RESPECTING LINGUISTIC DIVERSITY?

Language Discrimination in the European Union

Davyth Hicks



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RESPECTING LINGUISTIC DIVERSITY? LANGUAGE DISCRIMINATION IN THE EUROPEAN UNION



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Respecting linguistic diversity? Language Discrimination in the European Union

A Report on the ELEN, EFA-Greens, GUE-NGL European Parliament Hearing, the issues raised, and next steps for minoritised language rights

Ву

Davyth Hicks

ELEN Secretary-General



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Introduction

In January 2015 ELEN presented its Report¹ to the UN Universal Periodic Review (UPR) on language discrimination against co-official language speakers (Catalan, Basque and Galician) and Asturian and Aragonese in the Spanish state. It revealed not only everyday maltreatment but a shocking list of beatings and humiliation of people trying to use their official language with state authorities.

However, the ELEN Report only revealed the tip of the iceberg as there are many reports of this kind of discrimination across Europe. France, for example, is notorious for being a 'rogue' state on this issue having discriminated against its own 'regional' languages so thoroughly in the name of a perceived threat to 'unity' that they are nearly all now defined by UNESCO as severely endangered. In addition, we see regular occurrences of language based discrimination (despite being prohibited under the Charter of Fundamental Rights) happening to nearly all regional or minority languages in Europe, for example, to the Hungarian national minorities in Slovakia and Romania, co-official languages such as Catalan and Basque, and even with official languages such as Irish.

In March 2016 ELEN achieved a historic first when the issue of language rights and discrimination was discussed in the Parliament's LIBE (Civil Liberties, Justice and Home Affairs) Committee for the first time.²

¹ See: http://elen.ngo/elen-reports/

² http://www.catalannewsagency.com/politics/item/spain-s-linguistic-discrimination-debated-in-the-european-committe-for-civil-liberties-for-the-first-time



Thanks to the support of Marina Albiol MEP backed by many Catalan and Basque MEPs, ELEN was able to discuss the issue of language discrimination across Europe, with a focus on the Spanish state, in particular the Catalan cases documented by Plataforma per la Llengua.

Given what is seen as a worsening situation that urgently needs to be addressed and because of the interest in the issue shown in the LIBE Committee, ELEN with Liadh Ní Riada MEP, decided to hold a hearing in the European Parliament. The proposal for a hearing was promptly supported by MEPs Josep-Maria Terricabras, Ramon Tremosa, Jordi Sebastia, Marina Albiol and Josu Juaristi who all participated in the event.

The Hearing discussed how the EU and its Member-States deals with this problem. It reviewed the situation in various States with presentations from ELEN Member NGOs working on the ground that provided evidence of language discrimination in their territories with case studies. These case studies are discussed below and the accompanying Powerpoint presentations are on the ELEN website.

Experts assessed the current language rights situation and made recommendations along with civil society stakeholders on what measures the EU should bring forward to deal with the situation. This included the Council of Europe's ECRI recommendation's that language discrimination constitutes a form of both direct and indirect racism.

Discussion, with participation from the Commission, Council of Europe (FCNM and ECRML), OSCE HCNM, and the UN OHCHR, focused on how to best use existing legislation already in place such as the Race Equality Directive and the Charter of Fundamental Rights. The Hearing also discussed the Donostia Language Protocol proposals, and the ELEN proposal for new legislation such as a language rights directive for regional, minority and endangered language speakers. After all, it was argued, if the EU can protect fish and plants, have a race equality directive, and propose an anti-discrimination directive, why can't it act to protect its own linguistic diversity?

The Recommendations from the hearing are set to be presented to the Culture and LIBE Committees with the aim of having a full official hearing, as well as to the EU Commission, the Council of Europe, the OSCE, and the UN.

The hearing was remarkable for another very important reason, for the first time in the European Parliament, thanks to the support of the EFA Group, we had simultaneous interpretation in Catalan, Welsh, and Irish, as well as in English, French and Spanish.

The video of the entire meeting is available online.³⁴ The main points from each speaker have been summarised when we don't have full written text. When we have a full text from a speaker I have used that rather than a summary. The hearing was pushed for time and many speakers had to condense their presentations. Therefore, in this book we have, where available, used the original full texts.

ELEN would like to thank the EFA Parliamentary Group, in particular Jose-Luis Linaszoro, Liadh Ní Riada for hosting the event, Brian Carty and the Sinn Fein team, the EFA-Greens group, the GUE-NGL group, and all of the speakers, for making the whole event and this publication possible. Meur ras bras.

Davyth Hicks, Brussels 2016

³ Video http://www.greens-efa.eu/en/article/respecting-linguistic-diversity/

⁴ Short video clip http://elen.ngo/2016/07/07/ the-language-discrimination-hearing-liadh-ni-riada-mep/



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Glossary

CFR European Charter of Fundamental Rights

CoE Council of Europe

EBLUL European Bureau for Lesser-Used Languages

ECHR European Charter on Human Rights
ECtHR European Court of Human Rights

ECRML European Charter for Regional or Minority Languages

ELEN European Language Equality Network

FCNM Framework Convention for the Protection of National Minorities

HCNM OSCE High Commissioner on National Minorities

HR Human Rights

ICCPR UN International Covenant on Civil and Political Rights

ICH Intangible Cultural Heritage (UNESCO)

LULs Lesser-Used languages

OSCE Organisation for Security and Co-operation in Europe
PACE Parliamentary Assembly of the Council of Europe

RMLs Regional or Minority Languages

UN United Nations

OHCHR UN Office of the High Commissioner for Human Rights

CHAPTER 1

Language Rights: an Overview

Davyth Hicks

The new UN OHCHR Guidelines on the language rights of linguistic minorities states that: "Language rights and linguistic human rights are human rights which have a bearing on the language preferences of, or use by, state authorities, individuals and other entities. As language is central to human nature and culture, and is an expression of identity, issues surrounding language are particularly important to linguistic minority communities seeking to maintain their distinct group and cultural identity, sometimes under conditions of marginalization, exclusion and discrimination." 5

The guidelines continue:

Linguistic human rights can be described as a series of obligations on state authorities to either use certain languages in a number of contexts, not interfere with the linguistic choices and expressions of private parties, and may extend to an obligation to recognise or support the use of languages of minorities or indigenous peoples. Human rights involving language are a combination of legal requirements based on human rights treaties and guidelines to state authorities on how to

⁵ www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/LanguageRights.aspx

address languages or minority issues, and potential impacts associated with linguistic diversity within a state.

Language rights are to be found in various human rights and freedoms provisions, such as the prohibition of discrimination, freedom of expression, the right to private life, the right to education, and the right of linguistic minorities to use their own language with others in their group. They are also the subject of a variety of external guideline documents, such as in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UNESCO's Principles of Language and Education, the various Recommendations of the UN Forum on Minority Issues on Implementing the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the Council of Europe's Thematic Commentary No. 3 on the Language Rights of Persons Belonging to National Minorities under the Framework Convention, and the OSCE's Oslo Recommendations regarding the Linguistic Rights of National Minorities.

Despite some differences, all of these describe similar basic approaches for state authorities to meet their human rights obligations involving language including:

- respect the integral place of language rights as human rights;
- recognise and promote tolerance, cultural and linguistic diversity and mutual respect, understanding and cooperation among all segments of society;
- have in place legislation and policies that address linguistic human rights and prescribe a clear framework of standards and conduct;
- implement their human rights obligations by generally following the *proportionality principle* in the use of or support for different languages by state authorities, and the *principle of linguistic freedom* for private parties;
- integrate the concept of *active offer* as an integral part of public services to acknowledge a state's obligation to respect and provide for language rights, so that those using minority languages do not have to specifically request such services but can imminently use them when needs arise:

- Have in place effective complaint mechanisms before judicial, administrative and executive bodies to address and redress linguistic human rights issues.

Many international organisations have developed processes, tools, and instruments in recent years to promote and clarify how to implement these language rights principles. The UN Forum on Minority Issues, UNESCO's Languages and Multilingualism Section, the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities, and the OSCE High Commissioner on National Minorities, continue to provide a constructive series of platforms for the exchange of knowledge, support and expertise to enable these human rights processes, tools, and instruments to be continuously improved when it comes to the implementation of language rights. One important feature for all of these is the availability of reliable, disaggregated, data collection for state authorities to effectively prepare, apply and evaluate their policies implementing these rights, as well as improve on their activities and efforts where needed.

According to the UNOHCHR handbook the core language rights from these treaties, jurisprudence, and guideline documents operate at the level of three main foci:

- Dignity: The first Article of the Universal Declaration of Human Rights declared that all human beings are born free and equal in dignity and rights which is a fundamental principle and rule of international law, especially important in issues surrounding protection and promotion of minority identity.
- 2. *Liberty*: In private activities, language preferences are protected by basic human rights such as freedom of expression, the right to private life, the right of minorities to use their own language, or the prohibition of discrimination. Any private endeavour, whether commercial, artistic, religious, or political, may be protected.
- Equality and non-discrimination: The prohibition of discrimination prevents states from unreasonably disadvantaging or excluding individuals through language preferences in any of their activities, services, support or privileges.

4. *Identity*: The linguistic forms of identity, whether for individuals, communities or the state itself, is fundamental for many. These too can at times be protected by the right to freedom of expression, the right to private life, the right of minorities to use their own language, or the prohibition of discrimination.

The guidelines state that: "Linguistic human rights issues: (i) should be considered in any activity which involves state authorities and their language preferences; (ii) are closely associated with issues of national, collective, and individual identity; (iii) impact on the participation and inclusion of minorities; (iv) lead to sentiments of alienation or marginalisation and potential instability or conflict if not properly addressed in a balanced, reasonable way; and (v) occur in extremely diverse circumstances and conditions so there is no 'one-size-fits-all' approach to implementing language rights in all of the world's hugely diverse national contexts."

Linguistic tolerance or linguistic promotion

Existing language rights have been divided into two main categories: 1) Rights granting a regime of language tolerance, which we may define as "negative" rights, and 2) Rights granting language promotion, defined as "positive" rights.

Measures that grant linguistic tolerance include the post-war UN Universal Declaration of Human Rights, the European Convention of Human Rights, and the International Covenant on Civil and Political Rights (ICCPR). These treaties created binding international obligations which are in general enforceable through a system of individual petition.

The second category of language rights have been described as covering a regime of linguistic promotion. They include measures which create certain "positive" rights, for example, to key public services such as public education and media through the medium of minoritised languages. Examples are the Council of Europe's Framework Convention for the Protection of National Minorities and European Charter for Regional or Minority Languages, the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. There are also useful guideline documents such as the OSCE's Oslo

Recommendations regarding the Linguistic Rights of National Minorities⁶ and the new Protocol for Language Rights.⁷

Weaknesses in the existing language rights regime

All of the existing instruments, however, impose limits on the positive rights conferred on linguistic minorities. A prime example of such a limit is that most instruments confer individual rights instead of collective rights. This is particularly problematic for languages given that they are spoken by communities of people.

Overall, it is clear that present provision for linguistic minorities is lacking. The ICCPR and ECHR based on classic civil rights provide negative language rights, particularly the right to non-discrimination based on language. While they are of real use to those language minorities faced with repressive and assimilationist policies, such as those in the French state, the threat to many RMLs today may also be from various non-State processes, meaning that RML speakers have had to look to the host State itself to provide support measures.

Despite new instruments such as the ECRML and FCNM being put in place in the 1990s, language rights have still not been given the status of a key fundamental right under international law and, as discussed by Dunbar (2001)⁸ face four main challenges. Firstly, there is the patchwork nature of the support provided where in Europe we are still far away from the promised overarching framework for human rights. Many of the most useful measures for positive support for RMLs have not attained the status of binding international legal principles. Secondly, there is the limited nature of the rights themselves. In many cases the rights provided are subject to a range of conditions such as sufficient levels of demand, and which are bound by the administrative, financial and political convenience of the States themselves, all of which tend to significantly weaken these rights. For example, the ECRML clearly states that it offers no individual or collective rights at

⁶ http://www.osce.org/hcnm/67531

⁷ http://protokoloa.eus/en/

⁸ Rob Dunbar, 'Minority Language Rights in International Law.' International and Comparative Law Quarterly Vol. 50, 90-120 (2001).

all. Thirdly, almost all of the positive rights and state obligations are essentially unenforceable either because the instrument is not legally binding under international law, or because the instrument creates no real means of enforcement such as a right of individual petition or complaint to an international body.

Furthermore, as discussed by Dunbar (2001) commenting on the ECRML, "positive rights are provided in such a way that a one-sided reliance on government is created, with limited community control and input into the process of language planning and policy design and implementation. The narrow focus on government obligations obscures extremely important questions about the manner in which minority language services are conceived and developed."

As an update, based on discussion with the human rights lawyer Janos Fiala, ⁹ in current practice it is possible for the litigant to rely on other articles of the ECRML or FCNM before courts, even if they are technically not a "right". Any article listed in the two Treaties can be litigated on, and it can also be relevant to linguistic rights if the litigant combines it, as happens in practice, with some articles prohibiting discrimination. For example, ICCPR: Articles 2-27; ECHR: Articles 2-14 + protocols; and all of the CERD.

Only Article 27 of ICCPR specifically confers linguistic rights which can be litigated, continues Fiala, adding that, "Maybe the articles on freedom of speech (Art. 10 ECHR, Art. 19 ICCPR), depending on your definition. FCNM and ECRML are hard-law treaties without an effective enforcement mechanism, but can be invoked before (typically domestic) courts. This does not happen often, but it is possible."

Finally, over the last twenty years we have seen the reporting programme of the FCNM and ECRML go through four cycles, in some cases, with Recommendations from the Council of Ministers being effectively ignored by some State-parties and delayed many times. It leaves the Council of Europe Committee of Ministers in a difficult situation, for how much longer can it say it 'strongly recommends' that States take

⁹ From an e-mail discussion with Janos Fiala in January 2017, who spoke representing Szlovákiai Magyarok Kerekasztala at the Hearing.

action to protect regional languages and national minorities when States ignore such recommendations and take no action at all?

These last points are among the reasons why European civil society organisations drafted the new Donostia Language Protocol, and why it will need to be adopted and implemented.

New developments in language protection

Domestic legislation designed specifically for RMLs is invariably one of the best solutions to protect and promote our languages. Many RMLs now have language legislation in place that acts to guarantee their protection and which underpins measures for their revitalisation. However, one of the newest developments, which could be widely copied, is the establishment of impact assessments for Welsh in planning. The introduction of the Planning (Wales) Act in 2015¹⁰ signified a major step forward. Two key provisions in the Act confirmed that: 1) The Welsh language must be taken into account in the sustainability appraisal for all development plans, (Section 11 of the Act); and 2) The impact on the use of the Welsh Language can be a material consideration when determining a planning application (Section 31 of the Act). It means that development plans and planning decisions must take into account any impact on the Welsh language. The inclusion in legislation of Welsh language impact assessments is a significant milestone.

Furthermore, the scope of the impact assessment could be expanded to cover many more areas not just town planning. All kinds of developments could be covered by language impact assessments including planning for a new radio or TV station, for a university, for a supermarket, or when implementing environmental, health and safety measures. Any kind of new legislative proposal, local, national or European, should have its impact on language assessed. The EU already takes account of the impact on linguistic minorities when drafting new legislation. ¹¹ It is a new practice that could be greatly expanded in scope and adopted by state and autonomous governments throughout Europe.

¹⁰ http://gov.wales/topics/planning/legislation/planning-wales-act-2015/?skip=1&lang=cy 11 See: http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/ iag 2009 en.pdf

Language Discrimination in the European Union – MEP Comments

Liadh Ní Riada MEP

In June 2016 I had the honour of chairing a special hearing in the European Parliament on language discrimination in the EU. The hearing examined the situation of regional, indigenous, minority and lesserused languages across the EU.

It was my privilege to work closely with the European Language Equality Network (ELEN) to bring together a panel of language advocates, activists and experts from far and wide.

The issue of language discrimination is being discussed and challenged across Europe. In January 2015 ELEN presented its Report to the UN Universal Periodic Review (UPR) on language discrimination against co-official language speakers (Catalan, Basque and Galician) in the Spanish state.

