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**Linguistic human rights and the right to mother tongue
education: the overlooked components of the human
rights regime.**

Focus on the Arabic-speaking minority in France and the
controversial topics of the instruction of Arabic within the
French system of education and in Islamic religious institutions.

Author: Petya Mitova
Supervisor: Prof. Florence Benoît-Rohmer

(23 000 words)

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Abstract

The aim of this thesis is to bring enhanced awareness on the importance of the right to language and the need for it to be better recognised and protected. The specific focus of the text is on immigrant linguistic minorities due to immigrant minority languages' vulnerable position in the host societies. The second aim of the text is to bring awareness, in specific, to the situation of the Arabic-speaking minority in France. The two central human rights presented and analysed in the thesis are: linguistic human rights and the right to mother tongue education. One of the main tasks of thesis is the assessment of the recognition and protection of these rights within the UN and the CoE human rights systems. The findings are that the two rights are not sufficiently embedded in neither of the two human rights frameworks. The second main task is the assessment of the situation of Arabic speakers in France. The outcome of the analysis is that the language rights of Arabic speakers are not fully guaranteed. The adequate tackling of this issue is imperative in order for the balance and tolerance in the French society to be improved.

Table of Abbreviations

CoE	Council of Europe
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRML	European Charter for Regional or Minority Languages
EILE	Enseignements Internationaux des Langues Étrangères
ELCO	Enseignement des Langues et Cultures d'Origine
EU	European Union
FCPNM	Framework Convention for the Protection of National Minorities
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IML	Immigrant minority language
LoN	League of Nations
MTM education	Mother tongue medium education
OSCE	Organisation Security and Cooperation in Europe
RML	Regional minority language
SIT	Social Identity Theory
UDHR	Universal declaration of Human Rights
UN	United Nations
UNESCO	United Nations Education, Science and Culture Organisation
WWII	World War Two

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Introduction

The ability of human beings to communicate with each other through the means of language is what sets us apart from all the other forms of life on our planet. Communication is at the heart of cooperation and is central to the evolution of the world. It has enabled people to work together, to establish communities, societies, to found states.

The usage of language is so foundational to both the lives of human beings and to the functioning of the world that it is usually fully taken for granted. This is evident from the fact that the topic of the linguistic rights of people has received attention mainly from scholars and education experts while it had for many years remained at the bottom of the concerns of politicians as well as of international and regional human rights institutions. This is problematic for several reasons. Although the usage of language is a widespread freedom, it merits specific recognition as a human right as well as provision of adequate protection due to its primordial nature to the life of individuals. Moreover, the right to language is especially imperative in the case of lesser used languages. While the predominantly spoken language in a given society is at the heart of the administration, education, politics etc., the situation of the languages spoken by smaller groups of citizens in this same society is much more precarious. The possibility for speakers of such languages to learn, use and receive recognition of their mother tongues depends on the political will of the government in place and on the introduction of specific, well-mediated, adequate policies for protection and promotion.

In the context of the human rights regime, the topics of language and human rights have rarely been merged.¹ This can be explained by the fact that both represent politically sensitive

¹ Tove Skutnabb-Kangas, Robert Phillipson and Mart Rannut, *Linguistic Human Rights: Overcoming Linguistic Discrimination* (De Gruyter, Inc 1995) 1

issues, vastly dependent on the power structures in place.² The reluctance for dealing with linguistic rights has meant that very few advances have been made in this area. A major step towards the recognition and promotion of linguistic rights was made during the interwar period by the League of Nations. In the League of Nations Official Journal of June 1929, it was stated that the state signatories of the Paris treaties are bound to respect and permit the free usage of minority languages in the private and public sphere, in the fields of commerce, religion and the press.³ Furthermore, states shall make it possible for minority languages to be taught in primary education in areas populated by considerable numbers of minority-language speakers.⁴ These provisions of the League of Nation were truly evolutionary in nature and of major significance as they provided for considerable protection of the language rights of minorities. The LoN recognised a very broad freedom of usage of minority languages which encompassed both private and public life as well as the press.

Even though the post-WWII period was characterised by a strengthened enthusiasm for the protection and promotion of human rights, linguistic rights were not in the center of attention and remained largely unaddressed for a significant amount of time. The same can be said about the question of minorities which was disregarded for a considerably long period of time. Since the 1960s there has been a renewed interest in the topic of minorities exemplified by the adoption of the UNESCO Convention Against Discrimination in Education in 1960.⁵ However, the unanimous view of scholars is that the topic of minority language rights has not received enough attention.⁶

² *ibid.*

³ *ibid* 75–76.

⁴ *ibid* 2.

⁵ Fernand de Varenes and Elzbieta Kuzborska, ‘Minority Language Rights and Standards: Definitions and Applications at the Supranational Level’ in *The Palgrave Handbook of Minority Languages and Communities* (2019) ed. by G. Hogan-Brun, B. O’Rourke

⁶ Skutnabb-Kangas, Phillipson and Rannut (n 1) 78–79.

This thesis will focus on the linguistic rights of immigrant minorities while putting specific attention on the right to mother tongue education. Given that there has, for a long time, been a notorious gap within the human rights regime related to the protection and promotion of the language rights of linguistic minorities, it is necessary to evaluate whether the right to language is nowadays better guaranteed and protected. The focus on immigrant minorities is justified by their often very vulnerable position. The issue is very relevant nowadays due to the increased mobility of people and the formation of new immigrant minorities in many societies around the world, each one of these communities having their own language.

This work has also notably been prompted by the controversies surrounding the issue of the teaching of Arabic language in France. Arabic speakers are about 3 million in France.⁷ Most of them have emigrated from North-Africa, predominantly from Algeria and Morocco and constitute the largest immigrant group in France. Arabic is, in fact, the second most spoken language in France.⁸ Most Arabic speakers in France nowadays are third or fourth generation immigrants that have acquired the status of full-righted citizens of the French state.

Nevertheless, Arabic continues to be considered as an ‘immigrant language’ in France. What is even more concerning is the low numbers of students studying the language within the French education system. As of 2018, 0.1% of primary school pupils, and 0.2% of secondary school students were learning Arabic.⁹ At the same time, Arabic instruction has also been provided in mosques in combination with the teaching of Islam. This has generated widespread skepticism and criticism within the French society. Arabic speakers in France are an example of a linguistic minority in a problematic situation. Their rights to language and to mother tongue education have been put in jeopardy. This issue merits attention also because of its strong influence on the public opinion of the French society vis-à-vis Arabic speakers.

⁷ ‘La Langue Arabe by Jack Lang Book Review | The TLS’ (*TLS*)

⁸ Emmanuelle Talon, ‘Arabic, a ‘language of France’’ (*Le Monde diplomatique*, 1 December 2012)

⁹ ‘La Langue Arabe by Jack Lang Book Review | The TLS’ (n 7).

It has created strong antagonism in the society especially in recent years. The last two chapters of the thesis will be devoted to the study of the language rights situation of Arabic community in France.

Before beginning the analysis of the presented topic, it is imperative to introduce and define some of the main terms which are to be used. The term **minority** is one of them. The question of minorities has been addressed by many institutions and organisations around the world, yet there still is no firmly accepted definition in international law of what constitutes a ‘minority’.¹⁰ The lack of definition is a serious obstacle to the provision of adequate protection. There are, however, certain characteristics of minorities recognised by scholars. In his ‘Study on the rights of persons belonging to ethnic, religious and linguistic minorities’ prepared for the bodies of the UN in 1991, the Italian jurist Francesco Capotorti outlined the common features of a minority. Although the UN did not officially accept or recognise this definition, Capotorti’s study represents the most thorough analysis of the term ‘minority’. Firstly, minority members are always united around some common ethnic, linguistic or religious markers of identity.¹¹ Secondly, they share a desire to hold on to their identity.¹² Thirdly, minority groups are always less numerous than the rest of the population.¹³ Finally, minorities do not hold a dominant position in the society.¹⁴ Although the lack of an official, widely-accepted definition should be always born in mind, these central characteristics are useful guidance for the analysis of the topic of this thesis.

¹⁰ Dobromir Mihajlov, ‘The First Ten Years’ Experience of the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities in Europe: Evidence of Good Practice and/or of Problems?’ (2008) 5 *Miskolc Journal of International Law* 13, 89.

¹¹ G Hogan-Brun and S Wolff, *Minority Languages in Europe: Frameworks, Status, Prospects* (Palgrave Macmillan UK 2003) 38

¹² *ibid.*

¹³ *Ibid.*

¹⁴ Hogan-Brun and Wolff (n 11) 38.

Furthermore, the terms ‘**dominant**’ or ‘**majority**’ language and **minority language** are relative to the positions of languages in the society and are central to the present discussion.

A ‘dominant’ language is a language variety which has ‘legal or social status superior to that of other varieties in a given geographical area’.¹⁵ The dominant language is usually the national language which has an official status. There are cases where different languages are dominant in different parts of the country. For instance, French language is the dominant language in the Quebec province of Canada, while English is dominant in the rest of the country. Switzerland is another example of a country with three dominant languages which have been officialised: French, German and Italian.

In contrast, minority languages are distinguished from dominant languages by two criteria: the number of speakers and their position in the society. Firstly, minority language speakers are less numerous than dominant language speakers.¹⁶ Secondly, the political status of the minority language is also lower than that of the dominant language because.¹⁷

Furthermore, there are two distinct forms of minority languages: **regional minority languages (RMLs)** and **immigrant minority languages (IMLs)**. A regional minority (also indigenous minority) has got its historic homeland in a certain region of a state.¹⁸ Where there are regional minorities, they have usually been present on the territory of the state for decades, even centuries and the history of their speakers is intertwined with the history of the larger state. RMLs, consequently, are spoken in a more or less defined area of the country.

In contrast, IMLs are brought to the territory of the state by immigrants and are spoken within the communities of immigrants. Throughout history, there have always been people moving

¹⁵ Jean-Claude Beacco and Michel Byram, ‘From Linguistic Diversity to Plurilingual Education: Guide for the Development of Language Education Policies in Europe’ 55

¹⁶ Leigh Oakes, *Language and National Identity: Comparing France and Sweden* (John Benjamins Publishing Company 2001) 79–80

¹⁷ *ibid* 80.

¹⁸ *ibid* 81.

between countries, yet the scale of this phenomenon has vastly increased over the past decades since the end of WWII. Therefore, IMLs are considered as a phenomenon of the second half of the 20th century.¹⁹ Since the 1950s several waves of immigrants have arrived in Europe and this is how many non-European IMLs have been brought to the territory of most European states.²⁰ Figures show that over the past years there has been an increase in the number of IML speakers in contrast to the number of indigenous-language speakers.²¹

Chapter 1 constitutes a thorough analysis of the role of language both in the private sphere and on the larger, societal level. The different political approaches which can be taken vis-à-vis the coexistence of multiple minorities and multiple languages in one society are reviewed. Chapter 2, is based around the two main human rights, central to the analysis in this thesis: linguistic human rights (LHRs) and the right to mother tongue medium education (MTM education). These concepts are presented, defined and discussed in the main body of the thesis and not in the introduction in the aim of establishing a better coherence of the text and paying more attention to the intricacies of the two concepts. This is necessary for the development of the following chapters 3 and 4 which represent a thorough analysis and assessment of how these two human rights have been addressed in prominent human rights mechanisms. Chapter 3 focuses on the UN human rights system, while chapter 4 looks at the European context, more specifically the Council of Europe's approach to these topics. The thorough analysis of the European context is indispensable given that the ultimate focus of the thesis is on Arabic-speaking minority in France. Then, chapter 5 presents and discusses the approach of the French state vis-à-vis minorities and minority languages. The controversial question of the ratification of the European Charter for Regional or Minority Languages by France is also discussed. Finally, chapter 6 is focused on the Arabic speakers

¹⁹ *ibid* 84–86.

²⁰ *ibid* 85.

²¹ Guus Extra and Durk Gorter, 'Regional and Immigrant Minority Languages in Europe' 24, 9.

in France, the opportunity for them to learn and use their mother tongue. Specific attention is also paid to the divisive topic of the teaching of Arabic in mosques.

Chapter 1: The role and position of languages in a society

The aim of this chapter is to outline the role of languages in the lives of individuals as well as their contribution to the functioning of society. This is an indispensable point of departure in order to demonstrate why it is crucial for the members of linguistic minorities to have the opportunity to learn and use their mother tongues. Even though languages play a major role in the lives of all people, there often are inequalities between citizens with regards to their opportunities for learning and using their native languages. Several important phenomena will be presented and discussed in this chapter in order to be later applied to the assessment of the situation of Arabic speakers in France. The initial focus of the chapter is on the link between language and identity. Secondly, the topic of the link between language and nationhood will be reviewed. Finally, the phenomena of multiculturalism and multilingualism and the different state approaches to them will be analysed.

1.1 Language and identity

The usage of language is an integral element of the everyday lives of human beings. Language is not only a tool for communication and socialisation. There is a more intimate link between the individuals and the languages they use. Beyond the communication with others, it is through the means of words that we also communicate with ourselves, organise our thoughts, analyse the events in our lives and, thus, make sense of the world around us.

There are two principal facets of the individual's identity: personal and social identity. Personal identity refers to self-categories which define the unique individual, while social identity is related to the place of the individual in society and the similarities he or she has with the larger social group.²²

²² Oakes (n 16) 33.

Hogan-Brun and Wolff affirm that language is a ‘primary marker of identity’ because it allows us to identify ourselves, to identify the others and to understand the world around us.²³ Moreover, it is unanimously accepted that the mother tongue is a fundamental facet of the personal identity of the individual. According to the linguist and educator Tove Skutnabb-Kangas, the establishment of a positive relationship with the mother tongue is essential and a basic human right of every person and, thus, it needs to be accepted and respected by society.²⁴ Furthermore, Fishman highlights the role of the mother tongue for the ‘self-definition and self-realisation’ of the individual.²⁵ It is through the means of language that we first get to understand and define ourselves, to present ourselves to the world and then to seek the realisation of our potential within society. The mother tongue plays an important role to the formation of the individual’s identity. This is a strong argument in favour of the access to mother tongue education and the possibility for continuous practice of the native language for all.

Language also reveals to be of utmost importance for the formation of people’s social identities. Social identity theory (SIT) is an influential model developed within the field of social psychology. According to it, an important part of the individual’s identity is based on the act of belonging to a certain social group (ethnic or national)²⁶. Language usually is a key part of the definition of these groups. This remark is of specific importance for linguistic minorities, regardless of whether they are regionally based or have resulted from migratory movements. The members of linguistic minorities, need to master the language of the larger social group in order to be fully integrated into the society and to be able to gain the sense of

²³ G Hogan-Brun and S Wolff, *Minority Languages in Europe: Frameworks, Status, Prospects* (Palgrave Macmillan UK 2003) 3

²⁴ Tove Skutnabb-Kangas, ‘Mother Tongue Maintenance: The Debate. Linguistic Human Rights and Minority Education’ (1994) 28 *TESOL Quarterly*, p. 625.

