Approach between the Council of Europe Treaties and the European Union Framework in the Legal Protection of Minority Languages' (June 2010) 53 Revista de Llengua i Dret 111.