In the North of Ireland for example, the use of Irish continues to be undermined by the British and Irish Government's failure to implement the St Andrews Agreement for an Irish Language Act. In the South the Irish Government's policies fall short of offering full equality to Irish speakers.

Of course, the entire issue of Language Rights and diversity was always a personal one for me. The fact that I cannot speak my native language in my place of work, the European Parliament is discriminatory and flies in the face of the core principles of the European Union. The EU cannot continue to claim that it ,respects' linguistic diversity and then do nothing to protect that diversity.

Language diversity is a positive and enriching aspect of our societies, of our countries and of Europe as a whole. We must cherish and

Liadh Ní Riada



protect this diversity. The rights of speakers of our regional, indigenous, minority and lesser-used languages must be enshrined, respected and vindicated. I commend the European Language Equality Network on its work to date and wish it the best for the future.

Josep-Maria Terricabras MEP

In the EU only official languages are respected. When I was young we were told to speak in a 'Christian language'. While the situation has improved it's still difficult to speak Catalan in many domains. In 1996 we issued the Declaration of Linguistic Rights but there continues to be a lack of improvement since then.

Josu Juaristi MEP

One of the most salient issues is that I'm not able to use Euskara in the European Parliament.

This Hearing is a very important initiative and very much needed. It helps to show just how far away we are from language normalisation and linguistic rights. In the Basque Country the situation continues to be more complicated in Iparralde, the northern Basque Country under the French state. In addition, a continuing problem is that it is still not possible to have all the Basque-speaking territories working together. This is also an obstacle to Basque language revitalisation.



Jordi Sebastià MEP

Language discrimination is an attack on fundamental human rights. We're here to defend people, not just abstract political ideas. We see how people suffer. We see different levels of language discrimination across Europe and there are many cases of language discrimination in Valencia, often with parents being compelled to bring their children up in a different language than their own. When I was at school we would get shouted at and sent to the back of the class if we spoke Valencian.

Our language is something that allows us to live a full life. It's a fundamental right to live your life in your own language, including through education and the media. Road signs are still not allowed in Valencian, and only last week the police compelled people to speak in Spanish.

Languages are being forced into being 'minority' languages. All languages are a treasure, it is racist to discriminate against them.

Ramon Tremosa MEP

Catalan is a living language

Despite the fact that the Catalan Language is spoken by over 10 million people and is the 14th most spoken language in Europe, it is not one of the 24 official languages of the European Union. Therefore, Catalan speakers do not have the same linguistic rights that other citizens that

Josu Juaristi



speak an official European language have. For instance, Catalan is not allowed to be used by the Members of the Spanish Parliament, Senate, or in the European institutions.

A language is not alive depending only on its number of speakers, but by how people use it in their daily life: at home, at work, in the shops, in the streets, in social networks, and so on.

Barcelona Football Club has different Twitter accounts in different languages, and its Catalan version has over 5 million followers. This is many more than several other important football clubs in Europe that use, in their Twitter accounts, an official language of the European Union.

When Catalan speakers can be free, Catalan language has very good marks, even higher than some official languages. For example, 55% of books sold, 85% of internet browsers and 5 out of 6 social networks (Facebook, Twitter) have a Catalan version. Wiquipedia in Catalan is 17th globally for the number of articles in the language.

However, in the areas that depend on the Spanish Government, Catalan has very low marks. Such as in Justice, where only 12% of reports are in Catalan, 10% of products are labelled in Catalan. There are 340 Spanish laws that force companies to label in Spanish despite 24 laws that ask to do it in Catalan. Only 3% of films can be seen in the cinema in Catalan. Even the Council of Europe recently said in its last ECRML experts report on Spain on Charter compliance that Catalan is discriminated against by the Spanish institutions.

Jordi Sebastià



We have tried, tried and tried to be respected by the Spanish government, without success. That is why so many people have decided to back independence from Spain. Only an independent Catalan Government will respect our language, and therefore, the rights of all Catalan speakers.

Marina Albiol Guzman MEP

European Union - United in diversity?

It is now December 2016. The language of my country, the País Valencià, is Catalan, and the law that regulates its use dates back to 1983. After four decades of dictatorship, the País Valencià instituted a law that theoretically protected the Valencian language and encouraged its use to promote the recovery of its social use.

33 years have now passed since this law was put in place and now, this month, the Valencian media has published the story of a lawyer who has requested the Public Prosecutor to receive the official documents written in his own native Catalan language, which is recognized as official in the País Valencià. The news is that the Prosecutor's Office replied by stating that it is not forced to use the Catalan language in its notifications. The same lawyer had previously drafted a lawsuit in Catalan, the official language of the administration of justice, and the Court of Justice replied that it should be translated or else the case would be delayed for up to five years.



This month it was a lawyer but a few weeks ago, several youths denounced that the security staff at a music festival had threatened to forbid their access to the concerts if they used their own language. A few days before, a police officer required a citizen to change the language he was speaking in or he would make a complaint. This is just the visible part, those who decide to denounce the discrimination suffered. The vast majority of the hundreds of people that every week feel their rights are systematically being trampled while trying to live normally in Catalan don't even think about reporting such discrimination.

Plataforma per la Llengua publishes an annual report featuring cases of linguistic discrimination, and its 2015 edition, under the illustrative title, If you speak in Catalan the trial will be suspended, 'documents up to 37 serious cases of discrimination. After a long period of negotiations with the European Parliament's largest groups, we managed to include a debate with five of these cases in the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament. This is a sign of the exhaustion of the ways in which the Spanish State deals with the multilingual reality, which they consider a problem. The mechanisms used by the Government are often sterile to the demands of users of official languages other than Spanish. These laws theoretically defend and promote the use of minority languages, and therefore the Spanish State has ratified the European Charter for Regional

Marina Albiol



or Minority Languages, this would force the Government to establish measures to not be able to continue with the discrimination the speakers of Catalan, Galician, Basque, and Occitan currently undergo. However, this discrimination not only continues but is promoted by lax regulations or even by lack of them.

For those not experiencing this reality first-hand, it may seem inconceivable that today there are still these cases in Europe, and this may lead them to think they are isolated events. In reality, it is easy to observe how these cases take place systematically and constitute clear violations of fundamental rights.

Even today, in 2016, in Europe.



Hosts: EFA-Greens and GUE-NGL in partnership with ELEN Location: European Parliament, JAN 2Q2, Brussels, Belgium Interpretation: Irish, Welsh, Catalan, Spanish, French, English

9.25 Opening session. Welcome speech

Liadh Ní Riada MEP, Davyth Hicks (ELEN Secretary-General)

Introductory Remarks

Jordi Sebastià MEP, Josep-Maria Terricabras MEP, Josu Juaristi MEP, Marina Albiol MEP, Ramon Tremosa MEP (Moderator, Davyth Hicks)

10.10 Keynote: "Making the minority language invisible, the evasion of the minority language crisis in policy"

Mr Conchúr Ó Giollagáin (Soillse, Oilthigh na Gàidhealtachd agus nan Eilean). (Moderator, Liadh Ní Riada)

10.25 Language Rights and Discrimination in Europe

(Moderator, Liadh Ní Riada)

Keynote: "Respecting linguistic diversity? Language discrimination in Europe"

Mr Davyth Hicks (ELEN)

"Language speakers' rights, revisiting the 1998 OSCE Recommendations"

Mr Miquel Strubell (Linguapax International)

"Protecting Irish language rights"

Mr Rónán Ó Domhnaill (An Coimisinéir Teanga / Irish Language Commissioner)

"Linguistic supremacism"

Mr Ferran Suay (Acció Cultural del País Valencià (ACPV) / Universitat de València, ELEN Vice-President)

11.30 Coffee

11.45 Case Studies on Language Discrimination

(Moderator, Marina Albiol MEP)

- Breton: Mr Tangi Louarn (President, Kevre Breizh and ELEN-EBLUL France, ELEN Vice-President)
- Catalan: Ms Neus Mestres (Director, Plataforma per la Llengua)
- Irish: Mr Ciarán Mac Giolla Bhéin (Advocacy Manager, Conradh na Gaeilge)
- Welsh: Ms Tamsin Davies (Cymdeithas Yr Iaith Gymraeg)
- Basque: Mr Paul Bilbao-Sarria (Secretary-General, Kontseilua, ELEN Vice-President)
- Hungarian in Slovakia: Mr János Fiala (Szlovákiai Magyarok Kerekasztala)
- Hungarian in Romania: Ms Krisztina Sándor (Erdélyi Magyar Nemzeti Tanács)
- Occitan: Mr Alexis Ouentin (Institut Estudis Occitan, ELEN Vice-President)
- Galician: Paulo Filgueiras (A Mesa pola Normalización Lingüística)

13.30 Lunch

15.00 European and International Norms on regional or minority language rights: are they sufficient?

(Moderators, Josu Juaristi, Liadh Ní Riada)

- Mr Sixto Molina, Council of Europe, European Charter for Regional or Minority Languages (ECRML), Head of Secretariat
- Ms Belen Rodriguez de Alba, UN OHCHR, Indigenous Peoples and Minorities Section
- Ms Iryna Ulasiuk, OSCE High Commissioner on National Minorities (HCNM)
- Ms Kristina Cunningham, EU Commission, DG Education and Culture, Multilingualism

16.00 Keynote: "Overcoming language discrimination, the global development of language rights"

Mr Rob Dunbar, Roinn na Ceiltis is Eòlas na h-Alba, Oilthigh Dhùn Èideann (Moderator, Liadh Ní Riada)

Case study on the cultural importance of language in terms of linguistic rights

Mr Liam Ó Maolaodha, Oireachtas na Gaeilge (Moderator Liadh Ní Riada).

16.25 Coffee

16.35 Solutions

(Moderator, Liadh Ní Riada MEP)

- A new alternative "The Protocol to Ensure Language Rights" created by contributions from civil society - the way forward for establishing substantive linguistic rights. Paul Bilbao-Sarria, Kontseilua
- Better implementation of existing mechanisms, the ECRML, FCNM, ECHR, Charter of Fundamental Rights
 Sixto Molina (CoE ECRML), Kristina Cunningham (EU Commission),
 Belen Rodriguez de Alba (UN OHCHR)
- Languages Directive, new legislation?

Rob Dunbar: Best practices in protecting languages against discrimination.

Davyth Hicks: EU measures including a Directive for regional, minority or endangered languages.

Conchúr Ó Giollagáin: EU Emergency Commission on Language Endangerment

- Better promotion in the media of language rights
Páidí Ó Lionáird (TV presenter 7 Lá, TG4). Mr Maitiú Ó Coimín (Tuarisc.ie)

17.40 Discussion

(Moderator, Liadh Ní Riada)

17.50 Concluding Speech: "Dealing with language discrimination and ensuring linguistic rights in Europe, recommendations to the EU" Liadh Ní Riada MEP (Moderator, Davyth Hicks)

18.00 Close

The Presentations

PART 1

Language Rights and Discrimination

MAKING THE LANGUAGE MINORITY INVISIBLE: THE EVASION OF THE MINORITY LANGUAGE CRISIS IN POLICY

Mr Conchúr Ó Giollagáin, Gaelic Research Professor and Director of Soillse, The University of the Highlands and Islands, Sabhal Mòr Ostaig, Isle of Skye, Scotland

Introduction - Many achievements but still ignoring the crisis

Tá mé faoi chomaoin ag lucht eagraithe na comhdhála seo, Liadh Ní Riada, Ball Parlaiminte agus Davyth Hicks, Ard-Rúnaí ELEN, as an deis seo a thabhairt dúinn labhairt ar an ábhar tábhachtach seo. Tá sé ar intinn agam labhairt inniu i mBéarla sa gcaoi is go mbeidh na Gaeil in Albain agus in Éirinn araon in ann na pointí atá agam a thuiscint.

In many ways it is a remarkable achievement that the Gaelic-speaking groups of Ireland and Scotland still survive to this day after enduring phases of ethnocide over many centuries and eventually regrouping in the 19th and 20th Centuries to form and pursue a language planning agenda of revival, despite trends towards assimilation. Similar to many other minority cultures of Western Europe, this approach has met with relative success in elaborating a learner agenda for a formerly denigrated culture and in establishing a state-backed platform aimed chiefly at enhancing the status of the language as a secondary bilingual identity.

However, I wish to talk today about the minority-language blind spot in the language rights agenda, as it is currently pursued. The tendency in the language rights agenda to prioritise institutional provision and symbolic measures aimed at status-building has blinded the advocates of this approach to the social and cultural crisis of the minority groups. This unaddressed crisis has brought many of these minority groups to the point of social collapse.

I will talk in more detail about my recommendations in the 2nd part of my contribution, but my main point is that the level of crisis now warrants the establishment of an EU Emergency Commission on

Conchúr Ó Giollagáin



Language Endangerment. The aim of this proposed Emergency Commission would be to assist with more relevant interventions on the ground to enable minority language communities to reconstruct their cultural habitat and protect it for future generations.

Irish and Scottish Context

From the perspective of four generations of legislative and institutional provision, Irish is probably the most privileged minority language in the world. While Scottish Gaelic would not have such a lengthy period of State backing, the official supports for Gaelic could not be considered insignificant from a comparative viewpoint. Indeed, both jurisdictions where these languages are spoken have sought to act in accordance with many of the transnational declarations and conventions which seek to recognise the rights of cultural and ethnic minorities. This begs the question, therefore: why are these cultures on the brink of collapse despite having rights and legislative support mechanisms bestowed on them? The reasons for this mismatch between official aspiration and this troubling social reality lie to some extent in the way the language rights debate has been framed. Language rights abstracted out of their troubling social realities may actually serve to deflect attention, and therefore resources, from addressing the actual

crisis. Prioritising the symbolic approach to language rights is self-defeating for language minorities in that it sidelines more relevant interventions and actions.

Language policy transformations among the living Celtic languages have facilitated the emergence of a heritage model of language planning which prioritises the institutional needs of learners at the expense of the social requirements of the shrinking native-speaking groups. The learner-focussed heritage model tends to be unsustainable because it is largely disassociated from the well-spring of linguistic knowledge and cultural capital of the native-speaking community.

Denial of the Crisis

I contend here that the current language rights agenda, backed by well-aired post-structural sociolinguistics (mainly manifested as the study of metropolitan diversity), can be characterised by three glaring weaknesses:

- 1 It has contributed to a misdiagnosis of the minority language crisis;
- 2 It is promoting an ideological utopianism of linguistic resilience among the learner networks without reference to a supportive sociological structure;
- 3 It fails to produce a language planning model which can integrate, on the one hand, social supports for threatened minority communities and, on the other, educational and institutional provision for the learner networks, in a manner which is mutually beneficial to both.

The current approach is in denial of the crisis which will see the extirpation by neglect of the minority groups holding these cultures as primary identities. The failure to address the issue while opting for a learner utopianism merely adds insult to injury and compounds the inability of existing structures to approach both community and learner needs from a social perspective. This lack of intellectual rigour is enabling a strategic evasiveness in the state sector, such as in the Irish Government's 20 Year Strategy for the Irish Language. The general approach regarding the Celtic languages is encouraging official

participation in existing trends toward the social dominance of the majority language, i.e. English or French, while promoting the minority culture as an aesthetic optional extra. This misguided approach of prioritising language as pastime rather than a vital social identity serves to wheel our minority languages closer to the cliff edge. It treats the native speakers as curators of a declining culture for minority language learners rather than empowering them as socio-political actors.

Without reference to the social crisis of the remaining speaker group, the language rights debate is descending into a sociolinguistic illusion that assumes that what is good for the official agencies of state is good for the speakers. For the living Gaelic languages, this is clearly not the case. It is extremely difficult to demonstrate the relevance of policy provision if there is limited or no engagement with actual communities. The irony of State bodies promoting minority language rights, while considering the decline of the existing speaker group a non-issue, is not lost on the minorities. It smacks of a recurrent, but yet unrealisable, ambition to create an alternative social base for a culture while standing by and witnessing the disintegration of an existing one – it is the indefinitely-postponable tomorrow of contemporary minority language politics. To use an ecological metaphor, it is akin to being indifferent to current habitat destruction while speaking about the possibility of reproducing the ecosystem on another planet.