²⁵ Joshua A Fishman, *Reversing Language Shift: Theoretical and Empirical Foundations of Assistance to Threatened Languages* (Multilingual Matters 1991) p. 7.

²⁶ Oakes (n 16) 35

belonging. Two equally important priorities arise for the members of linguistic minorities: to learn and develop a positive identification with their mother tongues as well as to master the host-country language. Developing bilingualism is essential for them.

Fishman, however, also states that although language is a crucial facet of the individual's identity-building, it is not the only one and its impact depends largely on the cultural context.

²⁷ It has even been suggested that the level of impact of language on the identity is a choice and ultimately depends on how much importance is given to it by the person or by the larger social group.²⁸ The level of importance accorded to languages varies also between societies. This, however, is usually a reflection of the governments' policies vis-à-vis languages. Some countries have very flexible approaches towards the various languages spoken on their territories, while others still value highly their primary language and try to preserve its pivotal place in the society. This will be better illustrated with the example of France and through the analysis of the French state's linguistic policies in chapter five of the present thesis.

1.2. Language and nationhood

One of the principal characteristics of nations are their official languages. The impact of language on the formation of the nation is considerable and merits thorough analysis. The ideology of the strong, fundamental link between nation and language can be traced back to the period of the German Romanticism when it was proclaimed by several prominent German philosophers such as Alexander von Humboldt and Johann Gottlieb Fichte. Fichte was an ardent promoter of the idea of interdependence between language and nation. According to him, the existence of a language presupposed the emergence of a separate nation.²⁹

²⁷ Fishman (n 25) 24.

²⁸ Oakes (n 16) 141.

²⁹ Stephen May, *Language and Minority Rights: Ethnicity, Nationalism and the Politics of Language* (2nd ed, Routledge 2012) 61

The nation-state has been the main form of political organisation around the world since it emerged out of the Treaty of Westphalia in 1648. In fact, one of the main prerequisites for the building of the modern European nation-states was the ‘invention’ and proclamation of national languages which were to be favoured above the other languages existing on the same territory.³⁰ Hence, the national language has always been regarded as a central symbol of the nation-state. In fact, the name of the nation and the name of its official language are often very similar or even identical. The language, thus, can act as a powerful symbol of the group of speakers and play a significant role in their national self-identification as well as in the way outsiders identify them.³¹ Language is also considered a defining factor of citizenship.³² Nevertheless, the case can be different for the members of immigrant minorities, especially second and third-generation immigrants, for whom the mother tongue and the official language of the nation, they are legally members of, do not coincide.

There is also an undisputed link between the language and the culture of the state. One of the most prominent hypothesis regarding this link dates back 1920s and was proposed by Sapir and Whorf. It is based on the principle of linguistic relativity, according to which people perceive the world through the ‘lenses’ of their languages, thus, our worldview is the product of the language we speak.³³ Whorf further elaborated that the different words and grammatical structures of the different languages propose disparate perceptions and experiences of the world to their locutors.³⁴

Despite its prominence, the Sapir-Whorf principle is not suited to the present reality. It is misleading and can be even judged as dangerous because it suggests the inability of the members of different cultures (and speakers of different languages) to fully comprehend each

³⁰ Beacco and Byram (n 15) 19.

³¹ Hogan-Brun and Wolff (n 11) 19.

³² Beacco and Byram (n 15) 19.

³³ May (n 29) 139.

³⁴ *ibid.*

other. This amounts to stating that different cultures cannot live together in the same society, and it is a suggestion too extreme given that cultures have been coexisting for many decades in many nation-states.

A further counterargument can be brought against Sapir-Whorf hypothesis. The proposed idea that language shapes the worldview, can be regarded from the opposite perspective and it can be suggested that allowing and encouraging cultures (and languages) to coexist will forge a society where tolerance and respect are values of utmost importance. This would, undoubtedly, depend on the political and educational approaches taken. In fact, pluricultural and plurilingual education which seek to enhance the individuals' linguistic and cultural competences aim at encouraging the positive acceptance of cultural, religious and linguistic differences.³⁵ Difference does not necessarily produce clashes. An environment characterised by diversity can be the breeding ground for increased tolerance and open-mindedness. The key factor is how this diversity is perceived and handled politically.

1.3 Multiculturalism and multilingualism

The phenomenon of multiple cultures living together has come about naturally and is nowadays a stable feature of life in most nation-states. It has been significantly accelerated in the past decades by the process of globalisation. It has both undeniable advantages as well as the potential to pose some complications. The effects of the co-existence of multiple cultures are mostly dependent on the political approaches taken. This is why the phenomenon needs to be addressed adequately through well-mediated policies by the state authorities.

³⁵ Beacco and Byram (n 15) 18.

1.3.1. Multiculturalism

Already in the 1980s Brian Bullivant suggested that nation-states were facing a ‘pluralist dilemma’.³⁶ He defined this concept as the challenge for nation-states to reconcile the claims of the many constituent groups in society, to protect and endorse diversity while also maintaining the social cohesion necessary for peace and stability.³⁷ Scholars have elaborated on this issue by proposing two outcomes of the ‘pluralist dilemma’, two distinct approaches that states can adopt in response to this challenge.

On the one hand, ‘liberal pluralism’ has been identified as an approach whereby the state officially forbids any preferential treatment (by the legislature or the government) of the minorities living on its territory.³⁸ In this case, the state refrains from intervening in the matters of the minorities on its territory and might do so only in exceptional circumstances and for the sake of preventing discrimination.³⁹ This is also known as the ‘no discrimination approach’. The state both forbids preferential treatment of minorities as it considers it can amount to discrimination and is only willing to address the distinct social groups on its territory when this is strictly necessary for preventing discrimination.

The ‘liberal pluralism’ model overlaps to a significant extent with Jean-Jacques Rousseau’s conception of the modern polity as being based on: freedom, no differentiated treatment and people united by a common purpose.⁴⁰ The principle of equal treatment of all members in the society still lies at the heart of the French nation and is embedded in its French constitution. This principle has significant repercussions for the situation of minorities in France. The

³⁶ Brian Milton Bullivant, *The Pluralist Dilemma in Education: Six Case Studies* (Allen & Unwin 1981) 96.

³⁷ Bullivant (n 36).

³⁸ Milton M Gordon, ‘Models of Pluralism: The New American Dilemma’ (1981) 454 *The Annals of the American Academy of Political and Social Science* 178, 182–187.

³⁹ *ibid.*

⁴⁰ May (n 29) 97.

politics of the French state vis-à-vis minority groups will be the subject of further discussion in chapter five of the present thesis.

In contrast, there is also a second approach known as ‘corporate pluralism’ or ‘multiculturalism’. This model for resolution of the tensions deriving from the ‘pluralist dilemma’ is based on the full recognition of the minorities living on the territory of the state and, what is more, on giving them some political, economic or social benefits depending on their size and situation.⁴¹

The multiculturalist model is, obviously, in stark opposition to the strategy of ‘liberal pluralism’. The conception of identity in this case is much broader. The individual’s identity is understood as being a combination of many different features such as citizenship, ethnicity, language etc. At the heart of the ‘multiculturalist’ approach is the belief that societal institutions shall respect, recognise and accommodate the identities of all ethnocultural groups in the society and not just of the majority group.⁴²

Academic analyses and comparisons have tended to favour liberal pluralism over multiculturalism. The scholars who favour liberal pluralism are united by their view of the state as ethnically neutral. This is more of an aspiration, than a solid fact as it is dubious whether and to what extent the ethnic factor can be completely absent as a feature of society. For instance, May argues that ethnicity always plays a role, and that the civic realm is always to a varying extent a reflection of the interests of the dominant community in society.⁴³ Even though the co-existence of cultures and ethnicities is a stable characteristic of most nation-states nowadays, there is always one primary social group which is foundational to the nation-state whose traditions and values have shaped to a large extent its functioning.

⁴¹ *ibid.*

⁴² François Levrau and Patrick Loobuyck, ‘Introduction: Mapping the Multiculturalism-Interculturalism Debate’ (2018) 6 *Comparative Migration Studies* 13, 3.

⁴³ May (n 29) 108.

O’Railley confirms that the usage of the terms ‘culture’ and ‘ethnicity’ can be misleading and problematic as the term ‘culture’ is usually associated with the dominant group in society while the minority groups are said to have ‘ethnicities’.⁴⁴ The culture of the majority group in society usually becomes the civic culture of the nation-state, while the cultures of the minority groups are seen as divisive for the larger society⁴⁵. The power of words and the choice of rhetoric should be highlighted here. The definitions used and promoted in the society are capable of shaping people’s perception.

1.3.2. Multilingualism

In terms of language, Bullivant claims that the existence of a common language is a prerequisite for the smooth functioning of the society.⁴⁶ Indeed, the common national language is essential for the cooperation and coordination of the state and society. Firstly, a ‘lingua franca’ is essential for administrative purposes.⁴⁷ Secondly, the national language facilitates the membership in the ‘community of equals’ which a nation is meant to be.⁴⁸

According to May, there usually are unequal power relations between majority and minority language communities and they fail to be adequately addressed.⁴⁹ Nelde affirms that the dominant language group in society usually dominates the administration, politics, education and economy, while the minority groups are bound to give up their social ambitions and give in to assimilation or to resist politically.⁵⁰ Fernand de Varennes affirms that states demonstrate clear preference for one language over the others used on their territory by

⁴⁴ Camille C. O’Reilly, ‘When a Language is ‘Just Symbolic’: Reconsidering the Significance of Language to the Politics of Identity’ in *Minority Languages in Europe: Frameworks, Status, Prospects* ed. by Hogan-Brun and Wolff, (Palgrave Macmillan UK 2003) 21

⁴⁵ Ibid.

⁴⁶ Bullivant (n 36) 232.

⁴⁷ Hogan-Brun and Wolff (n 11) 41.

⁴⁸ Beacco and Byram (n 15) 13–25.

⁴⁹ May (n 29) 155–156.

⁵⁰ Peter Hans Nelde, ‘Language Conflict’, *The Handbook of Sociolinguistics* (John Wiley & Sons, Ltd 2017) 190

institutionalizing this language and making it central to the functioning of the state.⁵¹ This, consequently, provokes differentiated treatment of the members of society whose primary language does not coincide with the official one. This is a very delicate question on the balance between, on the one hand, the evident necessity for one common language for the sake of the smooth functioning of the state and, on the other, the equal treatment of all languages present on the territory of the state.

1.3.3. The politics of language

The variety and position of languages in a society is, to a considerable extent, dependent on the ‘language policy’ of the given state. ‘Language policy’ is understood as conscious official action seeking to intervene in the form, the social function or the place in education of the languages present on the territory of the state.⁵² Language policy initiatives can be initiated by the state, civil society groups, political parties etc.⁵³

On the one hand, ‘monolingualism’ is the strategy of favouring one main, dominant language on the territory of a state. It inevitably establishes inequality and breeds antagonism between the languages spoken.⁵⁴ On the other end of the spectrum is ‘plurilingualism’ which denotes a specific conception of the relation of the person to language and, consequently, a specific policy approach. ‘Plurilingualism’ is based on linguistic tolerance.⁵⁵ This model of language policy recognises the individual’s capacity of using and identifying with various languages. Plurilingualism is especially relevant nowadays when the command of more than one language is increasingly normalised and is a skill which the modern citizen is learning to master. Moreover, the co-existence and equal treatment of languages strengthens the peace

⁵¹ Fernand de Varennes, *Language, Minorities and Human Rights* (Brill Nijhoff 1996) 86–87

⁵² Beacco and Byram (n 15) 17.

⁵³ Ibid.

⁵⁴ Ibid 12.

⁵⁵ Ibid.

and mutual understanding within the society. In the ‘Report on endangered European languages and linguistic diversity in the European Union’ assigned by the European Parliament’s Committee on Culture and Education, the rapporteur François Alfonsi emphasises the fact that linguistic diversity allows access to the cultures of the languages spoken, which in turn boosts open-mindedness and social cohesion.⁵⁶ Linguistic diversity, when tolerated, should logically be reflected in the education system and become a force for forging tolerance and acceptance among the members of the society from an early age.

Multiculturalism and multilingualism are stable characteristics of modern-day societies. Therefore, social cohesion can no longer be expected to ensue from the imposition of only one language and only one culture to the detriment of others existing in the same society. Social cohesion is to be achieved through the support and equal treatment of all cultures and languages present in the state. The opposite approach erodes the understanding between the members of society and precipitates conflict. Languages need to be addressed with adequate policy approaches in order for higher cohesion, tolerance and acceptance to be forged in the society.

⁵⁶ Committee on Culture and Education, ‘Report on endangered European languages and linguistic diversity in the European Union’ (2013/2007(INI))

Chapter 2: Linguistic rights and the right to mother tongue education

This chapter aims at reviewing the two central human rights related to the topic of IMLs.

Firstly, the concept of linguistic human rights will be clarified in order to be later applied to the assessment of the situation of the speakers of Arabic in France. An efficient and progressive education system is one of the main prerequisites for the enjoyment of language rights. The access to language-learning is both a component of and a basis for the full enjoyment of language rights. Therefore, the right to education and, more specifically, the access to mother tongue education for children of linguistic minorities will also be discussed in this chapter.

2.1. Towards a definition of LHRs

No rigid definition of linguistic rights has been established in international law.⁵⁷ In the human rights context, however, definitions are essential. They are crucial prerequisites for the provision of human rights' promotion and protection. The notorious absence of an officially accepted definition of the content of linguistic rights is a prominent obstacle to their enjoyment.

For the purpose of this analysis, the following definition provided by Skutnabb-Kangas, Rannut and Philippson in their work 'Linguistic Human Rights: Overcoming Linguistic Discrimination' will be used as guidance for the rest of this work. The analysis of the three authors has proven to be foundational to the study of language rights and the definition provided, albeit not officially codified, addresses all the main concerns related to linguistic rights. The definition is based on three pillars: 1) right to positive identification with the mother tongue and possibility to practice it freely; 2) right to learn the mother tongue and to use it in many of the official contexts; 3) right to learn at least one of the official languages of

⁵⁷ The terms 'linguistic rights' and 'language rights' will be used interchangeably from hereon.

the country of residence.⁵⁸ As already demonstrated, the positive identification with the mother tongue through the possibility of learning and using it is fundamental to the healthy self-esteem of individuals and to their capacity of self-identification and self-realisation.

Points 1 and 2 are strongly connected since the positive identification with the mother tongue is made possible when the child has the right to learn it from a young age, to establish a proper link with it and to freely use it.