Misdiagnosis of Our Condition

Given the level of crisis, I would like to suggest that we re-examine the manner in which we adopted the language rights agenda in the minoritised context, especially in relation to the minority native languages of Ireland, Scotland and Wales. I pose the question as to whether the assumptions associated with this agenda exist in a sufficiently robust fashion to make the approach feasible and effective. It often erroneously assumes that the minority cultures are supported by a social density of speakers and that rights-backed support mechanisms and institutions should assist the self-perpetuation of the minorities as a socially-resilient group. At the time of the enactment and elaboration of language rights for Scottish Gaelic (2005), Irish (2003) and Welsh (1993), the on-going contraction of the speaker groups had already been

established as a cause for concern. Despite the clear issues of societal endangerment, these legislative mechanisms prioritised bilingual state provision of services, minority language visibility and status-building measures, similar to the Canadian Language Act (1972). It was the option for a symbolic and static approach over social engagement. The approach assumed that communal regeneration would follow the institutional lead. In hindsight, it was clearly a case of derivative thinking from the Canadian context, but without the demographic justification for assuming that the Acts' promotional focus would empower the speaker group. It was well meaning from the point of view of State craft, but inadequate as social engagement. The social densities of the speaker communities are simply not large enough and socio-economically diverse enough to make symbolic promotion a viable and effective intervention in the unidirectional and subtractive bilingualism of the living Celtic languages.

Diagnostic honesty

There are six defining characteristics of minority language groups which will have to be addressed if we are going to support our language minorities in a socially-relevant way:

- 1 Demographic fragility is bringing about the contraction of the native-speaker base at a faster rate than the development of learners who use the language productively.
- 2 Minority-speaking groups are suffering from a form of habitat loss; the erosion of their geographic base is hastening the loss of their social dominance in their traditional locus.
- 3 Minority bilingualism has produced a linguistic imbalance in that most minority speakers socialised in bilingualism have a higher linguistic proficiency in the majority language.
- 4 The sociology of minoritisation is evidenced in the social subordination of the young minority speakers; majority language youth socialisation processes predominate native communal contexts and institutional provision for the minority (i.e., even when provision is made for the minority language the social practice of the majority language tends to dominate the context).

- In relation to the politics of power relations, we can see that minority language institutional discourse demonstrates a tendency towards utopian thinking: it is not focused on the actual community and the minority language is often abstracted out of social context and repackaged as a cultural commodity available to all (i.e., it is treated as a plaything or pastime for the majority, rather than an integral resource of the minority).
- 6 There is also a discursive issue in that we are constrained in addressing the social problems of the language minorities because the symbolism of diversity is easier to accept than the social reality of erosion and demise. This general evasiveness has rendered the existing language minority invisible in the debate.

Social approach

It is clear that the current approach is not working because it is not rooted in an accurate diagnosis of the condition we are attempting to address. We need to face the fact that our language minorities are mired in a social crisis and addressing this crisis will require bespoke social initiatives. I am suggesting here that we rethink the language rights debate in a way that gives social expression to these rights in the context of a socio-cultural emergency.

This will involve empowering the communities we are attempting to address in their real rather than their assumed social context. To avoid the utopianism of the current approach, it will be necessary to develop support institutions which bestow some form of socio-economic advantage on those who wish to contribute to the social sustainability of the minority group and culture. It is opting for affirmative action at a time of crisis (A point I will return to in my contribution in the afternoon session).¹²

¹² See the Annex for the EU Emergency Commission on Language Endangerment proposal.

RESPECTING LINGUISTIC DIVERSITY? LANGUAGE DISCRIMINATION IN EUROPE

Mr Davyth Hicks (ELEN Secretary-General)

Language rights continue to be perceived as the latecomer to the human rights party and as such are yet to be fully integrated into the international human rights framework. Part of the discussion at the hearing looked at how this lack of protection engenders language discrimination against the speakers of lesser-used languages and what measures we in ELEN will take to address the issue. This presentation will discuss language discrimination against speakers of European lesser-used languages, the role of the European Language Equality Network (ELEN) in combatting discrimination, feature several case studies, examine current problems, and conclude with some proposals and recommendations for ELEN's advocacy work.

In Europe today linguistic discrimination against speakers of regional or minority languages (RMLs) is widespread, endemic, and multifaceted. Taking the Spanish state as an example, the 2015 ELEN Report¹³ to the UN Universal Periodic Review (UPR) on language discrimination against co-official language speakers (Catalan, Basque and Galician) and speakers of Asturian and Aragonese, revealed not only everyday maltreatment but a shocking list of beatings and humiliation of people trying to use their official language with state authorities.

However, there are many cases of this kind of discrimination across Europe. France, for example, is notorious for being a 'rogue' state on this issue having discriminated against its own 'regional' languages so thoroughly in the name of a perceived threat to 'unity' that they are nearly all now defined by UNESCO as severely endangered. In addition, we see regular occurrences of language based discrimination (despite being prohibited under the Charter of Fundamental Rights) happening to nearly all regional or minority languages in Europe, for example, to

¹³ See: http://elen.ngo/elen-reports/

Davyth Hicks



the Hungarian national minorities in Slovakia and Romania, co-official languages such as Catalan and Basque, and even with official languages such as Irish.

Language discrimination is, according to the Council of Europe's Commission on Racism and Intolerance (ECRI),¹⁴ a form of both direct and indirect racism. Language discrimination is a hate crime that is largely unrecognised, under-reported, and mostly unrecorded. Such under-reporting and lack of recognition means that the cases reported only give an indication of a far wider and systemic problem. Furthermore, discrimination acts to further stigmatise many already endangered languages. The EU has done little substantive to protect European citizens who are RML speakers against this form of discrimination. As speakers of lesser-used languages this situation, in a 21st century European Union that has the 'respect for linguistic diversity' as a core value, and where our languages are a key part of our identity, is unacceptable.

¹⁴ See Council of Europe ECRI Recommendation 7: http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation n7/ecrio3-8%20recommendation%20nr%207.pdf

Several ELEN members have collected data on cases of actual discrimination. For example, the Basque NGO *Behatokia* (part of the *Kontseilua* organisation), which monitors anti-Basque discrimination, collected 1,200 cases of language discrimination in 2015 alone. The Galician NGO *A Mesa pola Normalización Lingüística* recorded 200 complaints of anti-Galician language discrimination in 2015. While the Catalan NGO *Plataforma per la Llengua* reported on 37 new serious cases of language discrimination between 2013 and 2015. ¹⁵

The above-named reports illustrate how language discrimination happens at varying levels of intensity and takes different forms. At its worst we have actual physical violence, for example, beatings by the police. We have humiliation: in courts, by public officials, and at schools. There is stigmatisation of RML speakers, in schools, in work, in every area of life. This is often coupled with a more general lack of provision, or no provision at all, in education, media, the justice system, and the public administration, making each day an uphill struggle to use or transmit one's language.

Discrimination happens in various domains, for example, in the justice system with the courts and police, and in the healthcare system, with child custody, where children have been taken away from their parents because they spoke a lesser-used language. Discrimination leads to further stigmatisation, humiliation, and violence. It reinforces and perpetuates prejudice. It undermines and further minoritises the language itself, with the process leading not only to language death but to the eventual destruction of the individual and collective identities of several of the peoples of Europe.

European Language Equality Network (ELEN)

One of the European Language Equality Network (ELEN) goals is to effectively counter language discrimination at the international, state/autonomy, and local level. It aims to promote and protect European lesser-used (i.e. regional, minority, endangered, indigenous, co-official

¹⁵ https://www.plataforma-llengua.cat/media/upload/pdf/2016-03-11-linguistic-discrimination-cases 1457697768.pdf

and smaller national) languages, (RMLs), to work towards linguistic equality for these languages, under the broader framework of human rights, and to be a voice for the speakers of these languages at the local, regional, national, European and international level.

ELEN is a non-governmental organisation established in 2011 originally comprising members from the European Bureau for Lesser Used Languages' (EBLUL) member-state committees, Eurolang, plus many umbrella and individual language NGOs from most EU member states. ELEN's purpose is to represent the 50 million people, 10% of the EU's population, who speak a regional, minority, or endangered language (RML). ELEN represents 44 regional, minority and endangered languages with 150 member organisations in 22 States, so far. Examples of member organisations are language immersion schools such as the award winning Diwan Breton-medium schools organisation, parent organisations such as Rhieni dros Addysg Gymraeg (Wales), umbrella organisations such as Kevre Breizh (Brittany), Kontseilua (Basque Country), the Estonian Bureau for Lesser Used Languages (Estonia), large cultural organisations such as Acció Cultural del País Valencià (Valencia) and Plataforma per la Llengua (Catalonia), and academic institutions such as the University of Mainz - SNEB (Germany).

ELEN's everyday advocacy work focuses on the EU, Council of Europe and the UN. As far as possible ELEN monitors all draft legislation that may affect RMLs and acts to intervene in the legislative process in their interest. For example, amending Parliament Reports, inputting into Commission proposals, initiating Reports (e.g the Endangered Languages Report 2013 supported by 92% of MEPs1) and working closely with MEPs, for example, as the Secretariat for the Intergroup for Traditional Minorities, National Communities and Languages.

In addition, ELEN undertakes similar actions with the Council of Europe (PACE, FCNM and ECRML) and the UN (for example, on the Universal Periodic Review and with the OHCHR). ELEN has also intervened directly on behalf of national minorities, for example, over the referendum in Croatia over plans to raise the threshold for provision for national minorities to 50%. ELEN also acts locally with its members. Recent examples are the current campaign for French ratification of the ECRML, the lowering of the language provision thresholds for

Hungarian in Romania, and most recently our Report to the UN HRC on actual cases of discrimination against co-official languages in the Spanish state. In addition, ELEN advocacy work resulted in a favourable recommendation from the UN that France must recognise its linguistic minorities.

One of the most high impact projects that we are working on is the new Language Protocol initiative where we are working with our members Kontseilua and others on drafting a document for new binding standards on language rights. The Protocol, which will seek to implement the 1996 Declaration of Linguistic Rights, will be launched in Donostia in December 2016 as part of the city's European Capital of Culture activities.

Today, we are here to discuss cases of language discrimination and what action ELEN will take to address the issue.

Case Studies: Catalan

Platforma per la Llengua documented 37 new cases of language discrimination since July 2013 including: beatings by police; humiliation by the police or court; the loss of child custody; the denial of health-care. ¹⁶ When cases have been taken to court perpetrators are usually acquitted or the case abandoned. The vast majority (80%) of cases of linguistic discrimination analysed occurred in State-run organisations or institutions. Catalan-speaking citizens are in an extremely vulnerable position as, in many cases, they have to report the abuses they receive to the same institutions that are conducting the abuse. It is important to underline that this discrimination is set in the context where Catalan is an official language that Spain is obliged to protect by its own laws.

ELEN Report to the UN HRC and UPR 2015

In 2015 ELEN members compiled a Report¹⁷ summarising language discrimination against the non-Castilian languages in the Spanish state. Considering the large amount of detailed evidence from many

¹⁶ See https://www.plataforma-llengua.cat/media/upload/pdf/2016-03-11-linguistic-discrimination-cases 1457697768.pdf

¹⁷ https://elen.ngo/wp-content/uploads/2016/05/305021075-ELEN-Statement-to-UN-HRCttee.pdf

different areas our Report concluded that: "Discrimination against the autochthonous non-Castilian languages is systemic within the Spanish system. And that this discrimination has become institutionalised."

Case Studies: Breton

French state language policy is neatly summed up in Article 2 of the French Constitution: "La langue de la République est le français." This simple statement has engendered a ruthless language policy enforced since the days of the French Revolution, when barely 20% of today's French territories spoke French, by a Paris elite determined to implement the dogma of 'one language, one state'. It has engendered language policies designed to eradicate 'regional' languages in service to French state-building. As a Breton, Corsican, Occitan, Catalan, Alsacian or Basque speaker you do not exist under French law. There is no legal protection at all for the language leaving speakers exposed to daily language discrimination. With education, Breton immersion schools are undermined financially with obstacles constantly placed by state authorities acting to hinder their expansion of provision. Speakers are unable to use Breton with public administration at all and there is very little access to justice in Breton. Breton still has no dedicated public financed radio and TV. Today, France has neither ratified the ECRML or FCNM, key Treaties that form part of the Copenhagen criteria that all EU accession states must ratify. It means that Breton has none of the necessary building blocks to implement language revitalisation strategies, and this for an indigenous European language far older than French and around long before France existed. Breton, the most widely spoken Celtic language in 1914, is defined today by UNESCO as severely endangered. This is coupled with a breakdown across its territory in intergenerational transmission.

In 2015 ELEN Members Kevre Breizh successfully protested to the UN Human Rights Committee over the continuing discrimination against all 'regional' languages in the French state. In its statement the HRC said that, "The State party should reconsider its position on the official recognition of ethnic, religious and linguistic minorities. It should continue considering the development of tools to allow it to assess and ensure the effective enjoyment by indigenous peoples and minorities

of all human rights and fundamental freedoms. It should also make use of such data for planning and evaluation purposes." 18

Case Studies, Hungarian in Slovakia

In 2006 Hedviga Malinová was beaten up for speaking Hungarian by Slovak hooligans. Although she was the victim, the entire state apparatus was thrown at her to portray her as the culprit. In 2011 ECtHR reached a settlement between her and the Slovak state. The State apologized for the inefficiency of the investigation into her attack. However, the Slovak state continue to harass her, including attempting to have her committed to a psychiatric hospital. In 2014 she left Slovakia for Hungary. In January 2014 she faced new charges at Nitra District Court over the 2006 beating.

Case Studies: Brexit and language discrimination

In the Six Counties there continues to be a lack of Irish language legislation despite this being stipulated in the St Andrew's Agreement. A Language Act is needed to underpin revitalisation of Irish in the north of Ireland. Furthermore, Brexit may expose all UK RMLs to a return to discriminatory measures. The total cut in Cornish funding may signal more cuts to come. In the summer of 2016 ELEN with its member organisations issued a joint statement warning of the effect of Brexit on the Celtic languages.¹⁹

Language discrimination as racism

The Council of Europe's European Commission against Racism and Intolerance (ECRI) is a body entrusted with the task of combating racism, racial discrimination, xenophobia, anti-semitism and intolerance in greater Europe from the perspective of the protection of human rights, in the light of the European Convention on Human Rights, its additional protocols and related case-law. The ECRI Recommendation

¹⁸ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2 fC%2fFRA%2fCO%2f5&Lang=en

¹⁹ https://elen.ngo/2016/06/20/an-open-letter-llythyr-agored-lyther-ygor-litir-oscailte-our-language-communities-benefit-from-our-membership-of-the-european-union/

7, clearly states that language discrimination is both a direct and indirect form of racism.²⁰ It is time for this Recommendation to be adopted by the EU and Member States and mainstreamed into existing antiracism legislation. It would mean also that our language communities would be able to use existing domestic and EU anti-racism legislation to tackle cases of language discrimination.

Existing legal framework giving 'protection' is inadequate in nearly all states

Domestic legislation, language acts, and the FCNM and ECRML (Council of Europe) act as the benchmarks for national and linguistic minority protection. The "Copenhagen criteria" stipulates that accession states must ratify ECRML and FCNM. The "Copenhagen dilemma" is that the 'old' EU states such as France, Greece and Italy have not ratified the ECRML or FCNM. However, even with ratification, implementation is patchy, plus the ECRML does not grant actual language rights. Furthermore, there are varying standards in effective implementation of domestic legislation. For example, in Spain where, despite official status for Catalan, Basque, and Galician, the cases mentioned above illustrate that there is little actual protection.

One method used by MEPs and NGOs to obtain an insight into the official position of the EU on this issue is for a MEP to send a Written Question to the EU. In this case one question asked: "How can the EU help guarantee the rights of RML speakers against linguistic discrimination in a Member State?" The answer has been along the lines of only when implementing EU law can Art. 21 of the Charter of Fundamental Rights (re. Art. 51 on the scope of application) be invoked, followed by a reference to the ECRML (containing no rights), and the possibility of project funding under Erasmus Plus, but otherwise nothing.

Meanwhile, the question to the EU must be asked: if the EU can protect endangered fish, birds and plants and have a Race Directive, why can't it protect our endangered languages and RML speaker rights? As

²⁰ See http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n7/ecrio3-8%2orecommendation%2onr%207.pdf

the EU is manifestly is not taking any action to protect the basic rights of EU citizens on the issue, what steps might be taken? Clearly, it is time to launch discussions for legislation in the form of a Directive, taking the Race Equality Directive as a precedent, that acts to prohibit antiregional or minority language discrimination. In the meantime the EU should act to ensure that RML speakers are able to use the EU infringement procedure mechanism under Art. 258 of the TFEU, so as to ensure compliance with EU law, and where states are fined when RML speakers are discriminated against on the grounds of language. For example, recent (April 2015) infringement proceedings were upheld against Slovakia for discrimination against Roma children which, along with the Race Equality Directive, invoked Article 21 of the Charter of Fundamental Rights, which prohibits discrimination based on any ground such as race, language or ethnic origin.

Our recommendations for dealing with language discrimination are discussed in the closing section.

Conclusions

We must see the EU attack and eradicate language discrimination with the same vigour as we, and our forebears, stood up against other forms of racism. Meanwhile, States are victimising RML speakers of often endangered languages with impunity. If the EU is to live up to its aspirations as "Guardian of the Treaties," it cannot allow 10% of its population to be beaten, humiliated, and shamed simply because they wish to use their own European languages. The EU must live up to its obligation of protection and ensure substantive legal meaning to "respect for linguistic diversity" and work towards the elimination of discrimination against regional, minority and endangered European languages.

LANGUAGE SPEAKERS' RIGHTS, REVISITING THE 1998 OSCE RECOMMENDATIONS

Mr Miquel Strubell (Linguapax International)

First of all, I would like to thank the organisers and sponsors for having made this important hearing possible. We are discussing something very serious here today, and it is no surprise that Linguapax International, a non-governmental organization based in Barcelona and dedicated to the promotion and protection of linguistic diversity worldwide, is taking part in it. We believe that fostering harmony between linguistic groups is a crucial factor for peace within states and in the international community; and are convinced that putting an end to discriminatory practices is urgent.

We have to start the fifteen brief minutes I shall have (at best), to talk about "language rights" and about "language discrimination" by defining the two terms. A "right" is "A moral or legal entitlement to have or do something". From the latter, legal perspective a right only exists when it has been defined by law. In such a case, we should aim for the exercise of that right, not the right in itself, of course. If "discrimination" is "The unjust or prejudicial treatment of different categories of people, especially on the grounds of race, age, or sex", then we can concentrate on such treatment in regard to speakers of different languages.

At an ELEN-organized meeting, some might think that the main text to refer to on language rights would be the European Charter for Regional or Minority Languages (1992), which EBLUL and many leading figures of the day pushed for stubbornly until it was opened for signature and ratification. Though it is a useful instrument (see for instance its conclusions and recommendations in regard to Spain), it is not really about "Language Rights and discrimination". Article 6, to be sure, says that "The Parties undertake to see to it that the authorities, organisations and persons concerned are informed of the rights and duties established by this Charter." But in the whole of the rest of the text, only Article 9.1.a refers to "rights". It says that the parties undertake "to guarantee the accused the right to use his/her regional or minority language / in

criminal proceedings." The Charter lays down no other specific rights as such! Indeed, it is only in the Preamble that we find the most substantial reference to "rights":

"Considering that the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms"...

As far as "discrimination" is concerned, Article 7, para. 2 of the European Charter states that: "The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it." [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.]

In basic terms, rights and non-discrimination boil down to specific applications of several universal rights laid down on international instruments: freedom of (thought and) expression, freedom of association, and equality before the law, ... always in the context of (a) the aim of achieving full and free development of the individual human personality in conditions of equality; and (b) the fact that respect for a person's dignity is intimately connected with respect for the person's identity and consequently for the person's language.

To start with let us refer to several basic tenets of the matter at hand from a number of international instruments, using as the main source the Oslo Recommendations²¹ of which I shall speak in a moment. Article 1 of the Universal Declaration of Human Rights refers to the innate dignity of all human beings as the fundamental concept underlying all human rights standards. Article 1 of the Declaration states "All human

²¹ http://www.osce.org/hcnm/67531

beings are born free and equal in dignity and rights..." [T]his article... provides one of the foundations for the linguistic rights of persons belonging to national minorities. Equality in dignity and rights presupposes respect for the individual's identity as a human being. Language is one of the most fundamental components of human identity. Hence, respect for a person's dignity is intimately connected with respect for the person's identity and consequently for the person's language."

Article 10(1) of the Council of Europe's Framework Convention for the Protection of National Minorities stipulates that... "The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.

Non-discrimination is clearly laid down in the International Covenant on Civil and Political Rights (1966): Article 2 (1) "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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."

The Explanatory Note to the 1998 Oslo Recommendations reminds us that, "Article 19 of the Covenant guarantees freedom of expression which ... not only guarantees the right to impart or receive information and ideas of all sorts, regardless of frontiers, but also guarantees the right to do so in the medium or language of one's choice."

[Article 19] 1. Everyone shall have the right to hold opinions without interference.

2. 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.]

The Oslo Recommendations also highlight the fact that "The Council of Europe [Committee of Minister]'s Declaration on Freedom of Expression and Information (1982) affirms the social dimension of this right, "...the freedom of expression and information is necessary for the social, economic, cultural and political development of every human being, and constitutes a condition for the harmonious progress of social

and cultural groups, nations and the international community. The imparting and receiving of information also suggests people acting in community..."

So much for these preliminary points. To my mind the document that most thoroughly deals with these issues, in the framework of the speakers of "minoritised" languages (the terms used are plentiful!) is The Oslo Recommendations regarding the Linguistic Rights of National Minorities commissioned and adopted by the High Commissioner for National Minorities of the OSCE in 1998, and of which I was fortunate enough to be invited to help draft.

It came shortly after The Hague recom- Miquel Strubell mendations regarding the education rights of national minorities (and explanatory note; 1996) of which I shall quote just the two first paragraphs:



- 1 The right of persons belonging to national minorities to maintain their identity can only be fully realised if they acquire a proper knowledge of their mother tongue during the educational process. [At the same time, persons belonging to national minorities have a responsibility to integrate into the wider national society through the acquisition of a proper knowledge of the State language.]
- 2 In applying international instruments which may benefit persons belonging to national minorities, States should consistently adhere to the fundamental principles of equality and non-discrimination.

The basic idea behind the Oslo Recommendations is that international instruments define rights, and fix obligations, that are of universal applicability and therefore also to speakers of minoritised languages, or to members of national minorities that speak a language other than that of the State. So despite the title, the rights do not belong only to such minorities.

I quote: "Insofar as existing standards of minority rights are part of human rights, the starting point for the consultations was to presume compliance by States with all other human rights obligations including, in particular, equality and freedom from discrimination, freedom of expression, freedom of assembly and of association, as well as all the rights and freedoms of persons belonging to national minorities."

It was also presumed that the ultimate object of all human rights is the full and free development of the individual human personality in conditions of equality. Consequently, it was presumed that civil society should be open and fluid and, therefore, integrate all persons, including those belonging to national minorities.

Insofar as the use of language is also a fundamentally communicative matter, the essential social dimension of the human experience was also fully presumed.

The resultant Oslo Recommendations Regarding the Linguistic Rights of National Minorities attempt to clarify, in relatively straightforward language, the content of minority language rights generally applicable in the situations in which the HCNM is involved.

Note—and I'm sure I won't be the only person to point this out—that the rights do not apply to the language as such. Moreover, rights are apportioned to individuals, rather than to the national minorities as such; and this is underlined by constant references to «persons belonging to national minorities».

A quick aside. When I read Psychology at university, for me the word "discrimination" had a neutral, technical meaning: "The ability to distinguish between different stimuli". In this context, however, we are talking about a second, more popular, meaning: "The unjust or prejudicial treatment of different categories of people, especially on the grounds of race, age, or sex"... or language, we may add. When the Oslo Recommendations list "equality and freedom from discrimination, freedom of expression [and] freedom of assembly and of association", these apparently distinct rights are all closely related to the central issue of discrimination.

A document on rights such as the Oslo Recommendations might be expected to refer to them in every one of its 20 articles. In fact it only does so in 11 of them. In the rest logical consequences for the application of these rights are laid down.

There is no time to go into them individually, so I shall jump to some final remarks.

Names

- 1) Persons belonging to national minorities have the right to use their personal names in their own language according to their own traditions and linguistic systems.
- 2) Similarly, private entities such as cultural associations and business enterprises established by persons belonging to national minorities shall enjoy the same right with regard to their names.

Religion

4) Religion: In professing and practising his or her own religion individually or in community with others, every person shall be entitled to use the language(s) of his or her choice.

Community Life and NGOs

6) All persons, including persons belonging to national minorities, have the right to establish and manage their own non-governmental organisations, associations and institutions.

The Media

8) Persons belonging to national minorities have the right to establish and maintain their own minority language media.

Economic Life

12) All persons, including persons belonging to national minorities, have the right to operate private enterprises in the language or languages of their choice...

Administrative authorities and public services

13) In regions and localities where persons belonging to a national minority are present in significant numbers and where the desire for it has been expressed, persons belonging to this national minority shall have the right to acquire civil documents and certificates both in the official language or languages of the State

- and in the language of the national minority in question from regional and/or local public institutions.
- 16) States in which persons belonging to national minorities live should ensure that these persons have, in addition to appropriate judicial recourses, access to independent national institutions, such as ombudspersons or human rights commissions, in cases where they feel that their linguistic rights have been violated.
- 17) All persons, including persons belonging to a national minority, have the right to be informed promptly, in a language they understand, of the reasons for their arrest and/or detention and of the nature and cause of any accusation against them, and to defend themselves in this language, if necessary with the free assistance of an interpreter, before trial, during trial and on appeal.
- 18) In regions and localities where persons belonging to a national minority are present in significant numbers and where the desire for it has been expressed, persons belonging to this minority should have the right to express themselves in their own language in judicial proceedings, if necessary with the free assistance of an interpreter and/or translator.
- 21) Detained persons belonging to national minorities shall have the right to use the language of their choice in communications with inmates as well as with others. Authorities shall, wherever possible, adopt measures to enable prisoners to communicate in their own language both orally and in personal correspondence, within the limitations prescribed by law.

Conclusions

The Oslo Recommendations regarding the Linguistic Rights of National Minorities are as valid today as they were in 1998. The accompanying Explanatory Note refers to all the basic international instruments developed up till then in the field of human rights, and is a valuable source of background information. Moreover, to my knowledge no relevant legally binding instrument has come into force since that time. So I encourage you to read them, and to keep the text on your bedside table!

The speakers of "minoritised" languages we are talking about today are, after all, both human beings and also Europeans. To the degree that

legislation imposes the use of other languages (for instance, a constant bombardment at EU level, as Plataforma will probably explain), and that there are many examples of public and private discrimination – and even prejudice – against the use of these languages, their speakers (including learners) are being treated as second rate citizens. This we simply cannot accept. As Europeans. And as human beings. Thank you.

PROTECTING IRISH LANGUAGE RIGHTS

Mr Rónán Ó Domhnaill, An Coimisinéir Teanga / Irish Language Commissioner

Rónán Ó Domhnaill began with a presentation on how the Language Commissioner's office was created with the broad remit to monitor the implementation of language rights and to provide advice to individuals, public and private bodies on accessing their language rights, with the underlying principle that Irish speakers must have the same level of service as English speakers. He noted his exasperation that few public services anywhere in Ireland were able to function through the medium of Irish.

The Official Languages Act marked a watershed as it acted to underpin Irish language rights and aimed to improve the quantity and quality of Irish provision over time. It meant that any communication in an



Rónán Ó Domhnaill

official language must be replied to in the same language. This means the public has a right to a reply in Irish to correspondence in Irish.

Three main problems remain: Employees, and the public more generally, are unaware of services in Irish; Irish speakers are accustomed to obtaining services in English only; there's a lack of confidence in the standard of service available in Irish. The Commissioner added that it was a mistake in the Act not to refer to the Gaeltacht, and that state employees must be fluent in Irish, if not what kind of message does this send.

LINGUISTIC SUPREMACISM

Mr Ferran Suay, Acció Cultural del País Valencià (ACPV) / Universitat de València, ELEN Vice-President

Ferran Suay, in his presentation, focused on linguistic supremacism, where a group of speakers perceive their language as superior to others. He discussed the situation in Valencia where people had to speak Spanish in the healthcare system, and where children who spoke Valencian-Catalan at home were treated like foreigners, so much so that they need to go with their parents. If this were to happen to a Spanish-speaking child it would be unacceptable, but this was somehow acceptable for Catalan-speaking children. He underlined that language discrimination is a form of racism, as defined by the Council of Europe ECRI Recommendation 7,22 that the position of linguistic supremacism is a position of racism, and which should be dealt with in the same way.

Mr Suay referred to two specific examples of language discrimination detailed in the Plataforma Report. Firstly, that of Saida Saddouki (2007)²³ who was not only abused by a Spanish policeman in Mallorca

²² http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n7/ecrio3-8%2orecommendation%2onr%2o7.pdf

²³ Linguistic discrimination in Europe, the Catalan Case. p.38. https://www.plataforma-llengua.cat/que-fem/estudis-i-publicacions/121/the-catalan-case-linguistic-discrimination-in-europe.

Ferran Suay



after trying to speak to him in Catalan, but subsequently fined 1,500 euro for libel. Secondly, that of CMB (2012)²⁴, who for speaking Catalan to a civil guard policeman was detained for three hours, humiliated, and subsequently lost his driving licence.

ELEN had taken action on this by presenting the ELEN Report to the UN Periodic Review (UPR) on Spain and the Human Rights Council. The Report found that linguistic discrimination was systemic and institutionalized in Spain; that it is impossible to seek justice in Spain for this form of hate crime; and that the evidence indicates that it is also the courts who are guilty of language discrimination.²⁵

Mr Suay called for the EU to take action on this kind of language discrimination, for a formal hearing on the issue in the LIBE and Culture Committees, for Spain to cease this form of discrimination altogether, and for the EU to open infringement proceedings against Spain for contravention of the EU Charter of Fundamental Rights and the Race Equality Directive. He concluded that language discrimination is a hate crime and should be dealt with in the same way as racial and hate crime attacks.

²⁴ Linguistic discrimination in Europe, the Catalan Case. p.72.

²⁵ ELEN Report https://elen.ngo/wp-content/uploads/2016/05/305021075-ELEN-Statement-to-UN-HRCttee.pdf

PART 2

Language Discrimination Case Studies

BREZHONEG: RESPECT FOR DIVERSITY AND LINGUISTIC DISCRIMINATION, AGAINST RACISM AND INTOLERANCE: THE CASE OF FRANCE

Mr Tangi Louarn (President, Kevre Breizh and ELEN-EBLUL France, ELEN Vice-President)

Contrary to what the French State has affirmed in its replies to the UN Committee on Social, Economic and Cultural Rights in May 2013,26 there is a profound difference between the official, francophone, identity, imposed on all citizens, and the identities associated with the 75 languages of mainland and overseas France, which are nevertheless just as much a part of the Republic.

It is symptomatic of official ideology that the imposition of a single language – French – and the long-sought-after and pursued policy of eradication of the other languages of the land, is today phrased as "a right to the French language". Indeed, other languages, termed "regional" languages because of their association with various geographic entities, do not have a "right to language" and are even today subject to insidious pressures and deprived of the resources necessary for their transmission and development. Speakers of these languages or those wishing to recover the language spoken by their parents and grandparents, to pass it on to their children, or to adopt the traditional language of the area in which they've chosen to live are often victims of real discrimination.

In the area of education, we note in particular the obstacles placed in the path of the development of associative regional language immersion schools - non-religious, free and open to all - despite their having been officially recognised after a long fight. These schools, along with ensuring a mastery of French (as can be seen in the excellent exam results of their students), allow students to become actively bi- or multilingual. Created by groups of parents in mainland France – among

²⁶ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.1 2%2fFRA%2f4&Lang=en

them Alsatians, Basques, Bretons, Catalans and Occitans – in the 1970s in a context of a complete absence of teaching in their own languages, these schools ensure the continued existence of these centuriesold languages as languages of social life.