Point 2 makes a further important, yet controversial remark regarding the right of speakers to use their mother tongues in certain official contexts. The authors of the definition have clarified that the ‘official contexts’ referred to in the definition are the fields of ‘culture, education, religion, information and social affairs’ and they, furthermore, underline the need for financial aid to be provided by the state for the fulfillment of this right.⁵⁹ This, obviously, would not be straightforward to achieve if the language in question is not the official language of the state and especially if the state is home to many linguistic minorities. The more linguistic minorities on the territory of the state, the more languages that can claim recognition in official administrative contexts. As previously demonstrated, the usage of one language as an official state language is essential for the smooth operation of the state institutions and for the overall cohesion of the work of agencies (administration, legislature etc.). There are, of course, examples of countries where two or three languages have an official status. Nevertheless, the presence of official language(s) will always block the enjoyment of complete equality between the languages in the society including in the fields outlined by the authors.

Finally, the third point refers to the right of the members of linguistic minorities to learn at least one of the state’s official languages (in cases where there are two or more). Since the

⁵⁸ Skutnabb-Kangas, Phillipson and Rannut (n 1) 2.

⁵⁹ *ibid.*

official state language differs from the mother tongue of linguistic minority members, both the right to the mother tongue and the right to the official state language need to be protected. In the case of majority language speakers, the official language usually coincides with their mother tongue, unless there are more than one official state languages. This specific point is an important reminder that language rights should always be elaborated with consideration of both the speakers of the majority language as well as the members of linguistic minorities. This argument raises the question of the right to mother tongue education and it will be discussed later in this chapter. Overall, the definition provided by Skutnabb-Kangas et al. is of strong relevance as it is equally adapted to both dominant-language speakers and minority-language speakers and it also addresses all the relevant spheres of language-usage.

2.2. Linguistic Rights as part of the Human Rights Generations Framework

The topic of linguistic rights (or language rights) is still interwoven with many ambiguities. For instance, the assigning of this human rights category to one of the three generations of rights is problematic and far from straightforward. The classification of language rights into the generations framework is necessary in order to clarify the relevant duty-holders.

On the one hand, language rights are often assigned to the third generation of human rights since languages are spoken by groups of speakers. The rights of the third generation are called ‘solidarity rights’, ‘collective rights’ or ‘people’s rights’. The reconciliation of individual rights with group rights is often considered problematic, yet both forms have been recognised within the human rights regime and have even revealed to be interrelated. Group rights are justified by the need to protect the rights of the individuals within the group.⁶⁰

⁶⁰ Michael Ignatieff, ‘Human Rights as Idolatry’ in Amy Gutmann (ed), Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton University Press 2001) 68

Individual rights reveal to be the main justification behind group rights and group rights reveal to be essential for the protection of the rights of individuals.

On the other hand, linguistic rights can be also related to cultural rights on the basis of the already demonstrated fundamental connection between language and culture. However, Art. 27(1) of the UDHR gives an interesting perspective on this doubt. Art. 27(1) states that: ‘Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits’.⁶¹ Here the link between the phenomena of ‘culture’ and ‘community’ is recognised. Since language is intrinsically linked to culture and culture always belongs to a (bigger or smaller) community, then the rights related to the enjoyment of culture and the practice of language are community rights. As previously seen, ‘community rights’ or ‘group rights’ belong to the third generation of rights. This unambiguous link between language and community allows for linguistic rights to be assigned to the third generation.

2.3. Minority Language Rights and the Right to mother tongue education

Skutnabb-Kangas et al. affirm that the protection and provision of language rights is of highest importance and urgency specifically for minorities.⁶² This is because majority or dominant languages are usually protected by the state while minority languages do not receive sufficient attention by legislators. Andrassy stresses that the very necessity for official state languages unavoidably creates a disbalance between the rights of speakers.⁶³ The usefulness of official languages is undebatable and has already been demonstrated. The situation of inequality, however, can be addressed through the timely and secure provision of

⁶¹ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) Art. 27(1)

⁶² Skutnabb-Kangas, Phillipson and Rannut (n 1) 72.

⁶³ György Andrassy, ‘Freedom of Language: A Universal Human Right to Be Recognised’ (2012) 19 International Journal on Minority and Group Rights 195, 223.

adequate linguistic rights to minority groups. It is imperative for minimal standards of linguistic human rights protection to be established in both international law as well as in national legislations.⁶⁴

In specific, the situation of IML-speakers is the most precarious and complicated. IMLs, conversely, notoriously lack legal recognition and protection. According to Kibbe languages of immigrant groups have always been ‘at the bottom political and scientific concerns’.⁶⁵ Bearing in mind, however, the strong link between language and identity, it is not surprising that immigrants hold to their mother tongues and preserve them generation after generation. Although members of immigrant minorities cannot be restricted in speaking their languages, they cannot use them in many central spheres of social life such as administration and education.

Emphasis should be put on the fate of immigrant children who have been either born in the new country or have arrived there together with their families. The language spoken in their home and immediate community is different from that spoken by the wider society and, most importantly, from the language used in the education system.⁶⁶ The mother tongue is the first language learned by the individual, transmitted to him/her by the immediate family, usually by the mother figure. For children of immigrant minorities, it is equally important to both establish a positive identification with the mother tongue as well as to acquire fluency in the official state language for the sake of their full unobstructed integration into the larger society. The mother tongue is learned primarily in a spoken form in the individual’s childhood. The official state language, in contrast, is at the heart of the education system and

⁶⁴ Skutnabb-Kangas, Phillipson and Rannut (n 1) 3.

⁶⁵ Douglas A. Kibbee, ‘Language Rights and Immigrant Languages’ (2003) University of Illinois at Urbana-Champaign

⁶⁶ Ingrid Gogolin, ‘Linguistic diversity and new minorities in Europe: Guide for the Development of Language Education Policies in Europe: From Linguistic Diversity to Plurilingual Education’(2002) Language Policy Division, Council of Europe, Strasbourg.

is both thoroughly taught and is also the means for teaching all other subjects. An evident discrepancy can arise between the linguistic competences of immigrant students in the mother tongue and the official state language. For second and third generation immigrants, the disbalance is usually in favour of the official state language due to its far higher prominence in the education system and in the society. Statistics show that the second generation of immigrants develop strong bilingualism by establishing fluency both in their mother tongue with the principle aim of communicating with their relatives and in the host country language in order to integrate better in the larger society.⁶⁷ Third-generation immigrants tend to predominantly favour the host-country languages, yet the mother tongue still reveals to be useful for establishing better connections with the larger family.⁶⁸

An outcome of this discrepancy is the phenomenon of ‘language shift’. This is the process of abandonment of one language in favour of another as an outcome of the contact between languages.⁶⁹ Despite the importance of languages to the communities in which they are spoken, the desire for better life opportunities often provokes language shift among speakers of IMLs. In order to prevent the phenomena of ‘language lost’ and ‘language shift’ among the speakers of minority languages, mother tongue instruction is required.

Tove Skutnabb-Kangas, one of the most ardent defenders of linguistic rights in the academic field, has extensively written on the dangers of the phenomena of ‘language shift’ and ‘language loss’. According to her, the education systems in which minority children are taught only in the dominant state language are mediums for the promotion of an

⁶⁷ Thomas Soehl, ‘But Do They Speak It? The Intergenerational Transmission of Home-Country Language in Migrant Families in France’ (2016) 42 *Journal of Ethnic and Migration Studies*, 1515–1516.

⁶⁸ *ibid.*

⁶⁹ Anne Pauwels, ‘Changing Perspectives on Language Maintenance and Shift in Transnational Settings: From Settlement to Mobility’ in Gabrielle Hogan-Brun and Bernadette O’Rourke (eds), *The Palgrave Handbook of Minority Languages and Communities* (Palgrave Macmillan UK 2019) 235

assimilationist policy by the state.⁷⁰ This type of education organisation transforms the dominant state language into ‘killer language’ for minority languages by facilitating the process of language shift.⁷¹ She is, therefore, a proponent of mother tongue medium (MTM) education and defines it as the most urgent linguistic human right.⁷² The ‘medium’ is the language in which education is provided. Thus, Skutnabb-Kangas advocates for not only the right to learn the mother tongue, but to also study other subjects through the medium of the mother tongue. Skutnabb-Kangas had previously expressed concern and criticism that MTM education is not a recognised human right.⁷³ Skutnabb-Kangas’s arguments in favour of MTM education is the possibility for students to become bilingual and also the related strengthening of multilingualism in the society.⁷⁴ Furthermore, studies show that some of the effects of the usage of minority languages in the education include reduction of the number of students who drop out of school, improvement of the academic results of students and increasing the inclusiveness and effectiveness of the state administration.⁷⁵ Moreover, UNESCO defined the provision of education in the child’s mother tongue as ‘a critical issue’ in its seventh consultation regarding the implementation of the Convention and the Recommendation against discrimination in education.⁷⁶

Having established the content and significance of language rights with additional focus on mother tongue-medium education, it is relevant to review how these issues have been

⁷⁰ Tove Skutnabb-Kangas, ‘Marvellous Human Rights Rhetoric and Grim Realities: Language Rights in Education’ (2002) 1 *Journal of Language, Identity & Education* 179, 182.

⁷¹ *ibid* 181.

⁷² *ibid* 180.

⁷³ *ibid* 183.

⁷⁴ Tove Skutnabb-Kangas (2012/2013). Mother tongue medium education. In *The Encyclopedia of Applied Linguistics*, General Editor Carol A. Chapelle; part Bilingual Education, Area Editors Jasone Cenoz and Durk Gorter. Malden, MA: Blackwell.

⁷⁵ *Ibid*.

⁷⁶ ‘Results of the Seventh Consultation of Member States on the Implementation of the Convention and the Recommendation against Discrimination in Education (1960)

addressed in international and regional human rights documents. This will be the focus of the following two chapters.

Chapter 3 : Linguistic Rights and the Right to Education in International Human

Rights Law (the UN System)

This chapter will review if and how the topics of language rights and the right to mother tongue education have been addressed in the human rights framework of the UN. Considering the pioneering role of the UN in the establishment of the global human rights regime, it is imperative to begin the analysis from here.

3.1. The UDHR

The topic of language has been recognised as a fundamental component of the lives of individuals since the very establishment of the UN human rights regime. Article 2 of the UDHR reads : ‘Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’⁷⁷ The first two articles of the UDHR have the important role of establishing the universality of the rights within the Declaration and of prohibiting discrimination. Discrimination on the basis of language is explicitly forbidden, which means that the speakers of all languages are equally entitled to the rights set forth in the Declaration. This is commendable, yet not sufficient.

The UDHR does not address the topic of language in further depth. Neither minority rights, nor linguistic rights are addressed in the declaration. During the drafting of the document the question of minorities was, in fact, discussed and an article on the topic was envisaged, yet in the end such a paragraph was not included.⁷⁸ Given the primordial role played by the UDHR in establishing the international human rights regime, it can be concluded that this lack of

⁷⁷ UDHR Art. 2

⁷⁸ Andrassy (n 63) 210.

attention paid to the issue of language rights doomed the topic to significant neglect over the following decades.

Article 26 of the UDHR establishes the right to education which should be ‘free, at least in the elementary and fundamental stages’.⁷⁹ Moreover, education ‘shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups...’.⁸⁰ Considering the recognised importance for every individual of establishing a positive relationship with the mother tongue, it can be argued that MTM education is a precondition for the full development of the human personality. In addition, the mother tongue is the main medium for establishing and maintaining contact with the family culture, traditions and history. Losing the mother tongue equals losing an integral part of the individual’s personality and, thus, goes against the article’s aim of fulfilment of the personality. Furthermore, in line with one of the main aims of education given in the article, language education is proven to also teach cultural awareness, tolerance and acceptance from an early age and is capable of boosting the overall cohesion of the society.⁸¹

Finally, Art. 3(2) establishes that: ‘Parents have a prior right to choose the kind of education that shall be given to their children’.⁸² This is highly relevant to the topic of MTM education, because parents can require that their children receive instruction in their community’s language. It is not, however, easy to reshape the education system. The voices of parents would likely be given expression through wider social enquiries. Given that minority members are less numerous, their voices could be overlooked if policymakers don’t give

⁷⁹ UDHR Art. 26

⁸⁰ UDHR Art. 26

⁸¹ Beacco and Byram (n 15) 98.

⁸² UDHR Art. 26(3)

them specific attention. Overall, Art. 26 UDHR does not explicitly talk about language education and is not adapted to address the topic of minority language rights.

3.2. The ICCPR

There are two articles of the 1966 International Covenant on Civil and Political Rights which are of interest to the question of language rights. Firstly, Art. 27 reads: ‘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’.⁸³

This article is of substantial importance because it explicitly addresses minority groups including linguistic minorities and, hence, marks a departure from the notorious “silence” of the UDHR on the topic of minorities. This article has been recognised as one of the most important for the protection of linguistic minorities.⁸⁴

However, despite the pioneering nature of the article and its importance, it cannot be viewed as a full recognition and codification of linguistic rights. It gives a broad freedom of minorities to enjoy their cultures and languages, yet it does not set any specific rights regarding the learning and usage of minority languages. Further criticism has been raised with relation to the incomplete version of the linguistic rights concept as treated in the article. The article has been judged as giving ‘discriminative recognition’ of language rights since only minority linguistic rights are addressed with no mention of the language rights of the majority.⁸⁵ This is easily explained by the fact that the article is focused on minorities. Also, as previously stated, minority language speakers require more significant and urgent protection of their linguistic rights. Despite all this, this part of the ICCPR cannot be regarded

⁸³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

⁸⁴ Skutnabb-Kangas, Phillipson and Rannut (n 1) 210.

⁸⁵ Andrassy (n 63) 209.

as a providing comprehensive protection of language rights. An instrument which would address the complexity of the phenomenon and guarantee the rights of speakers of both minority and majority languages is needed.

Furthermore, Art. 19(2) reads: ‘Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice’.⁸⁶ This article can be seen as indirectly recognising people’s language rights as it affirms the right of individuals to receive and share information in oral or written format and it is evident that the usage of language is a prerequisite for the practice of these rights. Furthermore, of specific interest here is the UN Human Rights Committee’s 1989 judgement on *Ballantyne, Davidson and McIntyre v. Canada* in which it recognised that Art. 19 serves to protect not only the content of the information shared, but also the linguistic form which it takes.⁸⁷ Consequently, languages are recognised and equally protected as means of communication fundamental to the free spread and acquisition of information. This is commendable as it gives further recognition and protection of the freedom of individuals to use the languages of personal preference. However, this article also cannot be seen as fully addressing the topic of language rights.

3.3. The ICESCR

The topic of education rights is broadly addressed in Art. 13 of the International Covenant on Economic, Social and Cultural Rights. Most of the article resembles Art. 26 of the UDHR in terms of both content and formulation. The third paragraph of the article, however, makes a departure and establishes the liberty of parents or guardians ‘to choose for their children

⁸⁶ ICCPR, Art. 19(2)

⁸⁷ Robert Dunbar, ‘Minority Language Rights in International Law’ (2001) 50 *International and Comparative Law Quarterly* 90, 106.

schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions'.⁸⁸ The scope of this remark is limited to only the religious and moral education of children. Immigrant minorities also often establish their own private schools for transmission of their community languages. For instance, the establishment of private institutions for Arabic-teaching affiliated with religious institutions (mosques) has sparked substantial controversy in the French society.

The following part of the article states that: 'No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State'.⁸⁹ This point can be applicable to language-learning institutions. While the possibility for parents and community associations to establish private teaching institutions, the state remains the highest authority with regards to education. The state has, therefore, the power to set up very strict conditions for the establishment of private education institutions. This is the case of France where the Gatel act which gives significant power to the regional authorities to approve or reject the establishment of private schools was adopted in 2018. This event will be further considered in chapter five.

Furthermore, it is doubtful whether MTM education is best conducted in establishments parallel to the official education system of the state. On the one hand, such institutions are

⁸⁸ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 99 UNTS 3 (ICESCR) Art. 13

⁸⁹ ICESCR, Art. 13

viable alternatives for the provision of the essential mother tongue instruction. On the other hand, the state education system should be as inclusive as possible in order to integrate the needs of minority language speakers and, what is more, to facilitate cohesion and acceptance. Overall, this article comes short of addressing the issue of language education.

3.4. The CRC

The provision of mother tongue education is of highest importance for children. Therefore, it is imperative to review whether and how language rights and the right to education are addressed in the 1989 Convention on the Rights of the Child. Article 29 is of considerable interest and merits thorough analysis. It establishes the child's right to education with the aim of the development of his/her personality. Paragraph 1(c) of Art. 29 reads that the child's right to education should be directed at the 'development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own'.⁹⁰ The article addresses the very delicate, yet necessary balance between, on the one hand, the child's culture, language and religion and, on the other hand, the values of the country where he/she lives. The values of the country from which the child comes originally are notably recognised and this detail is especially relevant for immigrant children. Regardless of whether they have been born in their parents' home country or on the territory of the state of immigration, these children have a connection with the values and traditions of more than one state. They need to develop both of these connections as part of the development of their personalities.

⁹⁰ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) Art. 29

The Committee on the Rights of the Child has clarified the content of Art. 29 in General Comment No. 1 from 2001.⁹¹ Firstly, the Committee recognises that education should be ‘child-centered, child-friendly and empowering’.⁹² The ‘best interest of the child’ is one of the four general principles of the CRC that should guide the interpretation and application of the Convention. The abovementioned goals of what education should aspire to be are of direct importance to the fulfillment of the best interest of the child. Considering the importance of the positive identification of the people with their mother tongues, the provision of mother tongue education can reasonably be considered as part of the best interest of the child for his/her personality growth.

Furthermore, the Committee recognises the aim of education to bridge ‘the differences that have historically separated groups of people from one another’ as well as to promote the value of tolerance.⁹³ An education system which advances and celebrates the linguistic differences of its members is the best environment for forging acceptance and tolerance among children and is also the key to maintaining these qualities for the future of the society. Mother tongue education is important for the larger society because it also teaches the children for whom the dominant language is the mother tongue to embrace diversity.

The right for establishment of separate educational institutions is recognised in Art. 29(2) as long as these schools comply with any minimal standards laid out by the state.⁹⁴ Overall, Art. 29 CRC creates a very inclusive view of education which states should strive to achieve. This is not a straightforward task. Achieving the balance between the values of state and those of minorities would depend on the government’s policy and the choice between the ‘liberal

⁹¹ UN Committee on the Rights of the Child (CRC), ‘General comment No. 1 (2001), Article 29 (1), The aims of education’ (17 April 2001) CRC/GC/2001/1

⁹² Ibid.

⁹³ Ibid.

⁹⁴ CRC Art. 29(2)

pluralism' approach of no discrimination or the 'multiculturalism' approach recognising the needs of the groups within its society.

Art. 30 CRC recognises the right of minority children to enjoy the culture, language and religion of their communities.⁹⁵ This article gives recognition to minority children and this is of considerable importance since the attention given to the question of minorities is overall insufficient. The article, however, recognises only the freedom with regards to linguistic rights in the community sphere and is not adequate for broader protection of the linguistic and education rights of minority members.

3.5. The UNESCO Convention against Discrimination in Education

Given the unequal position of minority languages versus the official state language(s) previously discussed, it is interesting to see how the topic of minority rights in education is addressed in this convention adopted in 1960. Article 5(c) reads: 'It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the education policy of each State, the use or the teaching of their own language...'.⁹⁶ Several limitations to these rights are mentioned, however. The importance of 'understanding the culture and language of the community as a whole and... participating in its activities' is highlighted.⁹⁷ Furthermore, the convention directly vests the state with the responsibility for the realisation of the stated rights.⁹⁸ Despite the fact that it dates back to 1960s, the convention gives considerable attention to the topic of immigrant education rights. The document is pioneering in nature as

⁹⁵ CRC Art. 30

⁹⁶ Convention Against Discrimination in Education (adopted 14 December 1960, into force: 22 May 1962) 429 UNTS. 93 Art. 5(c)

⁹⁷ Ibid.

⁹⁸ Ibid.

at the period of its drafting the topic of minorities was still not a central concern of the human rights system.

3.6. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Adopted by the UN General Assembly in 1992, this is the first international instrument entirely and specifically devoted to the topic of minorities. From the very title of the declaration it becomes clear that linguistic minorities will be addressed on an equal level with the other types of minority groups.

In the preamble, it is recognised that there is a need for ‘more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities’.⁹⁹ This recognition is important as it highlights the urgency of the topic in question. Article 1 focuses on the responsibilities of states and encourages them to protect and promote the preservation of the identities of minorities through the adoption of adequate legislative measures.¹⁰⁰ The emphasis put on the adoption of relevant legislature is commendable as the absence of concrete mechanisms is the main obstacle to the fulfillment of the rights of minorities. Nevertheless, the reluctance of many governments to address the topic is still a vastly present phenomenon even nowadays. This is usually due to either the state constitution establishing a liberal pluralist approach to the communities within the society or due to the political stance of the government. Many European states have witnessed the rise of far-right ideology which further complicates the recognition of minorities and their needs.

⁹⁹ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (adopted 3 February 1992) UNGA A/RES/47/135

¹⁰⁰ Ibid. Art. 1

Art. 2 recognises the right of minorities to enjoy and to practice the distinctive features of their identity, including languages, as well as to form associations.¹⁰¹ As previously demonstrated, minority members are usually free to practice their languages in the private sphere, within their community. The practice of minority languages beyond the private sphere is where problems arise, and this aspect is notoriously not addressed in the declaration. Art. 4.3 focuses on the right to education of the members of minorities with specific mention of both the necessity to learn the mother tongue and to have instruction in the mother tongue.¹⁰² This article is very important because it explicitly addresses mother tongue education for minorities which is a precedent in comparison to the previously commented UN documents. The scope of the article is noteworthy. It establishes, firstly, the importance of learning the mother tongue, and, secondly, of receiving wider teaching in this language. This provision overlaps with the content of the principle of MTM education and is truly pioneering. Art. 4.4 highlights the importance for both wider society to learn about the culture of minorities as well as for minorities to learn the predominant state culture. This is also a significant advancement on the rhetoric about minorities because acceptance is best achieved through clear communication and knowledge about what is ‘different’.

Overall, this declaration is an important advancement of the UN system with regards to the question of minorities. Not only does it raise awareness about the topics of minorities and minority languages, it also puts forwards several very suitable suggestions for addressing them. It should be once again noted that this is the first document to advocate for the right to MTM education in the form it has been put forward by scholars. A declaration, however, declaration is a piece of soft law and has merely advisory power. Nevertheless, the innovative

¹⁰¹ Ibid. Art. 2

¹⁰² ‘OHCHR | Declaration on Minorities’

<<https://www.ohchr.org/en/professionalinterest/pages/minorities.aspx>> accessed 20 May 2021. Art. 4(3)

and very relevant suggestions made in this document should be considered thoroughly by legislators.

An important drawback of the declaration is the lack of concrete definition of the term ‘minority’. Furthermore, it does not address the important question of the communication between minority members and the state authorities.¹⁰³ Finally, the formulation of many of the recommendations within the document is rather vague and a wide freedom of maneuver is conceded to the states.¹⁰⁴

Overall, language rights and the right to mother tongue education have been addressed disparately in the documents of the UN system of human rights. There is no comprehensive article in a legally-binding UN document which tackles the question of the linguistic rights of both minority and majority-language speakers. Even more importantly, there is a lack of an official UN definition of the term ‘linguistic rights’. These are several arguments proving that the UN has not yet addressed the topic adequately and it is yet to issue a specialised document.

¹⁰³ Hogan-Brun and Wolff (n 11) 48.

¹⁰⁴ *ibid.*

Chapter 4: Linguistic Rights and the Right to Education in Europe

While the UN has a pioneering role in the establishment of the global human rights system, regional systems for protection and promotion of human rights have revealed to have just as much importance. The advantage of regional systems is the fact that they are adapted to the realities of the given regional contexts and can provide options for remedy of human rights violations more easily accessible by the people. The aim of this chapter is to review the consideration given to the topics of linguistic rights and the right to MTM education in the European context. This is essential since the ultimate focus of the thesis is on the Arabic-speaking minority in France. The Council of Europe's legislative approaches as well as two crucial reports of the OSCE will be analysed.

The Council of Europe is the main organisation promoting and protecting human rights, democracy, and the rule of law in Europe. It has established a number of hard law documents of human rights protection. The topic of language rights and the right to mother tongue education will be reviewed, firstly, within the framework of the European Convention on Human Rights (ECHR) and, secondly, through two specific conventions tackling the issue of minorities: the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

4.1 The ECHR

The right to education is codified in Art. 2 the first additional protocol of the ECHR of 1952. The article states: 'No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious

and philosophical convictions'.¹⁰⁵ It is evident that this article focuses more specifically on the right of parents to have a say in the education of their children. Judge Vajić has commented on this aspect of the right in *Lautsi v. Italy* saying that the character of the article is unusual because it vests the right to education not in its direct recipients (the students), but in their parents whose right to education is not at stake in the given circumstances.¹⁰⁶ The Court has affirmed that parental convictions can prevail 'only where they do not impinge on the primary right of the child to education'.¹⁰⁷ Parents' requirement for their children to receive mother tongue education in their minority's language cannot be seen as going against the right of the child to education. The right to mother tongue education in fact enriches the right to education and broadens the linguistic skills of children.

It is doubtful whether the preferences of parents with regards to the linguistic formation and mother tongue education of their children would be respected under Art. 2 Protocol 1. This question has been addressed in what is known as 'the Belgian Linguistic Case' of 1968.¹⁰⁸ This was the first case to examine the scope and content of Art. 2 Protocol 1. The case was brought up by French-speaking Belgian citizens who lived in the Dutch-speaking part of the country and who demand the provision of French-language education. The Belgian linguistic case is still regarded as relevant nowadays for the interpretation of Art. 2 Protocol 1. As part of its judgement, the Court stated that: 'to interpret the terms "religious" and "philosophical" as covering linguistic preferences would amount to a distortion of their ordinary and usual meaning and to read into the Convention something which is not there'.¹⁰⁹ Furthermore, the Court stated that Art. 2 requires state governments to allow the people under their jurisdiction

¹⁰⁵ Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, into force 3 September 1953) Council of Europe (ECHR) Art. 3

¹⁰⁶ *Case of Lautsi and others v. Italy* (30814/06) 18/03/2011

¹⁰⁷ Claire Fenton-Glynn, 'The Right to Education' in Claire Fenton-Glynn, *Children and the European Court of Human Rights* (Oxford University Press 2020) 147

¹⁰⁸ *ibid* 159.

¹⁰⁹ *Case "Relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium* (1474/62 1677/62 1691/62 1769/63 1994/63 2126/64) 23/07/1968

to have access to the education system already in place, but it does not call for the establishment of a specific type of education system or providing teaching in a particular language.¹¹⁰ The Court, however, recognised in the same judgement that: ‘the right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be’.¹¹¹

While respect for parents’ preferences for the linguistic formation of their children is not included in this article, the importance of the instruction of the national language is affirmed as an integral part of the right to education under the ECHR. This is not surprising as the role of the dominant language for the cohesion of the society and functioning of the state is undebatable. Nevertheless, the right to language should be based on the rights to learn both the official state language and the mother tongue (when they do not coincide, as in the case of linguistic minorities). Therefore, it becomes clear that the right to education as codified in the ECHR does not fully cover the right to language.

In the case of *W and D, M and HI v United Kingdom* of 1984 the Court noted that the essence of Art. 2 of Protocol 1 was to safeguard the pluralism and tolerance in the education system and to prevent indoctrination.¹¹² This remark is of considerable importance since it recognises the immense power that the education system has over young minds and, thus, the importance of a pluralist education. As previously noted, a policy of education based exclusively on the dominant culture and language in society can easily grow into a tactic of the government for the assimilation of minorities. The system of education has crucial influence over the youngest minds and future full-righted members of the society. Education policy should,

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² *W and D, M and HI v. United Kingdom* (10228/ 82, 10229/ 82) 06/03/1984

therefore, be approached cautiously. It can also be effectively used to recognise and promote minority cultures as languages as essential parts of the country's rich cultural heritage.

Finally, in *40 Mothers v Sweden* the Court recognised that the establishment of private language-teaching institutions is allowed, yet states are not required to provide financing for them.¹¹³ More often than not, MTM education is provided exactly in separate, private institutions organised by the interested communities. This freedom is important, yet the benefits of MTM education are far more significant when it is incorporated into the mainstream education system. This way the minority language in question is given higher recognition and its instruction can even be made available to non-minority members.

4.2. The European Charter for Regional or Minority Languages (ECRML)

Adopted in 1992, the ECRML is the first instrument in the world devoted to the promotion of indigenous languages.¹¹⁴

It is important to review the preamble of the Charter as it sets the general theme and spirit of the document. The protection and promotion of the 'historical regional or minority languages of Europe' is recognised as being of utmost importance for the development of 'Europe's cultural wealth and traditions' as well as for the upkeep of democracy in the European continent.¹¹⁵ An explanatory report was issued by the CoE together with the publication of the Charter in November 1992. It is clarified and stressed in this document that the aim of the Charter is purely 'cultural' and related to the preservation of the linguistic patrimony of Europe.¹¹⁶ It is further explained that the Charter does not seek to establish any rights

¹¹³ *40 Mother v. Sweden* (6853/ 74) 09/03/1977

¹¹⁴ Mihajlov' (n 10) 93.