Today, in the year 2016, the associative Diwan school of Lesneven, which provides a public service through immersive education in Breton to over a hundred students, is being asked by the Town Hall to pay five times its current rent for its new school building, thereby putting at risk its cost-free status and its very existence.

Further examples include:

- 1) in November 2014, the Mayor of Ciboure in the Basque country cut off the electricity at the Basque-language Seaska school;
- 2) in September 2014, the administrative tribunal of Limoges requested that the Occitan-language Calendreta school of Limoges repay a 47,000 Euro grant to the Regional Council;
- 3) in October 2013, the Chief Education Officer of Rennes prohibited the Regional Council of Brittany from inscribing the Republican motto "Liberty, Equality, Fraternity" in Breton alongside the French version in high schools.

In the area of the media, we note that, according to the official 2013 report of the State Councillor Rémi Caron, the 6 major regional languages of mainland France share 300 hours of public television per year, which works out to an average of only 50 hours per language per year.

In the area of public life, despite the decisions of democratically-elected assemblies, the State continues to oppose any form of co-official status for regional languages alongside French, whether it be in Corsica; for the languages of French Polynesia (State Council of June 13 2013); in the Basque township of Ustaritz (Pau administrative tribunal of January 27 2015); in the Breton township of Carhaix in the case of a request for a bilingual family booklet (by law of June 13 1803 put in place by First Consul Consul Napoléon Bonaparte and given as a ministerial reply at the National Assembly to written question n° 5552 – Official Journal of March 5 2013, p.2612).

Tangi Louarn



Legislation against racism and racial discrimination: linguistic discrimination is not yet recognised

The draft law on equality and citizenship, up for debate in the National Assembly in June 2016, only considers equality and citizenship in the light of mastery of the single French language, and totally excludes other languages, including regional languages, despite these latter having been considered to form part of "French patrimony" since a constitutional reform in 2008, and despite their forming an integral part of social life in many parts of the country. An example of this exclusion is the situation in areas such as Guyana or Mayotte, where the goal of teaching the French curriculum - in French - is pursued, completely ignoring the language and culture of native peoples, with catastrophic results on both educational and social levels.

The conclusions reached by Gay McDougall, UN independent expert on minority rights, as laid out in her report on France in 2008, are still topical today: "In spite of important national anti-discrimination legislation, serious racial discrimination is experienced by members of minority communities in France that is entrenched and institutionalized in nature. A political culture of denial has been an obstacle to effective measures to fully implement non-discrimination laws and to take concrete steps to address the complex inequalities that have been generated."

French society remains deeply elitist and unequal. This is why it is necessary to repeat the European Commission against Racism and

Intolerance's (ECRI) General Policy Recommendation n° 7, in which it is stated that "racism is understood as meaning the belief that a ground such as "race, colour, language, religion, nationality or national or ethnic origin justifies contempt of a person or group of persons or the notion of superiority of a person or group of persons."

This is also why, in its report of France published on March 1 2016, ECRI "is aware ... that a continuing shortcoming remains as far as language is concerned."

Five Concrete Measures

Civil society associations in France are demanding that five concrete measures be put in place in order to reform the institutionalised system of domination by a central elite cut off from the territories it governs, and to evolve towards a democracy that is respectful of its people, their languages and their cultures.

Such changes are necessary to put in pace the conditions required for a sustainable development respectful of human rights, as outlined in UNESCO's Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

PROPOSITIONS AND RECOMMENDATIONS OF ELEN-France against linguistic racism and intolerance in France, towards a real recognition of linguistic and cultural diversity

- 1. **Promote bilingualism in public life, giving co-official status to regional and territorial languages** alongside French in territories where such a desire is expressed by elected bodies or the population.
- 2. **Recognise linguistic discrimination in existing penal law** against all forms of discrimination, as the European Commission against Racism and Intolerance has recently recommended (report of the ECRI on France, March 1st2016)
- 3. **Provide public financing for immersion schools in regional languages** in order to make free education available to all families and students, whatever their origin, who choose to follow an education in a regional language, thereby supporting bilingualism and the creation of native speakers.

- 4. **Generalise teaching regional languages**, culture, and history, as well as education about respect for cultural diversity.
- 5. **Audiovisual media: establish programming over several years** to progressively attain a volume of production and broadcasting in regional languages that represents a significant portion of the public audiovisual media budget: for example, 10% over 10 years.

CATALA: NEW, SEVERE CASES OF LINGUISTIC DISCRIMINATION IN PUBLIC ADMINISTRATIONS IN SPAIN

Ms Neus Mestres Director, Plataforma per la Llengua

Neus Mestres, in her intervention, introduced the activities of Plataforma per la LLengua focusing on language rights work. Plataforma state that: "A linguistic discrimination in the public administration is a mental or physical harassment to a person on the grounds of the official language used in his relations with public bodies or institutions, as well as the refusal to be attended in a public administration because of using the Catalan language." She outlined that there have been 37 new cases of discrimination since June 2013 across the Catalan speaking countries, the majority being in Catalonia and Valencia and committed by that State security forces of the Spanish administration, as well as in the legal system.

Examples given were:

- Public Administration: Spanish passport denied to a Catalan speaking citizen, of Chinese background, for not having enough knowledge of Spanish.
- 2) Child Custody: a Court Law of Tenerife withdrew custody of her daughter to a mother that had moved to Catalonia because "Catalan could be a problem for the girl". 3) Police: two Spanish officers were acquitted from having arrested and beaten the musician Miquel Gironès for speaking Catalan. 4) Justice: a judge in



Neus Mestres

Figueres (Catalonia), threatens a witness with suspending the proceedings if she speaks in Catalan. 5) Health: a Doctor bullied a mother and daughter demanding that they speak to him in Spanish in the town of Torelló (Catalonia).

Ms Mestres highlighted that reported cases have increased in number. Nevertheless, they are just the visible part of a wider problem. Many cases are not reported and others do not occur because, out of fear of arrest or humiliation, some people defer on their right to speak in Catalan. There is lack of training of the personnel of the Spanish administration, coupled with attitudes of hostility, impunity from punishment, a legal system devoid of neutrality, and

an overarching structural problem within the Spanish government in terms of dealing with anti-Catalan discrimination.

Ms Mestres concluded by calling on the European institutions for linguistic discrimination to be considered as an attack on fundamental rights, and a system of fines for States that have ratified the ECRML but who have contravened the Charter.

GAEILGE: LANGUAGE DISCRIMINATION IN THE EU

Mr Ciarán Mac Giolla Bhéin (Advocacy Manager, Conradh na Gaeilge)

To start his presentation Mr Mac Giolla Bhéin thanked the organizers for the interpretation commenting that it shows that lesser used languages can quite easily be accommodated into the daily routine at the Parliament.

To set the scene Mr Mac Giolla Bhéin described how Ireland was a colonised country where the language was identified early on as a bulwark against colonisation, where every effort was made, politically, economically and culturally to hasten the demise of the language.

Language revitalisation efforts, be it today or throughout history, have been viewed through the prism of decolonisation and as overtly 'political acts'.

The identification of the language as a 'target' by the unionist dominated regime in the north post-partition followed in the vein of previous colonial regimes in Ireland and supported the efforts of the new rulers in Stormont to create a mono-lingual, mono-identity and some would argue, mono-religious state following the revolutionary period at the beginning of the 20th century. This mirrored closely events in Italy, and earlier France, where attempts were made to rally people around one flag, one language, one nation—minus the omnipresent colonial context.

The Irish language was seen as the key component of Irish identity and all efforts were made to de-legitimise, target and marginalise the language and those who spoke it.

Two quotes²⁷ reflect dominate unionist attitudes towards language at the time – although the wording and approach may slightly differ, the overall objective remains the same. We see this again throughout the next almost 100 years and will talk about it again soon.

Despite the draconian measures introduced, many activists remained committed to the revitalisation of the Irish language and activists who continually advocated the decolonizing project had, in many ways, to do so by stealth. The Irish language community became an alternative society operating in what one historian described as 'Hidden Ulster of revivalism.'

These efforts ultimately lay the groundwork for the modern Irish revival in the north which embedded a culture of 'Na habair é, déan é' – which meant that the revival happened outside of the reach of state and in many cases, in spite of the state. It culminated in Shaws Road

^{27 &}quot;The language is of no practical utility, but may be of much value to incipient traitors, as a means of fomenting trouble...the only people interested in this language are the avowed enemies of Northern Ireland." William Grant MP. "What use is it here in this busy part of the Empire to teach our children the Irish language? What use would it have to them? Is it not leading them along a road which has not practical value? We have not stopped the teaching; we have stopped the grants, which I think amounted to £1,500 a year. We have stopped the grants simply because we do not see that these boys being taught Irish would be any better or loyal citizens." Stormont P.M James Craig, 1933.





Gaeltacht. What also differentiated them was their degree of success and originality that was best encapsulated by their decision to form an urban Gaeltacht in West Belfast. It was a revolutionary self-help initiative which led to formation of Bunscoil Phobal Feirste, the first Irishmedium school in the north. They were threatened with arrest by state when they made their intentions public but ultimately led the groundwork for the modern revival which has been based around the Gaelscoileanna project. Irish medium is now the fastest growing education sector in the north with over 6,000 young people in Irish-medium schools. The original pioneers planted seeds which continue to flourish and bear fruit.

I met with Conchur O Giollagáin recently to get support for local language revivalist efforts in Belfast and a key point I took with me was that there is no blueprint for work being undertaken by language communities. Minority language communities are coming from across Europe and the world to learn from experiences here and projects here – and we must do likewise.

One thing many language planners agree on is that the state must play a pro-active role or at least not stand in the way of progress. But despite this and the history I have briefly outlined, the state in the north continues to actively discriminate against Irish language speakers through inaction and a refusal to implement its international and domestic obligations regarding the language. One example of this inaction is the failure to legislate for an Irish language Act and the failure to implement the agreed upon Irish language strategy.

Political attacks against the language

There is the continuation of the trend of using differing tactics in political attacks against the language but with similar objectives. The broader political purpose is to pollute debate around language rights and to strengthen the narrative which suggests that the Irish language in the north is part of a broader political, republican/separatist agenda. This narrative gives succour to those in public authorities and service providers who continue to refuse to provide even the most basic of services or recognition to language.

We continue to see the destruction of Irish language road signs in the very limited cases where they have been provided. Often the reaction of the authorities is to suggest that maintaining dual language signs is impracticable as opposed to targeting those responsible for vandalism.

Reasons for optimism

Despite all of the problems the language continues to flourish. More children are being educated through Irish than at any other point since the foundation of the northern state and more and more people are learning and embracing the language, from all sections of our community.

Consequently, we are seeing increasing public support for the language as evidenced by recent surveys and opinions polls. Despite the efforts of political opponents of the language, the demand for language rights are increasing being viewed through the prism of human rights and this has been supported hugely by the efforts of grassroots organisations to build alliances with other 'minority' communities in the north who increasingly see all of these efforts as part of a broader drive to bring about social and cultural change in the north where diversity and difference are celebrated.

Gaelcholáiste Dhoire was a monumental victory for the Irish-speaking community of south Derry in particular and the Irish community in the north in general. It was an example of the positive use of the statutory duty, the only protective legislation to protect Irish in north. It will be the bedrock of continued development for the Irish language community in that area. It helped to create a new generation of language activists who will continue to push the boundaries and raise the

bar of expectation in terms of what we, as Irish speakers, should expect from the government in the north of Ireland. They are a different generation who are products of the long campaign of struggle but who will ultimately define their own path and the future of an Ghaeilge as a spoken language in our part of Ireland.

CYMRAEG

Ms Tamsin Davies (Cymdeithas Yr Iaith Gymraeg)

Ms Davies opened her speech with a presentation on the language and its legal history noting that the Act of Union with England making English an official language in Wales, but making Welsh effectively unofficial in its own country, set the precedent for what would happen later. The Industrial Revolution of the 19th century witnessed a large migration of English speakers into south Wales tipping these communities into English speaking by the 20th century. By 1911 Welsh had become a minority language in its own country with 45% of the population as speakers. The 19th century also witnessed the imposition of English language in schools where children were forced to speak English or face punishment right up until the 1960s.

However, 1944 saw the first Welsh Education Act which introduced Welsh medium schools, the 1967 Welsh Language Act which ensured the right to use Welsh in court, the 1993 Welsh Language Act which ensured equality for Welsh and English across the public sector to be monitored by the Welsh Language Board. The 2011 Welsh Language Measure ensured full official status for Welsh backed with a Welsh Language Commissioner to ensure rights and new Welsh language standards to which all public bodies have to comply, with the measure extending to cover other organizations.

The changes have been driven by civil society, for example, by the Welsh language NGO Cymdeithas Yr Iaith Gymraeg, using various tactics including lobbying, protests and court cases. Our overriding concerns today are the lack of access to Welsh-medium education - this

Tamsin Davies



despite increasing parental demand, problems such as having to pay to travel to a Welsh medium school, the lack of access to Welsh medium health and social care - this is particularly acute when faced with problems such as dementia. Lastly, there is the lack of access to Welsh provision across the private sector, for example, with banks and supermarkets.

EUSKARA: LANGUAGE DISCRIMINATION IN THE BASQUE COUNTRY

Mr Paul Bilbao-Sarria (Secretary-General, Kontseilua, ELEN Vice-President)

Mr Bilbao opened his discussion underlining that he would not be able to use Basque in his presentation - a language spoken by 1000s of European citizens. Basque speakers are split between two different states, France and Spain. In France there are no collective rights for Basque speakers, the language of the Republic is French, and France has refused to ratify the European Charter for Regional or Minority Languages and the FCNM. Regarding the various UN Treaties, e.g. ICCO and the Rights of the Child, when criticised France simply responds that there are no minorities in France. This situation needs to be denounced by other EU member states.



Paul Bilbao-Sarria

Turning to Spain, the constitution stipulates that all Spanish citizens have a duty to know the Spanish language. Therefore, if someone is arrested, they may ask to use Basque which is official, yet the police can respond by saying that the detainee must use Spanish because people have a duty to know it.

Referring to the ECRML, there have been four reports each time calling on Spain to reform the justice system so as to ensure the usage of co-official languages. Despite this Spain continues not to implement the required reform. It raises the question as to why did Spain ratify the ECRML if it has no intention of implementing it?

Navarre has been arbitrarily divided into three linguistic areas, language rights are recognised in the north but not in Pamplona and in the south, despite the large number of Basque speakers. In Euskadi, Basque is official but people still have a duty know Spanish.

Cases of language discrimination

The organisation Behatokia²⁸ listed 1,200 cases of language discrimination from 2015 alone despite people being "protected". Therefore, language rights have been systematically violated. In Iparralde, Basque place-names are banned. For example, La Poste (the French post office) has stated that it will refuse to deliver a letter if its uses the Basque language. In the health system there has been systemic abuse with children not being allowed to express themselves in their own language to describe their symptoms and pain. The justice system makes no provision for Basque and recently there have been some direct attacks. Firstly, a judge stopped the opening of two Basque-medium kindergarten's in a village, secondly a Spanish court banned Basque language public broadcasting in Nafarroa.

²⁸ See: http://behatokia.eus/

MAGYAR (SLOVAKIA): VIOLATION OF HUNGARIAN-SPEAKERS' RIGHTS IN SLOVAKIA, FCNM EVALUATIONS

Mr János Fiala-Butora, Szlovákiai Magyarok Kerekasztala (Roundtable of Hungarians in Slovakia)

Mr Fiala-Butora discussed how the Council of Europe's Advisory Committee on the Framework Convention on the Protection of National Minorities (AC FCNM) evaluates violations of rights of Hungarian-speakers in Slovakia. They were notified about these problems in a shadow report, and had an opportunity to address them in their recent state report on Slovakia.