¹¹⁵ European Charter for Regional and Minority Languages (adopted 5 November 1992, entered into force 1 March 1998) Council of Europe: Secretariat of the Framework Convention for the Protection of National Minorities (ECRML)

¹¹⁶ Explanatory Report to the European Charter for Regional or Minority Languages, Council of Europe (1992)

(individual or collective) for the speakers of minority languages.¹¹⁷ Clearly, the Charter has been drafted with significant flexibility in order to be adaptable to the contexts of most countries in Europe and to stand higher chances of ratification by as many CoE members as possible. Considering the clarification of the explanatory note, the provisions in the Charter should be regarded as recommendations for ways in which states can preserve the minority languages existing on their territories and not as suggestions for rights which should be conferred to minority language speakers. It is doubtful, however, if the preservation of minority languages can be achieved without the conferment of any specific rights or prerogatives to the minorities that use these languages. Enabling minority members to learn and practice their language is how the preservation of minority languages can be best ensured. Without any active rights for the current speakers of minority languages, it is highly likely that these languages will be affected by the phenomena of ‘language shift’ and ‘language lost’ and will slowly but steadily perish.

Furthermore, the phrase ‘the historical regional or minority languages of Europe’ used in the Preamble attracts attention. This formulation raises doubts as to whether the languages of immigrant minorities can be considered as meriting protection and promotion under the ECRML. Furthermore, it is stressed in the Preamble that a balance between the protection and promotion of regional/ minority languages and the upkeep of the official state languages should be achieved.¹¹⁸ This is a further indication that the document has been drafted with strong consideration of the differing country contexts and language policies of the various CoE member states.

Article 1 of the Charter defines the central terms involved. "Regional or minority languages" are defined as: ‘languages that are: i) traditionally used within a given territory of a State by

¹¹⁷ Ibid.

¹¹⁸ ECRML

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'.¹¹⁹ Furthermore, it is explicitly stated that the definition excludes the dialects of official languages as well as the languages of migrants.¹²⁰ This definition is problematic due to its restrictive nature. Firstly, the phrase 'traditionally used within a given territory of a State' brings the focus to regional minority languages, well-embedded in the history and the traditions of the state and, more specifically, of a 'given territory' of the state. Furthermore, the term 'nationals' used in the definition points at a requirement of citizenship in order for people to qualify as members of a linguistic minority.

With regards to the question of territoriality, minority groups which have resulted from immigration are not territorially bound. Immigrants have arrived on the territories of European states, usually in search for better life opportunities, and have founded their homes in different parts of the countries. In contrast, the regional minorities are the ones that have a strong bond with specific regions of the countries. Paragraphs b) and c) explain the territorial feature of the definition in more depth. Firstly, languages spoken in a specific territory of the state are said to justify the measures for protection and promotion of the Charter.¹²¹ Secondly, 'non-territorial languages' which 'although traditionally used within the territory of the state, cannot be identified with a particular area thereof' are also recognised.¹²² For instance, the Committee of Ministers of the CoE has recognised non-territorial languages such as Yiddish and Romani whose speakers are dispersed across the territory of many European countries for qualifying under the Charter. Paragraph c), thus, leaves some possibility for consideration of

¹¹⁹ ECRML Art. 1

¹²⁰ ECRML Art. 1

¹²¹ ECRML Art. 1(b)

¹²² ECRML Art. 1(c)

immigrant minority languages as part of the ECRML due to their non-territorially bound nature.

With regards to the question of nationality, it remains dubious as to whether the Charter is suited for the protection of all members of immigrant minorities. Many immigrants are well-established, rightful European citizens. This is the case, for example, of North-African immigrants who have moved to France with the first waves of immigration in the 1960s and the 1970s, who have acquired citizenship and whose children are also full-righted citizens of France. In one of the biannual reports of the CoE Secretary General regarding the application of the Charter, it is remarked that the Charter does not cover minority languages related to recent migratory movements.¹²³ The term ‘recent’ leaves space for interpretation because, as demonstrated, the speaking of Arabic is not a recent phenomenon in neither France, nor Europe and has resulted from migratory movements which originated more than 50 years ago.

Having analysed the dubious definitions provided in the ECRML and having established that there is a possibility, albeit not fully clear, for immigrant minority members to be covered, it is reasonable to look at the provisions for protection set in the Charter. Article 7 sets the main objectives of the Charter. These include the recognition of regional or minority languages by the states as well as the facilitation of the usage of these languages in speech and writing and in both the public and the private sphere.¹²⁴ This demonstrates that recognition and protection of minority languages go hand in hand with enabling the speakers to learn and use these languages. Furthermore, the teaching and study of the regional and minority languages ‘at all appropriate stages’ as well as the provision of opportunities for non-speakers of such

¹²³ ‘Application of the European Charter for Regional or Minority Languages’ (2018-2020) Report by the Secretary General of the Council of Europe to the Parliamentary Assembly

¹²⁴ ECRML Art.7

languages to learn them are established as principles of the document.¹²⁵ Even though the Charter was not envisaged to accord rights to minority-language speakers, it becomes evident that the provisions in the document do foresee the better enabling for minority members to study and use their mother tongues.

The promotion of equality, inclusion, respect and non-discrimination is another key principle of the document. Of specific interest is Art. 7(4) which acknowledges that all decisions regarding linguistic minorities should be made with consideration of the preferences of their members.¹²⁶ This is a fundamental remark, which comes from the very essence of human rights. People, as right-holders, are at the heart of the human rights system, apart from receiving protection, they should be empowered to have an active role in the safeguard and promotion of their rights. Furthermore, this paragraph recognises the importance of the minority group of speakers to the protection of the minority language.

Article 8 of the Charter is especially relevant as it covers the topic of education. It thoroughly addresses all levels of education (pre-school, primary, secondary, technical and vocational education, university and other higher education, adult and continuing education). The article establishes that the contracting parties to the Charter should make these forms of education available in the regional or minority languages ‘within the territory in which such languages are used’.¹²⁷ The formulation of this phrase in the article raises once again doubts regarding the territorial aspect of the provisions of the Charter. As demonstrated, only regional minorities are territorially bound, while immigrant minorities are highly likely to be dispersed around the different parts of the state. From the formulation of the article, it seems that the realisation of the provisions in the article is dependant the number of minority members

¹²⁵ ECRML Art.7

¹²⁶ ECRML Art. 7(4)

¹²⁷ ECRML Art. 8

living in the given territory. While freedom is left to the state authorities to decide how many people are ‘enough’ speakers so that their language could merit protection, the provisions in the Charter are likely to act to the detriment of immigrant minorities who are not grouped at one specific place.

The propositions for language-education measures leave significant flexibility to the contracting parties as to how they will apply them. This is necessary since the situation of the minorities in the different European states is diverse. Therefore, states could either: 1) provide all of the educational content at a given level in the minority language; 2) provide a substantial part of the education in the language; 3) provide only the teaching of the languages or 4) provide one of these measures only for the students whose parents request it.¹²⁸ It is important to recognise here that the Charter addresses not only teaching of the minority language, but also teaching in the minority language. Therefore, the concept of MTM education is implicitly applied.

The flexibility of the provisions in the Charter can be seen as a double-edged sword. On the one hand, it gives more options to the authorities on how to provide minority language education. On the other hand, it can be used as an ‘excuse’ by the state for not providing, where possible, the most comprehensive form of minority language education.

Article 10 recognises the responsibilities of states with regards to the rights the usage of regional or minority languages in the public administration such as to request and receive information in oral and written form in the minority language.¹²⁹ Again, however, the provisions are adapted for territories with significant population of minority language speakers.

¹²⁸ ECRML Art. 8

¹²⁹ ECRML Art. 10

The ECRML has undoubtedly brought important recognition and awareness on the question of minority languages. Although the aims of the Charter are stated as ‘cultural’, the adequate application of the measures proposed requires the recognition of minorities and the accordance of certain rights (in the spheres of education, media, administration etc.). The provisions set in the Charter are highly reasonable. So far it has been ratified by 25 Council of Europe member states. Article 3 states that each contracting party can specify which minority or regional languages that exist on its territory the provisions in the Charter should be applied to.¹³⁰ This gives considerable influence to states to pick and choose which minority languages merit protection or not. From the analysis made it becomes clear that document is best adapted to only a part of the minority communities in Europe (regional minorities) and, thus, is not suited to the complete reality of the European continent. This is a major drawback which has a discrediting effect. Human rights are interdependent and equal for everybody, thus the Charter needs to be adapted so that it protects and promotes the rights of all linguistic minorities.

The ECRML will be once again discussed in relation to the impasse reached by France with regards to the ratification of the Charter. The reasons behind this will be reviewed in more depth in chapter six.

4.3. The Framework Convention for the Protection of National Minorities (FCPNM)

The Framework Convention was adopted in 1995, three years after the ECRML. Its scope is broader as it targets national minorities in general. It is stated in the Preamble that the ‘ethnic, cultural, linguistic and religious identity of each person belonging to a national minority’ should not only be respected, but it should also be made possible for these people to ‘express,

¹³⁰ ECRML Art. 3

preserve and develop' their identities.¹³¹ Moreover, it is recognised that 'the protection of national minorities is essential to stability, democratic security and peace' in the European continent.¹³² In the explanatory report accompanying the FCPNM, it is stated that the document 'does not imply the recognition of collective rights' and rather places the emphasis on the protection of the individual members of minorities.¹³³ However, it has been established that individual and collective rights go hand in hand. The protection of individual rights justifies the protection collective rights and vice versa. It becomes clear that, similarly to the ECRML, the FCPNM has been drafted in a flexible manner in order to be applicable to the diverse social and legislative situations of the many CoE member states. Nevertheless, in contrast to the ECRML, the FCPNM does foresee rights' protection and promotion.

The main drawback of the FCPNM is visible from the very beginning of the document and this is the lack of a precise definition of the term 'minority'. Definitions are normally provided at the start of such formal documents. Nowhere in the Convention is it explained how the term 'minority' can be defined or what the primary characteristics of minorities are. This is a reflection of the already mentioned lack of consensus in the global human rights system regarding the definition of the term 'minority'. It is stated in the explanatory report that: 'at this stage, it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States'.¹³⁴ Certain characteristics of minorities such as language, culture, religion are mentioned, yet a specific definition is not formulated. Despite the fact that the FCPNM is the most advanced regional document on the question of minorities, this is a major weakness, which compromises its efficacy. Definitions are essential for the adequate provision of human rights protection to those in need.

¹³¹ Framework Convention for the Protection of National Minorities and Explanatory Report (1995) Council of Europe (FCPNM)

¹³² FCPNM

¹³³ FCPNM

¹³⁴ Ibid.

Article 5 establishes two of the main objectives of the Convention. Firstly, the preservation and development the identity features of minorities such as their religion, language, traditions and culture (art. 5(1)).¹³⁵ Secondly, the prevention of assimilation of national minorities against their will (art. 5(2)).¹³⁶ The second point is of special relevance to the topic of MTM education since the lack of access to such education for linguistic minorities means that the dominant language assumes an assimilationist role.

Articles 9 and 10 address specifically the topic of linguistic minorities. Article 9 establishes their freedom of expression which includes the freedom to ‘receive and impart information and ideas in the minority language without interference by the public authorities’.¹³⁷ The article covers both the private and the public sphere which is commendable. The right to freedom of expression is highly regarded in the human rights framework of the CoE and is considered as being fundamental for the enjoyment of other rights. It is, therefore, very important that it is recognised with regards to linguistic minorities. This is an advancement in comparison to the ECRML where the right to freedom of expression is not included in such a thorough manner.

Art. 10(1) specifically allows for minority members to freely practice their languages in both written and oral form, in public or in private.¹³⁸ Furthermore, Art. 10(2) advises for communication with the state authorities in the minority language to be made available in the areas more traditionally populated by said minorities or where there are substantial numbers of minority members living.¹³⁹

¹³⁵ FCPNM Art. 5(1)

¹³⁶ FCPNM Art. 5(2)

¹³⁷ FCPNM Art. 9

¹³⁸ FCPNM Art. 10(1)

¹³⁹ FCPNM Art. 10(2)

Article 13 sets that the Convention's contracting parties should make it possible for minority members to set up their own educational and training establishments without this entailing any financial support from the state authorities.¹⁴⁰ Article 14(1) recognises the right of all minority members to learn their mother tongues. However, in Art. 14(2) it is stated that the government should take specific measures to provide teaching of as well as instruction in the minority languages only in areas inhabited traditionally or in substantial numbers by minorities and 'if there is substantial demand'.¹⁴¹ This provision is problematic as it considers minorities as regionally and permanently settled. The reality, however, is different and minorities can be dispersed across the whole territory of the state. This points at a further drawback of the document. Nowhere in the Convention are immigrant minority groups mentioned. Considering the arrival of numerous immigrants on the territory of Europe over the past decades, this is unacceptable.

Overall, several compelling propositions with regards to the rights of minority language speakers have been put forward in the FCPNM. A significant advantage is that the document does envisage the provision of actual protection of the rights of individual minority members, which is not the case of the ECRML. However, the document also has significant disadvantages such as the lack of a clear definition of the term 'minority' and the absence of reference to immigrant minority groups.

4.4. The OSCE

The Organisation for Security and Cooperation in Europe has continuously played an important part in the fight for preventing conflict and preserving the stability in the European continent. The OSCE addressed the topics of linguistic rights, including the education rights of minorities early on and has provided some useful guidance. Already in 1992 in its Helsinki

¹⁴⁰ FCPNM Art. 13

¹⁴¹ FCPNM Art. 14

Decisions, the OSCE established the position of High Commissioner on National Minorities with the aim of it being ‘an instrument of conflict prevention at the earliest possible stage’.¹⁴²

This decision came as a reaction to the conflicts which were at the time taking place in former Yugoslavia. It is of considerable importance because it recognises the intricate relation between social cohesion and national and regional stability.

The 1996 OSCE Hague Recommendations regarding the Education Rights of National Minorities and the 1998 OSCE Oslo Recommendations regarding the Linguistic Rights of National Minorities advance some important propositions with regards to linguistic minorities. Both documents have been drafted with the expert advice of The Foundation on Inter-Ethnic Relations. Paragraph 1 of the Hague Recommendation makes an important argument for the learning of the mother tongue by recognising the crucial role which it plays in the development of the individual’s identity.¹⁴³ Nevertheless, the balance between preserving the own identity, language and culture and also integrating into the wider society through also learning the state language is highlighted in both documents.¹⁴⁴¹⁴⁵ The importance for parents’ opinions with regards to the minority language education of their children is recognised.¹⁴⁶ Minority language education is approached in a rather vague manner in the Hague Recommendations. Both the responsibility of states to establish such education ‘to the maximum of their available resources, individually and through international assistance and cooperation...’ as well as the right of minorities to establish their own teaching institutions are recognised.¹⁴⁷ Furthermore, the instruction established by the state is to ideally be based not only on the development of language competence, but also on

¹⁴² Organization for Security and Co-operation in Europe (OSCE), ‘The Hague Recommendations Regarding the Education Rights of National Minorities’ (1 October 1996)

¹⁴³ Ibid., p. 5

¹⁴⁴ Ibid.

¹⁴⁵ Organization for Security and Co-operation in Europe (OSCE), ‘The Oslo Recommendations Regarding the Linguistic Rights of National Minorities’ (1 February 1998)

¹⁴⁶ The Hague Recommendations, p. 7

¹⁴⁷ The Hague Recommendations, p. 8

becoming familiar with the minority history and culture.¹⁴⁸ This measure, if applied, would have wider significance as it will also have an impact on non-minority students. Education is the basis for tolerance and ensuing social-cohesion so learning about the minorities present on the state territory can have a major impact.

Even though the two OSCE documents reviewed have a consultative role, the recommendations included are compelling. The most important advantage of the instruments is the high recognition of the importance of mother tongue education for linguistic minorities. MTM education is the basis on which all other minority rights should be based.

The European human rights context has provided very useful material for analysis of the topic of linguistic rights and right to MTM education. The pioneering nature of the ECRML in addressing the topic of minority languages is an example of the relevance of the regional systems of human rights protection. Having established the overall ‘atmosphere’ in Europe with regards to language rights, it is now possible to focus specifically on the situation of France with regards to linguistic minorities and, more specifically, the Arabic-speaking minority.

¹⁴⁸ The Hague Recommendations, p. 10

Chapter 5: Linguistic minorities in France: a problematic situation.

This chapter will look at the situation of linguistic minorities in France, more specifically at the question of what protection and rights they are provided with. This is necessary in order to then specifically analyse the situation of the Arabic-speaking minority in France in the next chapter. Firstly, the position of minorities in France will be reviewed with reference to the French Constitution. Then, the problematic question of the ratification of the ECRML will be discussed. The role and importance of the principle of equality as well as of the French language for the French nation will also be analysed.

5.1. The French Constitution and the minority question

It is useful to begin the discussion by defining the approach taken by the French state vis-à-vis the minorities on its territory. As discussed in chapter one, the politics of states vis-à-vis minorities can be classified in one of two distinct categories. On the one hand, there is the liberal-pluralist approach which prohibits the provision of special treatment to any distinct group in the society. On the other hand, multiculturalism is founded on the opposite values and requires the state to accord specialised protection to the minorities within its society.

Article 1 of the French Constitution states that ‘France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion’.¹⁴⁹ According to the French Constitutional Council, Article 1 denies the provision of any specific, collective rights to any group in the society and this is a founding principle of the French Republic.¹⁵⁰ It is easily identifiable that the liberal pluralist approach is favoured by the French state. This approach can also be

¹⁴⁹ ‘Constitution of 4 October 1958 | Conseil Constitutionnel’ <<https://www.conseil-constitutionnel.fr/en/constitution-of-4-october-1958>> accessed 13 May 2021.

¹⁵⁰ ‘Decision No. 99-412 DC of 15 June 1999 | Conseil Constitutionnel’ <<https://www.conseil-constitutionnel.fr/en/decision/1999/99412DC.htm>> accessed 13 May 2021.

defined as politics of neutrality. Article 1 prohibits the very distinction between citizens which means that minority groups cannot even achieve recognition. Recognition is the step which logically precedes the conferment of rights and protection. Without recognition the claim for rights becomes seriously complicated, even impossible.

The principle of equality is a fundamental value of the French Republic. The maxim of the Republic ‘Liberté, Égalité, Fraternité’ is codified in article 2 of the Constitution.¹⁵¹ This phrase is one of the highest embodiments of the French spirit together with the French flag (‘le drapeau tricolore’) and the Marseillaise. The principle of equality and its importance for the French Republic prompts an interesting debate. On the one hand, equality and non-discrimination are intrinsically related to and are central values of the human rights regime. They are the essential pre-requisites for the enjoyment of all other rights and this is usually declared at the very beginning of human rights documents. However, the case of France demonstrates that the advancement of the principle of equality can obstruct the provision of specific, differentiated rights to minorities. As a result, a problematic situation arises where a group within the society cannot be granted the rights and treatment it requires. This can be explained by the difference between formal equality and substantive equality. In essence, equality signifies the equal treatment of all people by the state authorities. In the case of France, precedence is given to formal equality which is equality before the law or the equal application of rules to all citizens. In contrast, substantive equality requires taking into consideration the fact that not all members of the society are in the same position and considering not only the application of the rules, but also their potential effects. The example of France shows that the formal equality principle can be detrimental to the protection of

¹⁵¹ ‘Constitution of 4 October 1958 | Conseil Constitutionnel’ (n 149).

minority rights. The principle of substantive equality is more adequate as an approach for addressing the minority question.

The stance of the French legislation poses a considerable problem since many minority groups coexist within the French society similarly to the situation in most of Europe's societies nowadays. Throughout its long history, France has become the home of many regional and immigrant linguistic minorities. Among the most prominent RMLs in France are the Alsatian, the Breton and the Basque, while the most widely spoken IMLs are Arabic and Portuguese.¹⁵² Despite the long history of these languages on the territory of France, the communities of speakers have not been recognised. This is even more noticeable given the increased attention given to of the minority question in Europe since the end of the 20th century through the adoption of the ECRML and the FCPNM.

5.2. The language policy of the French Republic

The language policy of France is a further factor which should be taken into consideration. As noted earlier, the two main language policy approaches are monolingualism and plurilingualism. Monolingualism has historically been endorsed by France. The French language is considered the highest embodiment of the French culture by the people who speak it.¹⁵³ Its primordial role is highlighted by the fact that it is codified in Article 2 of the Constitution which states that: 'The language of the Republic shall be French'.¹⁵⁴ This statement is very rigidly formulated and restrictive in nature as it does not allow for consideration of the minority languages spoken on the territory of the country. Although Article 1 of the French Constitution establishes that the citizens are equal before the law

¹⁵² Alexandra Filhon, 'Transmission familiale des langues en France: Évolutions historiques et concurrences' (2010) 1 *Annales de démographie historique* 19.

¹⁵³ Harold Schiffman, 'Language Policy and Linguistic Culture in France', *Linguistic Culture and Language Policy* (Routledge 1996) 80.

¹⁵⁴ 'Constitution of 4 October 1958 | Conseil Constitutionnel' (n 149).

‘without distinction of origin, race or religion’, the content of Article 2 demonstrates that distinction on the basis of language is widely accepted.¹⁵⁵ This distinction is to an extent well-justified by the already demonstrated need for a state to have its official language for unification and administrative purposes. Nevertheless, an exclusively monolingual policy approach of the state can have significant negative repercussions such as decreased linguistic heterogeneity and increased antagonism between the different linguistic groups.¹⁵⁶

After the 1789 French Revolution, the French language became one of the most important symbols of the French nation-state.¹⁵⁷ As declared by the Jacobins: ‘The unity of the Republic demands the unity of speech... Speech must be one, like the Republic’.¹⁵⁸ This comes to prove the influence of the Romantic idea of the tight link between language and nation promoted at that period of time. This was reflected in numerous pieces of legislation passed by the French state. For instance, ‘Loi du 2 thermidor’ from July 1794 established that no public act could be written in a language different from French.¹⁵⁹ It was through legislative means like this one that the cultural and linguistic unification of France was achieved over the century following the Revolution.¹⁶⁰ The strict imposition of French language definitely contributed for this process of homogenisation. According to Harguindéguy and Cole, France was ‘l’un des premiers États occidentaux à avoir établi et maintenu un ensemble de dispositifs tendant à homogénéiser les pratiques linguistiques sur son territoire depuis une époque déjà ancienne’.¹⁶¹ Vanston affirms that given that French language is a crucial part of the patrimony of France, the governments of the Republic have ‘historically assumed the role of

¹⁵⁵ Ibid.

¹⁵⁶ Beacco and Byram (n 15) 20.

¹⁵⁷ Michelle Harrison, *French Language Policies and the Revitalisation of Regional Languages in the 21st Century* (Springer Berlin Heidelberg 2018) 3.

¹⁵⁸ May (n 29) 168.

¹⁵⁹ Jean-Baptiste Harguindéguy and Alistair Cole, ‘La politique linguistique de la France à l’épreuve des revendications ethnoterritoriales’ (2009) 59 *Revue française de science politique* 29, 946.

¹⁶⁰ *ibid.*

¹⁶¹ *ibid* 940.

linguistic knight-errant, protecting and defending French from violation' from other languages.¹⁶²

The endorsement of monolingualism has been sustained by the French state for a long time and this is also evident from the legislative reforms passed over the past several decades such as the 1975 signature by the then president Valéry Giscard d'Estaing of what is known as the Bas-Lauriol law aimed at protecting French language from the impacts of the spread of English and guaranteeing its primordial position in fields such as commerce.¹⁶³ Moreover, the Toubon law was passed in 1994 with the aim of further broadening the scope of the protection and promotion of the French language and ensuring its leading role in all aspects of life in France. The law made the use of French language mandatory in three central domains of the social and economic life of the Republic: education, the workplace, the media, commerce and public meetings.¹⁶⁴ The law made it obligatory for all announcements, instructions or advertisements in written or spoken form to be formulated in French.¹⁶⁵ With regards to the question of education, Art. 11 of the law reads that: 'La langue de l'enseignement, des examens et concours, ainsi que des thèses et mémoires dans les établissements publics et privés d'enseignement est le français, sauf exceptions justifiées par les nécessités de l'enseignement des langues et cultures régionales ou étrangères ou lorsque les enseignants sont des professeurs associés ou invités étrangers.'¹⁶⁶ The Toubon law was passed with the explicit aim of reinforcing the hegemony of the French language.¹⁶⁷ The fact that the question of regional languages and cultures and the need for their teaching is

¹⁶² Christine Vanston, 'In Search of the Mot Juste: The Toubon Law and the European Union' (1999) 22 Boston College International and Comparative Law Review 20, 175.

¹⁶³ Schiffman (n 153) 79.

¹⁶⁴ May (n 29) 166.

¹⁶⁵ Vanston (n 162) 179.

¹⁶⁶ LOI n° 94-665 du 4 août 1994 relative à l'emploi de la langue française (1) 1994 (94-665).

¹⁶⁷ Harrison (n 157) 12.

addressed, however, serves as recognition and shows that the minority languages question cannot be fully disregarded when addressing the linguistic policy of the state.

The politics of endorsement of the French language sustained for decades, saw some countering in the beginning of the 21st century. In 2006 in Béziers about 20 000 protested in order to claim the full juridical and political recognition of the ‘languages of France’.¹⁶⁸ Then, in 2008 after many debates and propositions Article 75-1 of the Constitution was amended in order to give recognition to the RMLs of France in order to read: ‘Les langues régionales appartiennent au patrimoine de la France’.¹⁶⁹ This is an important amendment, yet it is evident that the minority languages question is not given equal importance as it is not addressed in the same article as the official state language (the ‘language of the Republic’).

The French case also proves the claim of linguists that minority language debates usually focus only on RMLs, while the topic of IMLs is often disregarded. The term ‘languages of France’ which is predominantly used in debates against the hegemony of French language, concentrates on the historical languages of France, the territorially embedded or ‘regional’ languages which have been present on the territory of the state for a long time and have tried to withstand the politics of linguistic unification of the French government for longer.

5.3. France and the European Charter for Regional or Minority Languages

Given the monolingual policy approach, it is not surprising that France has tackled the ECRML very cautiously. President Lionel Jospin announced his firm intentions of signing the Charter in 1998. Jospin had previously expressed his opinion on the question of linguistic diversity in a speech at the Council of Europe stating: ‘Plus que jamais, en cette fin du XXe siècle qui voit se développer la mondialisation des échanges et la globalisation de l’économie,

¹⁶⁸ Fernand de Varennes and others, *De la crispation à la conciliation? contributions pour la ratification de la Charte européenne des langues régionales ou minoritaires par la France* (1. ed, Aracne 2007) 26.

¹⁶⁹ Harrison (n 157) 17.

l'Europe a besoin d'affirmer son identité qui est faite de la diversité de son patrimoine linguistique et culturel'.¹⁷⁰

Jospin charged Guy Carcassonne, professor in public law, to prepare an analysis on the compatibility between the provisions of the ECRML and the French Constitution. In his study which spans over 130 pages, Carcassonne notes that the principle aim of the ECRML to protect endangered languages cannot be seen as posing a threat to the official state languages.¹⁷¹ In his concluding remarks, Carcassonne states: 'la Charte européenne des langues régionales ou minoritaires n'est pas, en elle-même, incompatible avec la Constitution, étant entendu, d'une part, que l'objet de la Charte est de protéger des langues et non, nécessairement, de conférer des droits imprescriptibles à leurs locuteurs, et, d'autre part, que ces langues appartiennent au patrimoine culturel indivis de la France'.¹⁷² The study serves as an important approval of the eventual signature and ratification of the Charter by France.

Of even greater interest is the report submitted by the linguist Bernard Cerquiglini in April 1999 entitled 'Les langues de France' which aimed at providing an exhaustive list of the minority languages which exist in France and merit protection under the ECRML. As previously noted, article 3 of the ECRML allows the contracting parties to decide which regional or minority languages to be protected under the Charter.¹⁷³ Cerquiglini criticises the restrictive nature of the Charter and its focus on the 'traditional', 'historical' minority languages of Europe and the fact that it excludes IMLs.¹⁷⁴ Cerquiglini highlights the fact that due to the 'jus soli' principle applicable in France, second-generation immigrants

¹⁷⁰ 'N° 489 - Rapport d'information de M. Jean-Jacques Urvoas Déposé En Application de l'article 145 Du Règlement, Par La Commission Des Lois Constitutionnelles, de La Législation et de l'administration Générale de La République Sur Les Implications Constitutionnelles d'une Ratification Par La France de La Charte Européenne Des Langues Régionales Ou Minoritaires'

¹⁷¹ Guy Carcassonne, 'Etude sur la compatibilité entre la Charte européenne des langues régionales ou minoritaires et la Constitution : rapport au Premier ministre' (10 juillet 1998)

¹⁷² Ibid.

¹⁷³ ECRML, Art. 3

¹⁷⁴ Bernard Cerquiglini, 'Les Langues de France : rapport au ministre de l'éducation nationale, de la recherche et de la technologie et à la ministre de la culture et de la communication' (Avril 1999)

automatically become French citizens.¹⁷⁵ They, however, still preserve their mother tongues. Cerquiglini's argument in favour of immigrant minority languages is reflected in the list provided by him which includes five non-territorial languages spoken by French citizens: Berber, dialectic Arabic, Yiddish, Romani and Western Armenian.¹⁷⁶ According to the linguist, these languages enrich the patrimony of France.¹⁷⁷ The work of Bernard Cerquiglini gives crucial recognition to the Arab minority in France and serves as an argument in favour of providing Arabic speakers with linguistic rights and protection.

France signed the Charter in 1999 accompanying it with an interpretative declaration in which it is stated that the government considers the ECRML compatible with the Constitution.¹⁷⁸ The 39 clauses of the Charter chosen by France were also laid out in this declaration. These included, among others, all the provisions under Art. 8 of the Charter related to the teaching of minority languages.¹⁷⁹ This demonstrated the French government's intentions of providing MTM education to linguistic minorities in accordance with the provisions of the ECRML.