Examples were given from five areas:

- 1) Fines for using minority languages. Several organisations have been sanctioned in Slovakia for Hungarian advertisements in newspapers and regional TV stations, and were threatened with sanctions for touristic signs, billboards, bilingual letterhead, etc. According to the AC the State Language Act applies only to public administration bodies. This shows extreme formalism: the Act indeed does apply only to those bodies, but fines can be issued also on the basis of other acts, which the AC ignores.
- 2) Support to minority cultures: there are enormous differences in per capita sums allocated to communities, ranging from 88,03 Euros per head (Jewish minority) to 4,33 Euros per head (Hungarians). The AC did not criticize this approach, it only stated that some communities did not like it. This delegitimizes the concerns: from an objective perspective (the AC) there is no problem, only one of the parties has a problem (i.e. the Hungarian community).
- 3) Public signs: several Hungarian municipality signs are missing, bilingual road signs and railway signs are not permitted. In its evaluation, the AC appreciated the authorities' efforts to implement provisions on public signs. That is really curious, given that

János Fiala-Butora



- the authorities made no effort to put up any signs or to clarify the legislation.
- 4) Healthcare: there is no right to use one's language in healthcare services. In a famous incident, a young woman was denied emergency treatment for not speaking Slovak with a proper accent. The AC completely failed to mention this as a problem, even though they received all the documentation.
- 5) Violence and hate-speech: there were several reports of Hungarians being attacked or threatened for speaking Hungarian. Among others, the Prime Minister himself made very derogatory remarks about minority communities, and the head of the President's Office's Public Relations department attacked two girls in a bar for speaking Hungarian. The police evaluated that no crime was committed as it could be classified as a hate crime if it can be proven that the perpetrator "had a long-standing negative opinion against the minority in question". The AC did not comment on these incidents, it only stated that some incidents were reported.

The above description shows that the approach of the AC FCNM falls below even the weak standards of the FCNM itself. To conclude, the AC, in this case, is not providing effective protection against the violations of the language rights of national minorities.

LANGUAGE RIGHTS IN ROMANIA - LANGUAGE USAGE IN THE LOCAL ADMINISTRATION

Magyar (Romania) Ms Krisztina Sándor (Erdélyi Magyar Nemzeti Tanács)

In her discussion Ms Sándor discussed the levels of Hungarian usage by the local administration in majority Hungarian-speaking areas of Romania based on a study conducted in 2014-2015. The ECRML ratified by Romania in 2008, acts to guarantee that Hungarians are able to access public services in their own language. The study aimed to establish the reality of the situation on the ground.

From the study several conclusions can be made:

- those settlements that had Hungarian leadership reacted positively to our inquiry.
- most of the settlements can and will use Hungarian orally, but there are some lack of provision in writing.
- a large part (36,5%) of the council staff are able to write in Hungarian.
- only half of Council websites have a Hungarian version, and only 25% are updated regularly.
- Hungarian websites function best in those settlements where there is a Hungarian majority on the council, or they are in a Hungarian-majority county (Covasna or Harghita).
- the nationality of the mayor is not as important as we thought.
- translated official documents can be found on only 6% of council websites, while 43% of them uploaded them exclusively in Romanian (46% of the settlements answered that they translate the documents regularly).
- in the case of forms, the situation is even worse: only 6% of the webpages had Hungarian forms, while only 15,4% of the settlements answered that they make Hungarian forms available for their population.
- only 12% of the settlements received Hungarian language inquiries or requests, 24% declared that they could formulate an answer in Hungarian.

Krisztina Sándor



- most of the mayor's offices can and will define how many of the assembly members are Hungarian
- There is a clear difference language usage at council meetings. In those settlements that have a Hungarian majority Hungarian assembly members tend to use their own language, in those that have a Romanian majority they don't.

OCCITAN

Mr Alexis Quentin (Institut d'Estudis Occitans)

Occitan has been spoken across what is now southern France and northern Italy since the Middle Ages. After this period it became increasingly affected by the expansion of the French kingdom which only allowed for the use of French at the official level. The French Revolution made the situation worse with its aim to exterminate all so-called 'regional' languages. Nevertheless, by 1914 there were still an estimated ten million Occitan speakers in the countryside. 1914 is also seen as the point

where decline sets in. By 1950 Occitan is no longer the majority language of the Occitan countryside plus young people migrated into cities and abandoned the language. In 1950 there was some legislation that allowed for Occitan teaching which was campaigned for by NGOs. However, this is set against a backdrop of the breakdown in inter-generational transmission. One of the tasks of the IEO has been to set up a network of schools to teach the language.

In 1992 French was made the official language of the Republic. For Occitan, which is still spoken in some families, we need a legal framework so that the language can be defended and promoted. It has huge popular support with 75% want Occitan to thrive according to opinion polls.

One example of how it is discriminated against is that an Occitan school has to be able to run on its own resources for five years before it gets even partial state support. A French language school is fully supported immediately. Recently we were promised an official Occitan language office, the state reneged on that agreement and an IEO member had to go on hunger strike to simply to get that promise fulfilled. It has been said before but France continues to be a 'rogue state' in the way its treats 'regional' languages and its own linguistic diversity which it pretends to uphold.

Alexis Quentin



GALEGO

Mr Paulo Filgueiras (A Mesa pola Normalización Lingüística)

A Mesa²⁹ was established to defend the language rights of Galician speakers. We offer a free service to people (A Liña do Galego) who may wish to make a complaint about language discrimination. We find that many Galician speakers are not aware of their language rights and this is coupled with an assumption that as Galician speakers are bilingual they will use Spanish in official contexts. Language rights are not respected at the regional or national level. Plus there is a perception of inferiority amongst speakers which results in speakers giving up trying to use Galician so as to access public services.

In 2015 we recorded 200 complaints of language discrimination, they are only a small part of those that actually occur daily. 50% of those complaints have been against the Galician Government, ironically the very institution that is meant to be upholding language rights.

Some examples are:

- 1) Police refusing to deal with a complaint if the citizen uses Galician.
- 2) A girl went to horse-riding camp but was bullied for speaking Galician so much so that she had to leave.
- 3) In 40 % of infant schools in the larger cities Galician is never used.
- 4) 95% of the telephone helpline companies deny us the option to speak in Galician.

Despite complaints about discrimination being made to the Galician Government no action has ever been taken, meaning that people can act against Galician with total impunity. The Public Administration has been a willing accomplice, when it is not directly responsible, to the attacks against Galician and responsible for the non-implementation of national, state and international agreements that protect our linguistic rights.

²⁹ www.amesa.gal/

Paulo Filgueiras



INTERNATIONAL NORMS

International Norms protecting RMLs, are they sufficient?

Mr Sixto Molina, Council of Europe, European Charter for Regional or Minority Languages (ECRML), Head of Secretariat

Mr Molina, in his intervention, referred to the challenges to be faced by the ECRML in the coming years, *inter alia*, the need to look into the ratification of the Charter by other States, the examination of the role of media in protecting regional or minority language rights in the 21th century or the need to provide increased visibility to the evaluation reports and recommendations adopted by the COMEX and the Committee of Ministers. He also recalled that in 2017 and 2018, both the ECRML and the FCNM will be celebrating their respective anniversaries of the entry into force of the Instruments and thus, a number of activities would need to be organised to mark these events. To finish he highlighted the importance for the Secretariat of the ECRML to develop further synergies with the stakeholder.





The rights of linguistic minorities in international human rights standards

Ms Belén Rodríguez de Alba, UN OHCHR, Indigenous Peoples and Minorities Section

The rights of linguistic minorities are established in international human rights standards, including the 1992 United Nations Declaration on Minorities. Adopted by consensus in 1992 by the General Assembly, the Declaration remains the first UN human rights instrument devoted solely to minorities. In its preamble the Declaration provides that the promotion and protection of the rights of persons belonging to minorities contribute to the political and social stability of States in which they live. However, challenges to the enjoyment of the rights of linguistic minorities exist in all regions and include restrictions on the opportunities available to linguistic minorities to learn and receive education for their children in minority languages, and limitations on the use of minority languages in public life and the media. Globally many minority languages are under threat of significant decline or disappearance due to such factors as the dominance of selected languages, processes of assimilation, and decline in minority-language users. This presentation will provide an overview of the impact of the international human rights regime on the rights of linguistic minorities.

According to UNESCO, there are estimated to be more than 6,000 languages spoken globally, most of which can be considered minority languages. For minorities, language is often a central element and expression of their identity and of key importance in the preservation of group identity. Language is often particularly important to non-dominant communities seeking to maintain their distinct group and cultural identity, sometimes under conditions of marginalization, exclusion and discrimination.

Linguistic minorities are frequently also national, ethnic or religious minorities and consequently the challenges they face may be exacerbated by discrimination on the grounds of their ethnicity, religion or nationality. Respect for linguistic rights is also linked to social inclusion and participation. Minority women, elderly and those living in remote areas are particularly often facing social exclusion that hampers their access to information and services and undermines their participation in cultural, economic, social and public life.

The rights of individuals freely to use, learn and transmit their languages in public and in private without discrimination are well established in international human rights law and are understood to be enjoyed collectively.

International standards

The International Covenant on Civil and Political Rights, in article 2, requires States to ensure that the human rights of all individuals within their territory and subject to their jurisdiction will be ensured and respected without distinction of any kind including on the basis of language. Article 19 guarantees freedom of expression and the right to impart or receive information and ideas of all kinds in the medium or language of one's choice. Article 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.

The Convention on the Rights of the Child requires, under article 30, that children belonging to minorities have the right to use their own language.

The 1992 Declaration on Minorities further elaborates the rights of minorities, including in relation to language. Importantly it imposes positive obligations on States and the requirement for positive measures that go beyond standard non-discrimination provisions contained in other international standards. Language is among the most important carriers of group identity. In line with the general requirement in article 1 that States shall encourage the promotion of the linguistic identity of the minority concerned, measures are required for persons belonging to minorities to learn their mother tongue (which is a minimum) or to have instruction in their mother tongue (which goes some steps further).

From the international human rights perspective, States are free to decide whether or not to declare one or more languages as state or official languages. In the same vein, the promotion of such languages is a legitimate goal for States to pursue. This must, however, be done in a manner that fully respects the rights of persons belonging to minorities, including their right to use their language in private and in public, guaranteed in international human rights law. These two goals should not be perceived as contradictory; on the contrary, they can be mutually reinforcing.

Each State can decide how it implements minority and linguistic rights in practice, and it is reasonable to consider that greater attention and resources will be dedicated to commonly spoken, traditionally present or geographically concentrated minority languages than is given to relatively newly arrived linguistic groups with few or dispersed members. Nevertheless, reasonable accommodation of smaller and less commonly used minority languages is required. Indeed, it may be the case that some highly marginalized minority groups require greater attention and stronger measures to support their linguistic and cultural rights. Modalities to support small or dispersed linguistic communities can include informal language classes within or outside public education structures, provision of key public information documents in such language, and consultation with cultural and national associations representing linguistic minorities to assess and respond to specific needs.

Centralized language policies may give primacy to the dominant national language, while decentralized policies can be more effective in

responding to minority and regional language usage patterns and local conditions. Minority rights must also be considered in regional or local contexts. In some regions, such as autonomous minority regions, a particular linguistic minority may constitute the majority population and may have in place extensive provisions for the use of its language as the dominant language of the region in administration, education and service provision. In such cases it is important to ensure the language rights of those belonging to other communities who may find themselves de facto linguistic minorities in certain localities despite constituting a majority nationally.



Belén Rodríguez de Alba

Challenges

The phenomenon of minority language decline constitutes an urgent global challenge, which may be due to a combination of factors. We can see how some countries have aggressively promoted a single national language as a means of reinforcing sovereignty, national unity and territorial integrity.

The lack of domestic legal protection for minority languages in many regions remains a major concern. Legal recognition and legislative protection of minority languages create legal safeguards and a requirement for policy and programme measures to address the issues of linguistic minorities, and often result in institutional attention. Lack of such recognition and legal protections results in an environment where there is little or no formal legal commitment to promoting and protecting minority languages or the rights of linguistic minorities other than those required by international law.

International human rights bodies have repeatedly urged States to ensure that efforts to strengthen knowledge and use of official or state languages focus on promotional and incentive-based measures rather than sanctions or coercive measures. The Universal Periodic Review has urged to ensure that the policy of promoting the national

language is not pursued to the detriment of the rights of linguistic minorities. The State authorities should allocate adequate support for such measures, and for minorities' access to them, in educational and other context. Furthermore, efforts to raise awareness of minority cultures and teaching of their languages to the majority can contribute not only to the protection of minority rights but to the cohesion of the entire society.

A common problem faced by minorities is that minority languages are frequently not used in national or local administration or as the language of instruction in schools. Consequently those belonging to minorities may face barriers to their full participation in public life and children from minorities may be disadvantaged in education from an early age. While accurate and detailed disaggregated data are scarce in most countries, evidence suggests that those belonging to linguistic minorities are at greater risk of experiencing poor socioeconomic indicators relative to majority populations, poorer educational access and worse education outcomes, and consequently lower incomes and disproportionate levels of poverty.

Since persons belonging to minorities, like those belonging to majorities, have a duty to integrate into the wider national society, they need also to learn the official or State language(s). The official language(s) should gradually be introduced at later stages. Where there is a large linguistic minority within the country, the language of the minority is sometimes also an official language of the State concerned.

UNICEF highlights evidence that bilingual education from the earliest years of schooling ensures that minority children become proficient in their mother tongue and the dominant language from an early age. Teaching children for a recommended six to eight years in their mother tongue and gradually introducing national languages has advantages, including the following: children learn better, are more confident and are well equipped to transfer their literacy and numeracy skills to additional languages.

In some national contexts Governments have imposed prohibitive restrictions on the use of minority languages in public spheres, including in political life. Under such circumstances minorities have even faced prosecution for exercising their right to use their language

publicly, for example in the context of political campaigns. Such actions may be imposed in the context of efforts to stringently enforce the use of a single national language or assimilate minority communities via restrictions on their language use. Just like persons belonging to majorities, minorities have the right to participate in public life and economic life. This requires that the impact of measures ranging from electoral laws to language-related norms on minorities and their right to participate is carefully considered, prior and after their adoption, and any elements undermining these rights are removed. Such impact assessments should also involve close participation of representatives of minorities potentially concerned.

Minorities have the right to use their language in communication with administrative authorities in areas where they live in substantial numbers. This must be taken into account in the recruitment practices and language norms and policies, as these are factors that can either help or harm the implementation of this right.

Human rights obligations related to language issues cover also to the issue of personal names. For example, persons belonging to a national minority have the right to use their surname (patronym) and first names in the minority language and the right to official recognition of them.

Rights of linguistic minorities in the digital era

The rapidly growing digital media and other information technology developments have created new opportunities for minorities. The growth of the Internet and web-based information has made dramatic changes in the ways that people communicate and use and transmit language. However, these media developments also bring about new challenges for minorities, including challenges that may require us to revisit measures needed to protect language rights, freedom of expression, right to information and the right to participate in decision making for persons belonging to minorities. For example, if minorities are left disproportionately on the wrong side of the "digital divide" with no access to new media or if the on-going shift to on-line communication tools also means decreasing options to use minority languages in interaction with authorities or in education, rights of persons belonging to minorities are at risk.

Questions such as: How does the switch of the more traditional media to new Internet platforms affect availability of media contents in minority language? Or how does it affect use of minority language? Still need to be answered. The challenge to ensure that all population groups can benefit equally requires solutions that include the packaging of information in minority languages and provision of low-cost access for all. The Internet clearly also has the potential to assist in the preservation, dissemination and teaching of minority languages.

Despite the fact than in many instances the provisions of the 1992 Declaration on Minorities have not been implemented in practice, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and other international standards clearly establish the rights of linguistic minorities and the duties upon States. While they do not require that a State provide all activities and services in every language present within the State, in its assessment of how to fulfil its obligations, each State must take into account numerous factors relevant to linguistic minorities, including the number of language users and their distribution within the country. Minority rights, including rights related to language use, are human rights. They are not optional but legally binding standards that States have freely ratified and need to respect in law and in practice. There is a need to redouble efforts, nationally and through strengthened international cooperation, to protect the rights of persons belonging to minorities, including linguistic minorities.

HCNM approach to Language Rights

Ms Iryna Ulasiuk, OSCE High Commissioner on National Minorities (HCNM)

The Office of the High Commissioner on National Minorities was established in 1992, as an institution tasked to provide early warning and take appropriate early action to prevent ethnic tensions from developing into conflict. Its mandate describes it as "an instrument of conflict prevention at the earliest possible stage".

Linguistic rights, and their implications for societal cohesion and state stability, have long been recognized as a core component in the

Iryna Ulasiuk



conflict prevention work of the High Commissioner, despite not being explicitly mentioned in the institution's mandate as such. Already the first High Commissioner, Max Van der Stoel, recognized that the linguistic rights of national minorities – i.e. the right of persons belonging to national minorities to use their language in the private and public spheres – represented a recurrent issue in a significant number of OSCE participating states. On the one hand, language is a highly personal matter, closely connected with identity, in both its individual and collective manifestations. On the other hand, language is an essential tool of social organization and cohesion, and it certainly bears directly on numerous aspects of a state's functioning. In a democratic state committed to human rights, the accommodation of the existing linguistic diversity, in keeping with international standards and relevant OSCE commitments, thus becomes an important matter of policy and law.

Recognizing that the failure to ensure an appropriate balance between a state (or official) language(s) and minority languages may become a serious source of inter-ethnic tensions, the HCNM developed the Oslo Recommendations Regarding the Linguistic Rights of National Minorities. Launched in 1998, these were some of the first thematic recommendations developed by the institution. The Oslo Recommendations covered topics such as names, religion, community life and nongovernmental organizations, the media, economic life, administrative authorities and public services, independent national institutions, the judicial authorities and deprivation of liberty. Their main goal was to

provide guidance to OSCE participating states on how best to ensure the linguistic rights of national minorities within their borders.

Successive High Commissioners continued to pay close attention to the linguistic rights of national minorities, throughout their tenures, including through promotion of implementation of the Oslo Recommendations. Linguistic and associated rights proved a challenge in many OSCE participating states, and the HCNM repeatedly advised the relevant authorities of these states on how to secure a fair balance between the promotion of the state language and the protection of linguistic minority rights.

The successive High Commissioners have acknowledged that the State language is an effective tool in promoting the cohesion of society, but not the only one.

Promoting the use of the State language constitutes a legitimate State interest. Moreover, knowledge of the State language is also beneficial to persons belonging to national minorities. Having a command of the State language increases the opportunities for effective participation in society at all levels. This requires that persons belonging to national minorities are given and make use of the opportunity to learn the State language. On the other hand, the use of the State language must not affect the right of persons belonging to national minorities to preserve their identity. As persons belonging to national minorities have a right to study and be educated in their mother tongue, the education system must adequately reflect their needs. Likewise, the media can positively contribute to mutual respect and understanding by providing balanced coverage and making national minorities visible to the majority.

So the HCNM has argued that while promoting use of the State language constitutes a legitimate State interest, efforts to promote the State language should be balanced against the linguistic rights of persons belonging to national minorities to learn and use their own languages. Therefore, the *means* that States employ to achieve the legitimate goal of promoting the State language should be proportionate and should involve positive incentives rather than punitive measures.

In some OSCE participating States, employees of public institutions are required to know and use the State language. While such a requirement is certainly permissible, the High Commissioner recommended

to States that it should only be used to the extent necessary for the performance of an employee's professional duties. Otherwise there is a risk that it can become a barrier to employment in public institutions. The High Commissioner further recommended that different levels of language proficiency should be required for different levels of professional functions. The same principle can also be applied regarding integration and migrant groups.

When language are introduced for the first time, it is also important to allow sufficient time for civil servants to acquire the necessary proficiency in the State language. It is also a good idea to facilitate the efforts of national minorities to learn the State language.

This can be done, for instance, by offering career opportunities to people who speak the State and minority languages, by providing bilingual education or by helping members of national minorities to learn the State language, such as by offering language courses. These are just some of the ways that States can work to prevent discrimination of persons belonging to national minorities.

The High Commissioner strongly discouraged States from employing punitive systems to police lack of State language knowledge. The experience of the institution shows that fines, sanctions, inspections and disproportionate language requirements are ineffective, potentially counterproductive, in some cases even undermining basic democratic principles, and can increase the potential for tension and conflict within society.

Linguistic rights also feature prominently in the latest set of thematic recommendations issued by the HNCM, the 2012 Ljubljana Guidelines on Integration of Diverse Societies, which reiterate the importance of language policies for strengthening societal integration and cohesiveness.

Integrating diversity is a fundamental aspect of both conflict prevention and building a cohesive society and as such is the premise of any HCNM engagement. The general approach of the HCNM throughout the OSCE area is based on integration with respect for diversity. The aim underlying the policy is to create a society in which all members, including persons belonging to national minorities, share and build a feeling of common identity while recognising their differences. Such an approach entails the integration of societies rather than into societies and a focus on society as a whole. It is important to acknowledge

that persons belonging to national minorities represent an enrichment of society, rather than just tolerating their presence. This applies very clearly to linguistic diversity which enriches societies and cultures. This potential enrichment stands in stark contrast to the threat that majorities and/or Governments perceive when faces with linguistic (or other minorities within their boundaries. However, when linguistic diversity is handled in an appropriate way in a State's legislation and policy – providing both for the protection of minority languages and promotion of adequate knowledge of the State language – this diversity can function as the basis for interaction and cooperation of individual and groups, thus fostering cohesion.

While the exact recipe for achieving the appropriate mix of integrative and protective elements is hard to define and entirely context specific, the underlying international framework of linguistic rights does offer a general framework in which States have to operate. International good practice offers further guidance on how to formulate and implement the appropriate policies.

EU Commission, DG Education and Culture, Multilingualism

Mrs Kristina Cunningham

In her presentation Ms Cunningham outlined the Commission's position regarding upholding language rights. The EU Commission is clearly against all forms of discrimination, she said, as this is against European values. However, the EU can only propose legislation according to EU Treaties which currently give it no legal basis to propose an instrument against language discrimination. Furthermore, the Charter of Fundamental Rights, where Article 21 prohibits discrimination on the grounds of language and/or being a member of a national minority, only applies when EU Member States are implementing EU law. Article 19 of the TFEU Treaty allows for EU action on several grounds,³⁰

³⁰ Re. TFEU Article 19 'sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.'

Kristina Cunningham



but these do not include discrimination on the grounds of language. Linguistic discrimination is therefore not an area that the EU can act on.

Has anything changed in the last two years? Firstly, we have a new Commission. If it is any different to two years ago then that is because it is now ten times more difficult to propose new legislation. Out of the priorities set out by the Juncker Commission language discrimination is not one of them.

Secondly, EU funded language projects may be part of the solution, they can be used to raise awareness and to be influential. Thirdly, migration is influencing all policy areas of the Commission.

Debate

In the short debate that followed the institutional presentations several important points were made. Ms Cunningham emphasised that what the Commission is able to do is to promote linguistic diversity with incentives rather than through punitive measures. Ms Rodriguez suggested that the fact that the UN Special Rapporteur on Minorities had been able to visit France illustrated that France does have a limited recognition of minorities, and that this may be an entry point for NGOs working on the issue. Mr Molina discussed how the media often portrayed language minorities negatively and the importance of having a positive image with the majority in a state.

Davyth Hicks countered Ms Cunningham's point that the EU was unable to take any action regarding language discrimination. He

referred to the recent EU infringement proceedings against Slovakia over the exclusion of Roma schoolchildren from state schools. In the proceedings Article 21 of the CFR had been invoked along with the Race Equality Directive.³¹ He asked if this can be done for the Roma why not for other national and linguistic minorities when faced with language discrimination.

OVERCOMING LANGUAGE DISCRIMINATION, THE GLOBAL DEVELOPMENT OF LANGUAGE RIGHTS

Mr Rob Dunbar, Roinn na Ceiltis is Eòlas na h-Alba, Oilthigh Dhùn Èideann

Professor Dunbar discussed international legal instruments and domestic law. Language rights act to regulate language use and the term language regulations is preferred. The ECRML has been explicit to convey that it contains no rights, but nevertheless it does create the scenario for better linguistic diversity.

Discrimination is also a tricky concept, as it may be a double-edged sword, and we have to be aware in our campaign work of the differences between equity and equality. It is important to advise against false oppositions but common cause can be made with other minorities.

Language regulations tend to be reactive more than pro-active. It took a hundred years to gain recognisable language rights for French speakers in Canada and a very long time for Welsh and Gaelic activists to gain any rights in the UK. For example, Canada: Confederation (and a limited official languages regime), 1867; Official Languages Act, 1969, Canadian Charter of Rights and Freedoms, 1982. Ireland: Constitution, 1937; Official Languages Act 2003.

In international law language rights are a relative latecomer to the international human rights party, for example the ECHR (1953), the

³¹ https://www.opensocietyfoundations.org/press-releases/ european-commission-targets-slovakia-over-roma-school-discrimination

International Covenant on Civil and Political Rights (1966) (s. 27), the Convention on the Rights of the Child (1989) giving very limited rights.

There are more developed provisions only with the minorities instruments of the early 1990s which came in response to the crisis in Yugoslavia which acted to wake up the international community, and which led to the FCNM and ECRML.

More recently there has been a slowing of standard-setting while the whole issue of minorities has slipped off the agenda, which has been coupled with a retrenchment regarding multiculturalism.

Are some languages more equal than others? Speakers of any language can benefit from the protection of 'core' civil and political rights (e.g. right to a fair trial, rights on arrest, non-discrimination based on language), but the protection of language-specific rights is more limited. In Canada over 200 languages are spoken, including more than 60 indigenous languages; generally, only two benefit from a language rights regime (English, French (save in Nunavut, NWT). In international law there is the debate over 'old' minorities versus 'new' minorities, and which of these are covered. For example, the European Charter for Regional or Minority Languages covers 'autochthonous' languages, while other minority treaties don't define their scope of coverage. States generally take a limited approach, however, the UK implements the FCNM quite differently compared with other European states as it includes some non-indigenous ethnic groups.

Language rights are generally limited to public sector. These include the rights to use a minority language in political institutions (national parliaments; regional, local assemblies); the right to obtain public services through the medium of a minority language (national, regional or local; political institutions and public administration more generally); the right to use minority language in courts, tribunals; the right to minority language education. Language rights in respect of the private, voluntary sector are non-existent in international law, and rare in domestic law (e.g. Quebec, Catalonia).

Language rights are also divided into the Territorial principle vs. Personality principle.

In practice, language rights are often limited territorially, for example the Canadian Charter of Rights and Freedoms, 1982 states

Rob Dunbar



that with Education rights 'wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction' (s. 23(3)).

The European Charter states: 'within the territory in which such languages are used': 8(1) (Education), 10(3) (public services) and refers to districts 'in which the number of residents using the regional or minority languages justifies the measures specified below': 9(1) (Judicial authorities), 10(1) (administrative authorities and public services).

The Framework Convention states: 'in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers': for example, 10(2) (dealings with administrative authorities), 11(3) (traditional local names, street names, topographical indications), and 14(2) (education).

Language rights are often contingent geographically and according to numbers of speakers. Demand sufficiency has been described as being on a 'sliding scale'³² where the more speakers there are the more provision they receive. For example, the Canadian Charter of Rights and Freedoms, where there is 'significant demand' (s. 20, public services from local offices of federal institutions); 'if there is sufficient demand', in the FCNM 14(2) (right to education).

³² See, for example, Fernand de Varennes Language, Minorities and Human Rights. (1996) The Hague.

Sometimes the terminology is more aspirational, for example, 'the Parties endeavour to ensure, as far as possible' (FCNM, 10(2) (public services), 14(2) (education).

Such language is very common in the language scheme/language plan model found in Wales under the Welsh Language Act 1993, and in legislation for Irish and Gaelic.

Regarding enforceability minority Instruments are generally weak. The FCNM and ECRML provide no judicial, or quasi-judicial mechanism; just a state reporting mechanism which doesn't usually entertain individual claims. With domestic rights regimes sometimes we find a judicial remedy/recourse to the Courts (however, this is often unpredictable, costly, and thus risky). We have seen the development of the Language Commissioner model (e.g Canada, Ireland and Wales). Furthermore, these instruments require individuals to initiate proceedings.

There are various overarching structural issues. For example, do minorities know their rights and the legal remedies? Current legislation is based on a Choice model where it generally requires individuals to act. Often RML speakers may be reluctant to do so perhaps so as to avoid being perceived as a troublemaker, they may be comfortable using majority language or they may not be confident in the quality of the minority service. Much legislation is limited to the public sector, outside of education, most people have limited contact with the public sector.

There is a very limited application to policy-making in areas which affect language vitality (e.g. land-use planning, economic development—but see Welsh 'Policy-making standards' (Welsh Language (Wales) Measure 2011): it considers what effects policy decisions may have on opportunities to use Welsh, treating Welsh no less favourably than English). Bad planning itself may affect a language and may damage it. We need a more holistic view of the social reality of RML speakers so as to protect them from bad policies which may affect RMLs negatively.

Decision-making power itself is generally not addressed: but see FCNM, Art. 15—"create conditions necessary for effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them". This last point suggests that types of autonomy and strengthening local decision-making is the way forward in helping to manage language minorities.

Liam Ó Maolaodha

Páidí Ó Lionáird

The cultural importance of language in terms of linguistic rights

Mr Liam Ó Maolaodha, Oireachtas na Gaeilge

The Oireachtas festival symbolises the link of Irish language and culture, a cultural revolution with the resurgence of Irish being its overarching aim. The Oireachtas represents a trinity of language, culture and art. Through the language we express ourselves, our culture and our spirit, this leads us to language rights, and leads to more young people feeling more confident to use Irish. Government support is lacking considering that Irish is the official state language and despite the strong support of the population. We must not let any language die, saving Irish is one of the most important things that people can do.

Better promotion in the media of language rights

Mr Páidí Ó Lionáird (TV presenter 7 Lá, TG4)

Broadcasting in Irish is vital for the Irish language community in Ireland, for example, during the 'dearg le fearg' protest Irish language media coverage helps to give more backing to such events. It is vital that the community understands legislation to be presented. The media is also able to highlight how the law may be misused, for example, over a drink-drive conviction where the defendant claimed his language rights had been infringed because

Maitiú Ó Coimín



he had not been addressed in Irish, even though he was not an Irish speaker. Caes such as these give language rights a bad name.

Language rights can be used as a stick or as an incentive. For example, we have had to deal with the issue of not being able to buy goods over the phone as the software doesn't recognise the fada accent. Similarly with the Aer Lingus website where we had to campaign to be able to use the accent.

Mr Maitiú Ó Coimín (Tuarisc.ie)

It is hugely important to have Irish language TV, radio and websites. As media we report on behalf of the whole Irish language community. Tuarisc is an online newspaper, some may say that its Irish speakers speaking to themselves but we believe that our news analysis is important as we have an understanding about what's going on that the big English media would not cover.

It is very imporant that we have a voice in all media, TV, radio and on news sites. We're not fanatics with typewriters, we're journalists first but who happen to be Irish language journalists. It is difficult to have an impact on people with language rights stories. But it will be important to ourselves.



Because of lack of time the hearing had to drop the original timings and go straight to its final section to discuss conclusions, proposals and practical steps on how to deal with language discrimination.

"The Protocol to Ensure Language Rights"

Paul Bilbao-Sarria, Kontseilua

A new alternative "The Protocol to Ensure Language Rights" has been created by contributions from civil society, and is set to be a very important tool for the future. The idea for the Protocol grew from the success of Basque civil society in making new speakers which in turn the raised the question of what is needed to guarantee our language rights.

The Donostia Protocol draws from the 1996 Declaration of Linguistic Rights and we called on ELEN, ECMI, UNPO, CIEMEN and Linguapax to work with us to develop it. In addition, over 120 language organisations contributed to the Protocol representing 30 language communities.

Its most important quality, making it a unique document, is that it reflects the contribution of civil society and its choices as to what measures to ensure language rights best suit their language community.³³

³³ The Protocol was published in December 2016 after a successful launch in Donostia. It can be downloaded at: http://protokoloa.eus/wp-content/uploads/2016/12/HEBP5HIZKUNTZA.pdf

Better implementation of existing mechanisms, the ECRML, FCNM, ECHR, Charter of Fundamental Rights

Sixto Molina (CoE ECRML)

Mr Molina made five main points regarding dealing with language discrimination. 1. It is important to avoid false expectations, and to ensure that the state knows exactly what it can do. 2) Important to avoid politicising language issues. Language is not about politics but about people, and about all the people in a state - not just RML speakers. 3) It is important to sensitize national authorities as to why it should help protect RMLs. 4) It is important not just to speak about all the negative aspects regarding RMLs but to focus on the positive aspects and to emphasise the best practices; 5) It is important to link the activities of local authorities and parliamentarians and the EU, and to use the EU, for example, by getting France to do something for RMLs with the Social Fund.