Nevertheless, France never reached the stage of ratification. The question of ratification was referred to the French Constitutional Council by the then-president Jacques Chirac in accordance with Article 54 of the Constitution which reads that if the Constitutional Council decides that 'an international undertaking contains a clause contrary to the Constitution, authorization to ratify or approve the international undertaking involved may be given only after amending the Constitution'.¹⁸⁰ In its Decision 99-412 DC of 15 June 1999, the Constitutional Council ruled that certain provisions of the ECRML contradict the French

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ 'Projet de loi constitutionnelle autorisant la ratification de la Charte européenne des langues régionales ou minoritaires', Conseil de l'État (JUSC1514364L)

¹⁷⁹ *ibid.*

¹⁸⁰ 'Constitution of 4 October 1958 | Conseil Constitutionnel' (n 149).

Constitution ('La Charte européenne des langues régionales ou minoritaires comporte des clauses contraires à la Constitution').¹⁸¹ The Constitutional Council justified its decision with, firstly, Art 1 of the Constitution which establishes the principle of equality. Secondly, the decision 91-290 DC of the Constitutional Council from 1991 regarding the statute of Corsica was also cited. In this decision the Council stated that : 'le principe d'unicité du peuple français, dont aucune section ne peut s'attribuer l'exercice de la souveraineté nationale, a également valeur constitutionnelle... ces principes fondamentaux s'opposent à ce que soient reconnus des droits collectifs à quelque groupe que ce soit, défini par une communauté d'origine, de culture, de langue ou de croyance'.¹⁸² The primordality of the principle of equality for the French Republic is evoked as the reason behind the impossible conferment of rights to minorities. It is imperative here to remind that in the explanatory note accompanying the Charter, it has been stated that the aim of the document is primarily cultural as it seeks to protect regional and minority languages from disappearance through the application of specialised measures, but it does not seek the provision of rights to linguistic minorities.¹⁸³ Furthermore, Article 7(2) of the ECRML reads: 'The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages'.¹⁸⁴

This judgement of the Constitutional Council has meant that the only way forward for ratification of the Charter would be through an amendment of the Constitution. This is why the process of ratification has remained blocked for the past 22 years. The Constitutional

¹⁸¹ *Décision 99-412 DC - 15 juin 1999 - Charte européenne des langues régionales ou minoritaires - Non conformité partielle* [1999] Conseil constitutionnel *Décision 99-412 DC*.

¹⁸² 'Commentaire de la décision n° 99-412 DC du 15 juin 1999' 4.

¹⁸³ Council of Europe, 'Explanatory Report to the European Charter for Regional or Minority Languages' (1992

¹⁸⁴ ECRML Art. 7(2)

Council reaffirmed its position once again in a written opinion given in 2015. Despite this, a draft constitutional law for the authorisation of the ECRML was proposed to the Senate by the then-minister of justice Mrs. Taubira. The project was rejected by the Senate with 180 votes ‘against’ versus 155 ‘for’.¹⁸⁵

Overall, some of the central legislative provisions in the French Republic reveal to be contradictory to the enjoyment of rights by minorities in France. Linguistic minorities on the territory of France are, thus, neither recognised, nor invested with any rights.

¹⁸⁵ Sénat, ‘Séance Du 27 Octobre 2015 (Compte Rendu Intégral Des Débats)’ <<https://www.senat.fr/seances/s201510/s20151027/s20151027007.html>> accessed 3 July 2021.

Chapter 6: The teaching of Arabic in France: a complex and controversial topic

The aim of this chapter is to critically analyse how the instruction of Arabic has been accommodated in the French system of education up until nowadays as well as to review some of the controversies related to this topic. Firstly, the French system of instruction of IMLs will be reviewed with focus on the ELCO programme, its objectives and results as well as its closure in 2020 announced by the President Emmanuel Macron. Furthermore, the widespread association of Arabic language with the Islamic faith will be discussed as well as the role of mosques as alternative places for Arabic instruction.

6.1. The instruction of immigrant minority languages in the French system of education

As presented in the previous chapter, monolingual state policy trumps language inclusiveness in France. The central role of the French language in the society and, consequently, in the French system of education is undisputed. According to Smythe, France's policies regarding foreign language education reflect 'the Eurocentric preference for English and other European languages' over non-European languages which have resulted from immigration flows such as Arabic.¹⁸⁶ For instance, English and Alsatian are twice more often passed from one generation to another than Arabic.¹⁸⁷ According to François Grin, 'la diffusion d'une langue... est fonction croissante du pouvoir d'achat des personnes qui l'ont comme première langue'.¹⁸⁸ Arabic-speaking immigrants have arrived as part of economic immigration flows and this has, in most cases, doomed them to a marginalised position not only in France, but also in the wider European society.¹⁸⁹ The low level of transmission of IMLs between

¹⁸⁶ Fiona Smythe, 'Language Inclusiveness in Education: Implications for Immigrant Students in France and New Zealand' (2020) 55 *New Zealand Journal of Educational Studies* 215, 226.

¹⁸⁷ Filhon (n 152) 213.

¹⁸⁸ François Grin, « L'analyse économique de la dynamique des langues dans le contexte de la mondialisation », (1999) in *La gestion du plurilinguisme et des langues nationales dans un contexte de mondialisation*, Actes du Séminaire de Québec du 30 novembre et 1^{er} décembre 1998, Conseil de la langue française.

¹⁸⁹ Mouloud Lounaoui, Kamal Nait-Zerrad, 'L'enseignement du berbère en France' in *Enseignement des langues d'origine et immigration nord-africaine en Europe : Langue maternelle ou langue d'état ?* ed. by Mohamed Tilmatine (1987)

generations can be explained by, on the one hand, the fact that adult minority members consider that the IML does not give many prerogatives to their children as future full-righted society members and, on the other hand, the monolingual state policy which strengthens predominantly the immigrant children's capacities in the host-country language.

ELCO (Enseignements de langue et culture d'origine) was the first programme established to facilitate the teaching of Arabic in France. ELCO was established through the signature of bilateral agreements between France and eight other countries (Portugal, Italy, Tunis, Morocco, Spain, Yugoslavia, Turkey and Algeria) in between 1983 and 1984.¹⁹⁰ The initiative was prompted by a directive adopted by the Council of the EU in 1977. Art. 3 of the directive reads: 'Member States shall, in accordance with their national circumstances and legal systems, and in cooperation with States of origin, take appropriate measures to promote, in coordination with normal education, teaching of the mother tongue and culture of the country of origin...'.¹⁹¹

In line with the EU directive, the ELCO programme was envisaged as a mechanism facilitating the integration of immigrant children by allowing them to both feel better integrated in the school system as well as to enhance and preserve their connection with their roots.¹⁹² The objectives of ELCO as defined by the Ministry of National Education, Youth and Sports were: 'structurer la langue parlée dans le milieu familial, favoriser l'épanouissement personnel des jeunes issus d'autres cultures, valoriser la diversification des langues à l'école.'¹⁹³ This formulation acknowledges that the provision of MTM education to immigrant children aids not only them in the correct acquisition of their languages of origin,

¹⁹⁰ Marie-Madeleine Bertucci, 'L'enseignement des langues et cultures d'origine : incertitudes de statut et ambiguïté des missions' (2007) 158 *Le français aujourd'hui* 28, 30.

¹⁹¹ Directive 77/486/CEE du Conseil, du 25 juillet 1977, visant à la scolarisation des enfants des travailleurs migrants OJ L 199, 6.8.1977, p. 32–33

¹⁹² Bertucci (n 190) 30.

¹⁹³ 'Enseignements de langue et de culture d'origine (ELCO)' (*éduscol | Ministère de l'Éducation nationale, de la Jeunesse et des Sports - Direction générale de l'enseignement scolaire*) <<https://eduscol.education.fr/11114/enseignements-de-langue-et-de-culture-d-origine-elco>> accessed 5 July 2021.

but also increases the diversity of languages in the education system of France. Language-learning and plurilingualism as a personal skill have become highly praised over the past decades in the wider European context. In the CoE's 'Guide for the Development of Language Policies in Europe' it is recognised that plurilingualism not only enhances the communication between European citizens, but also enables them to develop intercultural sensibility which is beneficial for democracy on the European continent.¹⁹⁴ However, ELCO classes were often provided separately from the mainstream school curriculum and offered to only bilingual Franco-Arabic students.

With regards to the instruction of Arabic, France signed two similar in nature ELCO agreements with Algeria in 1991 and with and Morocco in 1993.¹⁹⁵¹⁹⁶ Both agreements established that Arabic classes would last for up to three hours a week and the teaching would be facilitated by teachers hired and remunerated by the Algerian and the Moroccan states.¹⁹⁷¹⁹⁸ These classes would either be integrated in the schools' timetables or would take place outside of the official school hours. Furthermore, the programme of teaching would be elaborated by the two foreign states, but applied only after having received the approval of the French authorities.¹⁹⁹²⁰⁰ ELCO was founded on tight cooperation between the partnering states. Nevertheless, France also retained the right to exert control over the teaching programme.

A 2013 study analysing the performance of bilingual Franco-Arabic students demonstrated that bilingual education has a positive impact on the overall linguistic performance of

¹⁹⁴ Beacco and Byram (n 15) 13.

¹⁹⁵ Bertucci (n 190) 31.

¹⁹⁶ Michel Neyerneuf, 'Négociation franco-marocaine pour l'enseignement des langues et cultures d'origine' in *Enseignement des langues d'origine et immigration nord-africaine en Europe : Langue maternelle ou langue d'état ?* ed. by Mohamed Tilmatine (1987)

¹⁹⁷ Bertucci (n 190) 31.

¹⁹⁸ Neyerneuf 65.

¹⁹⁹ Bertucci (n 190) 31.

²⁰⁰ Neyerneuf 65.

students. The results of the survey showed that those students who followed Arabic classes performed better in French language classes than those who did not study Arabic in school.²⁰¹ However, the implementation of the ELCO programme, revealed to be problematic, especially with regards to Arabic language. The programme has received considerable criticism from various societal actors and institutions. According to Neyereneuf, the French state did not handle the project correctly from the start as it did not pay enough attention to the evaluation of the teaching plans and did not facilitate the integration of the foreign teachers into the education system.²⁰²

Moreover, in its 2000 report entitled ‘L’Islam dans le monde’ the French Haut Conseil d’Intégration suggested that the programme should be stopped because ‘la manière dont ces enseignements sont dispensés est devenue inadaptée aux enjeux de la politique d’intégration’.²⁰³ Furthermore, according to the Haut Conseil d’Intégration, the teaching of Arabic is given by ‘marginalised’ teachers who use outdated teaching practices and this can lead to the marginalisation of the students as well.²⁰⁴ This report highlights some very important aspects of the malfunctioning of the ELCO programme, yet it does not comment on the reasons behind them. The programme is presented as having reached a point of impasse and as no longer being of any use, yet the mistakes made by the responsible authorities are not discussed. The suggestion made by the Haut Conseil to end ELCO is accompanied by the idea for the ELCO languages to be better integrated into the school curriculum: ‘l’apprentissage au collège comme au lycée des langues d’origine comme langue vivante étrangère doit être encouragé’.²⁰⁵ This is a viable alternative as it would give ELCO

²⁰¹ Amal Rachidi, Isabelle Nocus and Agnès Florin, ‘Effets de l’enseignement de la langue arabe en classe ELCO (Enseignement des langues et cultures d’origine) sur les performances scolaires et langagières en français’ (2013) 2013 *Enfance* 349, 365.

²⁰² Neyerneuf 66.

²⁰³ ‘L’Islam dans la République’ (*Vie publique.fr*) <<https://www.vie-publique.fr/rapport/24979-lislam-dans-la-republique>> accessed 5 July 2021.

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

languages a more prominent position in the education system on an equal stance as other courses in the curriculum and, what is even more important, it would make them accessible to a greater number of students, not only to immigrant minority students. This could potentially be very useful for enhancing the tolerance and acceptance among students and within the society at large. However, the suggestion of the Haut Conseil d'Intégration was only partially fulfilled in 2006 when the teaching of Portuguese and Italian evolved away from ELCO and became part of the 'langues vivantes' programme.²⁰⁶ This created a situation of disbalance and inequality with regards to the format of instruction and the number of teaching hours and this came to the detriment of Arabic language which did not obtain the status of 'langue vivante'. Thus, the ELCO programme was seen as problematic predominantly when it came to Arabic language, yet the problem was never adequately addressed.

6.2. Arabic language and Islam: a damaging correlation

A prominent reason behind the scepticism vis-à-vis the teaching of Arabic as part of ELCO is the widespread association between Arabic language and Islam. Neyerneuf affirms that the Moroccan state had envisaged that the ELCO programme would also include a part devoted to 'initiation à la religion' and this had provoked suspicion and scepticism.²⁰⁷ This is not surprising given the primordially of the principle of secularism ('laïcité') in all aspects of the functioning of the French state and society, including education. The first sentence of Art. 1 of the French Constitution reads: 'France shall be an indivisible, secular, democratic and social Republic'.²⁰⁸ Therefore, the teaching of any religion in relation to language-instruction is unacceptable.

²⁰⁶ Bertucci (n 190) 32.

²⁰⁷ Neyerneuf 66.

²⁰⁸ 'Constitution of 4 October 1958 | Conseil Constitutionnel' (n 149).

Anti-Islam sentiments have been significantly exacerbated in France and the rest of Europe in recent years due to the increased incidence of terrorist attacks. These events significantly exacerbated the spread of fear and hatred vis-à-vis the Muslim community in France and Europe. Bourget describes how the narrative vis-à-vis North-African immigrants and their children has changed over the years with the term ‘Arabic immigrant’ used in the 1970s having been transformed into the ‘Muslim citizen’ in the 1990s.²⁰⁹ A possible interpretation of this evolution of the narrative is that upon their arrival in France North-African immigrants were distinguished primarily by their language and the focus of the integrationist policies of France was on the ‘linguistic assimilation’. This is also reflected in the French naturalization policy. The knowledge of French language is an essential prerequisite for the acquisition of French citizenship.²¹⁰ A couple of decades later, when the majority of Arabic-speaking immigrants had become well-established on the territory of France, many of them and their children full-righted citizens of France, the narrative changed with focus on Islam. This rhetoric, however, is overly simplistic as not all Arabic-speakers are Muslims, and not all Muslims speak Arabic.²¹¹ Bourget affirms that Islam and Islamic culture have always been considered as foreign to the French state and this is illustrated by the debates around the wearing of headscarves and burkini by Muslim women in France.²¹² Roy goes even further and states that Islam is commonly perceived as being ‘set in opposition to European values’.²¹³ The terrorist attacks of the past several years have only served to strengthen this narrative which has been present in the wider European context for decades.

²⁰⁹ Carine Bourget, *Islamic Schools in France: Minority Integration and Separatism in Western Society* (Springer International Publishing 2019) 3 <<http://link.springer.com/10.1007/978-3-030-03834-2>> accessed 4 May 2021.

²¹⁰ ‘Circulaire DPM N° 2000-254 Du 12 Mai 2000 Relative Aux Naturalisations, Réintégrations Dans La Nationalité Française et Perte de La Nationalité Française (NOR : MES/N/00/30272/C

²¹¹ D.E. Ager, ‘Immigration and Language Policy in France’ (1994) 15 *Journal of Intercultural Studies* 35, 38.

²¹² Bourget (n 209) 3–4.

²¹³ Benjamin Joyeux, Esther Benbassa, Olivier Roy ‘Security and Identity: Between Fantasy and Reality’ (*Green European Journal*)

As a result of the detrimental narratives discussed above, the peculiar term ‘communautarisme’ has emerged in the French context. The term is charged with a strong negative connotation and describes the tendency of ‘valuing an affiliation to an ethnic or religious community above integration to the collective’.²¹⁴ Given the primordality of the principles of unity (‘unicité du peuple’) and equality (‘égalité’) for the French Republic, it is easy to see why the concept of ‘communautarisme’ is seen as a major threat to the Nation. However, the predominant association of the term with Muslims creates a disbalance in the society and has had a definite negative impact on Muslims in France and the ways they are portrayed in media and perceived by the larger society. According to the French political scientist and scholar of secularisation and Islam in France, Olivier Roy, there is no organised or well-defined ‘Muslim community’ in France but rather ‘a scattered, heterogeneous population not very concerned with unifying itself or even with being really represented’.²¹⁵ Unfortunately, the narratives constructed by politicians and by the media outlets are far more influential than scholarly work. Muslims not only in France, but in most societies have suffered from the renewed prominence of the far-right in recent years and the rise of a ‘fake news’ and media outlets favouring scandal over accuracy.

6.3. Arabic instruction in mosques. Can Arabic be taught in a secular manner?

A prominent factor which has further strengthened the controversy around the teaching of Arabic is the provision of language classes inside religious establishments. Many mosques in France provide instruction of Arabic together with the teaching of Islam. The debate around these parallel educational establishments has become far more prominent in recent years and has further increased the fear of ‘communautarisme’. Mosques as milieus for language instruction are entirely separated from the official school system. More importantly, these

²¹⁴ Bourget (n 209) 4.

²¹⁵ *ibid* 8.

establishments go against the Republican concept of secular education because they combine the teaching of language with religious education. Given the strengthened negative sentiments vis-à-vis Islam, it comes as no surprise that the combination of language and religious education has been faced with scepticism and even hostility.

The authorities' stance regarding this matter is reflected in the adoption of the Gatel Law in April 2018 which made the procedure for the establishment of private schools more complex. It accorded strong competences to the local authorities to approve or reject the formation of private schools: 'L'autorité compétente de l'Etat en matière d'éducation, le maire, le représentant de l'Etat dans le département et le procureur de la République peuvent former opposition à l'ouverture de l'établissement'.²¹⁶ This legislative act was designed in direct response to the mounting social and governmental preoccupation with the provision of Arabic teaching in religious establishments.

It is essential to reflect on the reasons for the increased prominence of Arabic instruction in mosques. According to Bourget the Arabic language and culture have been 'devaluated' in education due to the French education system's focus on 'promoting a national culture common to all'.²¹⁷ Furthermore, Keaton has criticised the school curriculum for being overly Franco-centric.²¹⁸ The choice of the language instruction provided in mosques over that in schools reflects the preference of parents regarding the education of their children. One possible reason for this is the importance given to religious education by some Muslim families and their strong affiliations with the religious establishments which they frequent.

²¹⁶ LOI n° 2018-266 du 13 avril 2018 visant à simplifier et mieux encadrer le régime d'ouverture et de contrôle des établissements privés hors contrat (1) 2018 (2018-266).

²¹⁷ Bourget (n 209) 128.

²¹⁸ Trica Danielle Keaton. *Muslim Girls and the Other France: Race, Identity Politics, and Social Exclusion*. Indiana University Press, 2006. Project MUSE

Moreover, the increased prominence of language education in mosques should also be considered as a form of criticism of the conventional forms of teaching of Arabic. It should be analysed by the French education authorities as revealing an insufficiency of the mainstream school curriculum. In the 2018 report 'The Islamist factory' issued by the Institut Montaigne, the author Hakim El Karoui recognises this deficiency of the French education and states: 'To revive the learning of the Arabic language is key, especially since Arabic courses have become for Islamists the best means of attracting youth in their mosques and school'.²¹⁹ The main advantage of official, mainstream school systems, is their power to unite students by providing them with equal chances and a safe environment to exchange knowledge and ideas. This is a crucial factor as it can contribute significantly to the unity of the society. In order for this valuable potential of the conventional education system to be fulfilled, it needs to become as inclusive as possible and to respond to the needs of students coming from various backgrounds. This is the way forward in modern-day societies which are increasingly multicultural.

The discussion regarding the instruction of Arabic in mosques raises a further important question: can Arabic language be taught in a purely secular way? Arabic language has a central place in Islam as it is the language in which the Quran is written and it is used on a daily basis for praying by practicing Muslims.²²⁰ Furthermore, as affirmed by Morrow, the Qur'an established the standard of classical Arabic, the guide to good grammar, the path of eloquence...'.²²¹

The French orientalist Paul Balta affirms that while Islam is an unavoidable element of Arabic-teaching, Arabic should not be regarded as 'a religious language' and it can be taught

²¹⁹ Hakim El Karoui 'The Islamist Factory' 2018 Institut Montaigne

²²⁰ Bourget (n 209) 132.

²²¹ John A. Morrow, Arabic Instruction in France: Pedagogy or Politics? (2007) *International Journal of the Humanities* 4, 6, 20

in a secular way.²²² The intrinsic relation between Arabic and Islam cannot be omitted in the educational process. Yet, what matters is the way in which it is presented. Arabic language's primordially to the Islamic faith can be presented from a purely cultural and historical perspectives. Furthermore, Balta also advocates for the instruction of Arabic in schools to be enhanced so that parents do not have to turn to associations of religious type'.²²³

6.4. EILE instead of ELCO: A viable way forward?

The president of the French Republic, Emmanuel Macron, announced the definite end of the ELCO programme in his influential speech entitled 'Fight against separatism' which he held during a visit in Les Mureaux in October 2020. As the principle reasons behind the abolishing of ELCO Macron stated that: 'it led to us having teachers on our soil who were not always proficient in French, through contracts with their native countries. Those contracts were with Algeria, Morocco and Turkey, and incorporated curricula that were not in compliance with French law'.²²⁴ The President's arguments are very close in nature to the criticism raised by the Haut Conseil d'Intégration twenty years earlier. However, even though ELCO was indeed based on contracts with foreign countries and allowed them to have influence over the teaching of the languages in question, the French state had, since the very establishment of the initiative, the right and the responsibility to review and express opinions on the education programmes proposed by the partnering states. Macron did not go into further detail as to explain why and how it was allowed for the ELCO curriculum to reach a state of non-compliance with French law. Evidently, this is a fault of the French authorities and it can be seen as negligence vis-à-vis the functioning of ELCO. Furthermore, the suppression of ELCO

²²² Paul Balta, 'L'Islam dans le monde' as cited by Morrow (2007)

²²³ Ibid.

²²⁴ 'Fight against Separatism – the Republic in Action: Speech by Emmanuel Macron, President of the Republic, on the Fight against Separatism.' (*elysee.fr*, 2 October 2020) <<https://www.elysee.fr/en/emmanuel-macron/2020/10/02/fight-against-separatism-the-republic-in-action-speech-by-emmanuel-macron-president-of-the-republic-on-the-fight-against-separatism>> accessed 6 July 2021.

came almost 40 years after the establishment of the programme, even though scholars had noted the lack of productive dialogue and effective oversight of the programme since the late 1990s.²²⁵ Even though the programme encountered obstacles since the beginning, it was neither improved, nor suppressed.

Furthermore, Macron announced the creation by the Ministry of Education of a new system of language teaching: EILE (enseignements internationaux de langues étrangères) and highlighted the fact that it will enhance the government's control over language instruction.²²⁶

On the Ministry of Education's website, it is stated that the classes of the EILE framework will be available to 'tous les élèves volontaires des écoles les proposant à partir de la classe de CE1 à raison d'1 heure 30 chaque semaine, en plus des 24 heures hebdomadaires'.²²⁷

'L'enseignement est assuré par des enseignants mis à disposition par les pays partenaires et parlant parfaitement le français. L'attention portée à la qualité des enseignements est renforcée'.²²⁸ Like ELCO, EILE is also based on the cooperation of France with foreign countries for the provision of teaching personnel. In the field of foreign language teaching cooperation reveals to be indispensable. EILE is charged with more efficient oversight of the teaching programmes as well as of the teachers themselves. This can be seen as an implicit acknowledgement by the French authorities of their failure to perform adequate oversight of the ELCO programme. An evident major advantage of EILE is the fact that this new initiative makes Arabic accessible to a much vaster group of students beyond those for whom it is the mother tongue. The language is better integrated into the mainstream school curriculum and receives higher recognition. Therefore, EILE serves to remediate the disbalance created in

²²⁵ Neyerneuf 66.

²²⁶ 'Fight against Separatism – the Republic in Action: Speech by Emmanuel Macron, President of the Republic, on the Fight against Separatism.' (n 224).

²²⁷ 'Les langues vivantes étrangères et régionales' (*Ministère de l'Éducation Nationale de la Jeunesse et des Sports*) <<https://www.education.gouv.fr/les-langues-vivantes-etrangees-et-regionales-11249>> accessed 6 July 2021.

²²⁸ *ibid.*

2006 between, on the one side, Arabic language and Italian and Portuguese languages, on the other side.

Furthermore, the context and the overall structure of President Macron's speech suggest a further reason behind the suppression of ELCO. The President made an overall statement about the school of the French Republic stating that it 'must first and foremost instil the values of the Republic and not those of a religion, and educate citizens not worshippers, schools without contracts – over which we will have greater control...'.²²⁹ It becomes clear from the words of Mr. Macron that a central aim of the French government is to assure that the Islamic faith is fully separated from the education system.

6.5. To what extent are the LHRs of the Arabic-speaking community in France guaranteed?

This is the final imperative question which needs to be addressed. As already demonstrated, the French constitution prevents the minorities, which exist on the territory of the country, from attaining official recognition. Therefore, there is no recognised Arabic-speaking minority in France, despite the number of French citizens who have this language as their mother tongue. No specific rights have been granted to Arabic speakers or codified in any legislative act of the French state. Nevertheless, in order to summarise the objective situation, the principles on which the concept of LHRs is founded will be applied to the specific situation of Arabic speakers in France. In accordance with the definition of LHRs presented in chapter two, these principles are: the opportunity to learn the mother tongue, to use it freely, to use it in some official contexts and the opportunity to learn at least one of the official languages of the country of residence.

²²⁹ 'Fight against Separatism – the Republic in Action: Speech by Emmanuel Macron, President of the Republic, on the Fight against Separatism.' (n 224).

In terms of the freedom of usage of the language, Arabic speakers are fully free to use their mother tongue both in the private and the public sphere. However, when it comes to the official administrative contexts, Arabic language cannot be used as a medium of communication due to the central role accorded to the French language through the Toubon law of 1994.

With regards to education, more specifically MTM education, the ELCO programme, which had been in place for almost 40 years, is the only relevant mechanism in the French context. Its effectiveness, however, is dubious due to the low number of teaching hours (up to three per week). This form of teaching is suitable for foreign language instruction, but it is not adequate for instruction of the mother tongue to students members of linguistic minorities. Furthermore, apart from this notable drawback, ELCO represented only a format for the teaching 'of' the mother tongue. Instruction 'in' the mother tongue (the possibility for other classes to be taught using this language) had not been provided within the framework of this programme. This means that the right to MTM education of Arabic speakers, which implies both these aspects of mother-tongue education, is not fulfilled. However, the learning of the country residence's language, which is another component of the right to language, has been guaranteed by the French state. What is more, the French language holds a pivotal position in the education system of France, in stark contrast to the low attention given to minority languages. The education component of the right to language is, therefore, not effectively ensured for Arabic speakers in the French context. There is currently no prospect of the situation to be improved since the new EILE programme does not increase the number of teaching hours of Arabic language and neither does it envisage the instruction of other course in the minority language.

Overall, the needs of Arabic speakers for the full enjoyment of the mother tongue as recommended by experts are not met in the French context. Given that the speakers of the

language constitute a prominent community in France, this situation is problematic because it breeds inequality and marginalisation, by preventing Arabic speakers from establishing the necessary positive link with their mother tongue. This compels some of them to choose the language instruction provided by Islamic faith institutions which further exacerbates the problems of antagonism and intolerance.

Two central ways of improvement of the situation can be recommended. On the basis of the new EILE system, the number of teaching hours of Arabic language should be increased. This should be done for all minority languages taught within the programme. Moreover, the principle of MTM education should be fully applied. Within the framework of EILE, Arabic-speaking students should also be given the opportunity to study some of the courses in their curriculum in their mother tongue at least at some of the levels of education. This will ensure and strengthen their establishment of a positive relationship with their mother tongue.

Conclusion

This thesis has sought several interdependent aims. Firstly, the importance of the recognition and the protection of the right to language and the right to mother tongue education have been highlighted. Secondly, based on review of central UN and CoE human rights documents, it has been demonstrated that the abovementioned rights have not been very well addressed, nor provided with protection in both the global and the European human rights systems. Thirdly, a focused study of the linguistic rights of the Arabic-speaking community in France has been conducted. This was done through review of the French Republic's language policy, its legislation regarding minorities as well as through analysis of the instruction of minority languages provided in the French education system. Based on this analysis, it has been concluded that the members of the Arabic-speaking minority in France do not have their linguistic rights adequately protected. This compromises the establishment of the indispensable for every individual link with the mother tongue. Furthermore, the situation also breeds antagonism within the society due to the increased salience of the instruction of Arabic language in mosques.

The lessons which should be learned and the recommendations which should be thoroughly considered are the following. Firstly, the adoption of a concrete document recognising and providing protection for the language rights of both minority- as well as majority-language speakers should be adopted. The document should be as comprehensive as possible. The document needs to be drafted with specific consideration of the issue of mother tongue education in order to ensure the right of every child to learn and be able to use his/ her mother tongue. Ideally, such a mechanism should exist both at the global as well as at regional levels. Secondly, with regards to the Arabic-speaking community in France, the French government needs to considerably enhance the quality of the Arabic-instruction provided within the official system of education. The new EILE system is a small step forward, yet it needs to be

improved by the provision of a higher number of teaching hours of Arabic language as well as by the provision of the opportunity for Arabic-speaking children to learn some of the courses in their curriculum in Arabic.

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