Belen Rodriguez de Alba (UN OHCHR)

Ms Rodríguez de Alba highlighted the launch of the new UN OHCHR guide to linguistic minorities and that civil society organisations review the text. She also proposed that NGOs use the UN's Universal Periodic Review (UPR) procedure. An analysis conducted on the UPR's positive effect on minorities found that out of the UPR recommendations 78% had been accepted by State parties, making the UPR mechanism one of the most effective instruments for ensuring minority rights.

Languages Directive, new legislation?

Conchúr Ó Giollagáin

EU Emergency Commission on Language Endangerment

Conchúr Ó Giollagáin recommended the setting up of an EU emergency commission on language endangerment. He underlined that the current language rights discourse focused on talking to institutions instead of people, and that a different kind of approach is needed. Affirmative action will be crucial, the language rights debate is bland, static and stuck in the institutions. A list for fundamental action includes: family

support, youth socialisation, dealing with issues of intergenerational solidarity, and educational development. Finally, there is no point in lecturing minority and endangered language communities on culture when they can't see the benefit from it.

Rob Dunbar

Best practices in protecting languages against discrimination

Language rights are necessary but not sufficient in themselves, we have to consider which policies are appropriate. In the current political climate there is little likelihood for new standard setting. What we could focus on is empowering and fleshing out effective participation for RML communities. These can be coupled with language sensitive policy making. These should go hand-in-hand with political autonomy.

Davyth Hicks

Short and long term proposals

After speaking to our members and drawing on experience working at the European level on RML issues, proposals may be divided into two main areas. Short-term, where we are able to use existing instruments, and longer term where new legislation is required.

In the short term we are working for:

- 1) The ratification of the ECRML and the FCNM in particular by France, Italy and Greece. We need to see the full implementation of these Treaties by those States that have ratified and penalties (for example, EU infringement proceedings coupled with fines) imposed for those States that persistently contravene these treaties.
- 2) The scope of application of the EU infringement procedure must be extended so that it covers cases of anti-regional language discrimination. The infringement procedure is designed to ensure that states comply with the EU rule of law, which includes the protection of citizen's rights. With the Roma cases in the Slovakia, which addressed systemic discrimination, both the Race Equality Directive and Article 21 on the Charter of Fundamental Rights were invoked.

- 3) We need to see language rights included as a mainstream fundamental right and treated as such in EU law, and that the EU adopts the CoE ECRI recommendation (7) that language discrimination constitutes a form of both direct and indirect racism. This would allow us to use existing anti-racial discrimination legislation.
- 4) Establish a European Framework Strategy for minoritised and endangered European languages, using the Roma Framework Strategy as a precedent.

In the longer term we want to see new legislation, to this end ELEN will be working towards:

- 1) A European language Ombudsman or Commissioner and language rights observatory that works to ensure European citizen's language rights, and that is empowered to act to protect them.
- 2) An European agency for minoritised and endangered languages, following on from the Framework Strategy, that is empowered to meaningfully protect and promote languages.
- 3) Work to secure the adoption and implementation of the new Donostia Protocol³⁴ to ensure language rights.
- 4) An EU Endangered Languages Directive that both underpins language rights and ensures funding for their revitalisation.

As we have stated above, if the EU can protect birds, fish and plants, why can it not protect our languages?

³⁴ Donostia Protocol http://protokoloa.eus/wp-content/uploads/2016/12/HEBP5HIZKUNTZA.pdf

Conclusions: "Dealing with language discrimination and ensuring linguistic rights in Europe, recommendations to the EU"

Liadh Ní Riada MEP

We often find ourselves in the position where we are preaching to the choir, it is vital that we speak to everyone from the majority culture and engage with them. Although there are many differences between our languages and cultures it is evident that the same problems confront us all. Similarly sign language issues should also be included in this debate.

As a mother I want to ensure that my children speak my language. I don't want to be one of the last speakers of Irish, and I don't want my children to experience problems because of their language. Human rights connect all of us.

Therefore, I would like to propose the following:

- 1) We will create a forum with all the participants here today,
- 2) We will list five or six main points that we agree on and that we wish to take forward,
- 3) I and other MEPs will go to the CULT, LIBE and PETI Committees and the Intergroup so that we can start working towards these main points and the proposals discussed by Davyth and ELEN, including working towards a Directive.



for new EU level measures for the protection and promotion of lesser-used languages

Conclusions and Solutions

The language hearing held on June 1st hosted by the EFA Group and Liadh Ní Riada MEP heard from a broad range of stakeholders including ELEN member organisations, the Council of Europe, the OSCE HCNM, the UN OHCHR, the European Commission, MEPs, and academics, who agreed that new measures are necessary to deal with anti-regional/ minority language discrimination and for the overall protection and promotion of lesser-used languages.

Recommendations for action may be divided into short-term (i.e. where the legal base already exists to take action), and medium-term (i.e. where new legislation is required) measures to be taken by the EU.

Short term

EU-wide framework to protect and promote RMLs using existing mechanisms

- Including the proper implementation of the ECRML and FCNM where it has been ratified accompanied with sanctions (e.g. infringement proceedings) from the EU for lack of implementation.
- EU to ensure that France, Italy and Greece ratify the ECRML and FCNM, both of which form part of the Copenhagen criteria for accession states.

- Ensure that a mechanism in put in place so as to ensure that access to justice is easily available to all RML speakers. This could be similar to Viviane Reding's 2014 one-stop-shop proposals regarding data protection.³⁵
- Ensure greater usage of EU impact assessment mechanism for EU projects that affect RML speakers.

2) Language discrimination is a form of racism, recognition of RML rights as a fundamental right

- The ECRI (Council of Europe) Recommendation 7 stipulates that language discrimination is a form of both direct and indirect racism.³⁶
- Ensure that the scope of discrimination covered by the EU, currently including discrimination on the grounds of race, includes language discrimination, and that this is included as a fundamental rights issue.
- Ensure that the Fundamental Rights Agency adopts this approach and mainstreams it into its work.

EU Infringement proceedings for contravening Charter Fundamental Rights (CFRts)

- Ensure that the EU is both empowered and motivated to take **infringement proceedings**³⁷ against states in cases of language discrimination, using Art 21. ChFRts, Race Equality Directive, and precedents set by Rule of Law.
- EU opened infringement proceedings vs. Slovakia regarding Roma education (2015),38 and the Czech Republic in 2014.39
- Invoked Art. 21 of CFRts and Race Equality Directive (2000/43/EC (RED)) Articles 2.2a, 2.2b, 2.3, 3.1.g)

³⁵ http://europa.eu/rapid/press-release MEMO-14-60 en.htm

 $^{36\} http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N7/default_en.asp$

³⁷ http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/index_en.htm

³⁸ https://www.opensocietyfoundations.org/press-releases/

european-commission-targets-slovakia-over-roma-school-discrimination

³⁹ https://www.opensocietyfoundations.org/press-releases/

brussels-takes-action-against-czech-republic-over-roma-school-discrimination

- Start to use infringement mechanism to protect RML speaker rights.
- Develop a 'one-stop-shop' (Viviane Reding 2013) to facilitate this procedure.
- ELEN calling for infringement proceedings vs. Spain regarding serious cases of anti-RML discrimination.
- ELEN will call for infringement proceedings against France for the same reasons.
- Infringement proceedings established by **Article 258** of the Treaty on the Functioning of the European Union
- Provides the Commission with an effective legislative tool to ensure compliance with EU law.
- If the Commission believes a Member State to be in breach of EU law and considers the measures taken by the Member States to address the Commission's concerns as insufficient, the Commission may bring the matter to the Court of Justice for the European Union.
- If the Court finds a Member State has failed to fulfil an obligation under the Treaties, it will require the state to take the necessary measures to comply.

4) Language Protocol for language rights. Discussion and implementation at the EU level

- Language protocol for language rights has now been published in Donostia.40
- The protocol is a key project for ELEN members.
- The Protocol is based on the 1996 Declaration of Linguistic Rights⁴¹ and seeks to create a document, a protocol, which can be adopted and implemented by States, autonomous governments, regions, cities and towns.
- The objectives of the Protocol are: to declare that guaranteeing language diversity and ensuring language development are keys to peaceful coexistence; to create an effective instrument for language equality and the revitalisation of languages in unfavourable

⁴⁰ http://protokoloa.eus/en/

⁴¹ http://www.linguistic-declaration.org/main-gb.htm

- situations; to ensure that the language community is the actor in this process and to assert that society's involvement guarantees equal treatment. The protocol will be launched in December 2016.
- Our recommendations are to have a presentation of the Protocol at the CULT Committee, followed by an EP Report on implementing the Protocol. Formal discussions with the EU regarding the Protocol's adoption and implementation.

5) Funding for ELEN. Full implementation of the Ebner Report

- ELEN is the only civil society network in Europe representing millions of speakers of RMLs, many of which are endangered and many of which are discriminated against on a daily basis. It replaced EBLUL in 2011. Commissioner Juncker, on becoming Commission President, stated to the Parliament that outstanding EP legislative INI Reports would be implemented by COMM. The 2003 Ebner Report42 (2003/2057 INI), a legislative own initiative report, stipulated that EBLUL should continue to receive funding (B.12) yet, despite recommendations to continue funding from the Commissions own assessors Ernst and Young, funding was cut in 2009 and EBLUL closed. In 2011 EBLUL members formed ELEN to replace EBLUL, it is the only civil society network that works to protect and promote European lesser-used languages comprising 60 member organisations representing 44 languages in 21 European states. However, it needs core funding from the EU for its everyday operational costs so as to ensure that it can participate fully with the EU, UN, and Council of Europe, and to conduct effective language revitalisation projects for endangered European languages.

6) European Framework Strategy for RMLs

- Establish a **Framework Strategy for RMLs** similar to the Roma Framework Strategy.⁴³

⁴² http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A5-2003-0271+0+DOC+XML+Vo//EN&language=ro

⁴³ http://ec.europa.eu/justice/discrimination/roma/eu-framework/index en.htm

- In 2011 the European Commission adopted in 2011 an EU Framework for National Roma Integration Strategies focussing on four key areas: education, employment, healthcare and housing.
- The Framework invited all Member States to present the European Commission with their strategy for Roma inclusion or for specific policy measures for the Roma within their wider social inclusion policies. The main responsibility as well as the competences to improve the situation of all marginalised people, including the Roma, rest with the Member States
- Given the precedent set by the Framework Strategy for the Roma ELEN recommends that a strategy is set up for RMLs.
- The proposal for an **EU Emergency Commission on Language Endangerment** by Conchur, see below, could comprise the main objective and work programme of a RML Framework Strategy.

Medium term

7) EU Language Commissioner

- Canada, Ireland and Wales all have language commissioners who work to ensure the protection of language rights.
- If the EU is serious about managing its linguistic diversity and upholding RML rights, it should have a language commissioner or ombudsman.

8) ELEN Language Rights Observatory

- For example, the Catalan, Basque, and Galician language observatories.
- Support ELEN in setting up a Europe-wide language observatory that monitors and collects data on all RMLs in Europe, including on their sociolinguistic situation, numbers of speakers, as well as incidences of discrimination.
- Linked to Language Commissioner's Office

9) EU language plan

- EU Language Plan, to be adopted by States, that meaningfully promotes equality and usage for all European RM languages, as

recommended in the Commission's NGO Platform for Multilingualism Report.44

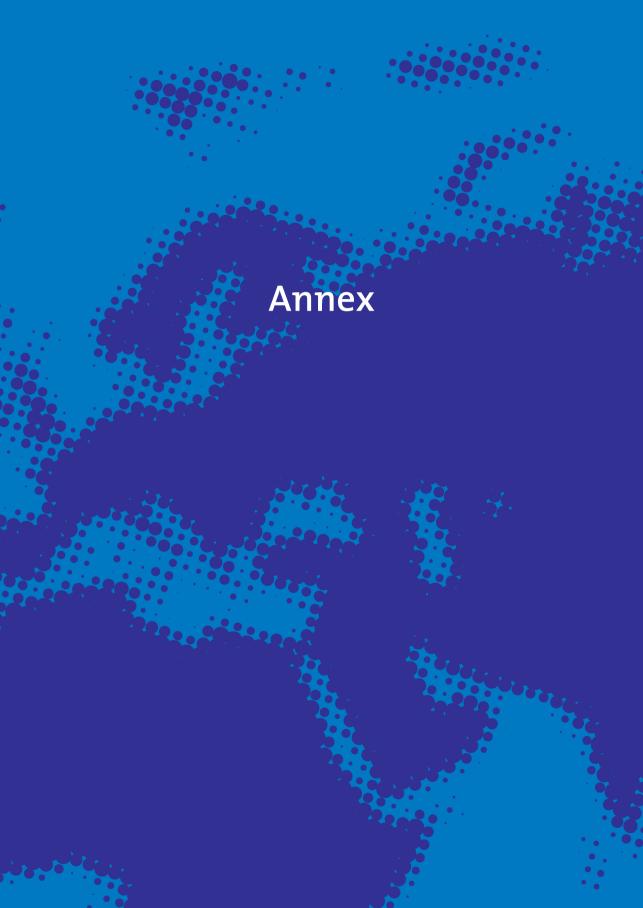
10) EU Directive on language rights and the abolition of linguistic discrimination against RMLs

- If the EU can protect birds, fish and plants, why can't it protect Europe's RMLs and endangered languages.
- Work with the EU to develop an EU Directive or Regulation that works to promote and protect Europe's RMLs.
- With the coming into force of the Charter of Fundamental Rights, any discrimination based on language, or on membership of a national minority, is now prohibited. (Art. 21)
- While we have 'respect for linguistic diversity' at the heart of the European project, one cannot **respect** something and idly stand by and watch it disappear.

11) Developing a Directive for European regional, minority and endangered languages

- ELEN wishes to discuss and develop an EU Directive on the respect for linguistic diversity and the prohibition, preferably the **abolition**, of discrimination on the grounds of language.
- The process could commence with a formal discussion for proposals with the various stakeholders and institutions. Following that, ELEN, the Parliament, and the Commission, could then begin to formulate a text.
- The Directive could be restricted in scope and only applied to European regional, minority and endangered languages.
- Its primary function would be to meaningfully promote and protect these languages and to ensure RML speaker rights.

⁴⁴ http://elen.ngo/wp-content/uploads/2016/05/report-civil-society en.pdf



EU Emergency Commission on Language Endangerment: A Proposal by Conchúr Ó Giollagáin

The current debate on language rights has focussed primarily on four socio-political features:

- The denial of language rights in contravention of declared obligations;
- The denial of minority language rights in such an egregious manner that they also represent a denial of fundamental human rights;
- The bestowal of rights which are framed in a deceptive manner in order to render them meaningless or non-implementable;
- The official promotion of a language rights framework which is out of date or out of touch with the degree of crisis enveloping the speaker group the Irish condition.

Given the serious nature of threat and endangerment experienced by many of our language minorities, we are in serious need of a rethink in relation to what we are seeking to achieve with the promotion of linguistic rights.

In the first instance, it will be advisable to overhaul the one-size-fits-all thinking. It is clear that assigning Scottish Gaelic, Basque and Catalan to the same sociolinguistic category of minority language status cannot serve any feasible strategic purpose. Surely, an accurate diagnosis of the size of the minority group, the social density of its speaker base and the

current status and effectiveness of socio-political provision will set focal points for varying language planning and provision agendas.

Perhaps some of the blame for the bland and static approach to current concerns lies in the fact that it is very difficult to identify and agree on priorities and key actions when the catch-all tactic is obscuring more pressing realities, most notably the social collapse of the remaining speaker groups.

The style and much of the content of academic and intellectual leadership which has been fostered by the current language rights agenda has transformed minority language policy and politics in a manner which is largely irrelevant to the concerns and challenges of the existing minority language communities.

We should now develop a new dynamic in the rights-based approach which addresses the minority concerns in individual jurisdictions – a form of co-ordinated sociolinguistic federalism.

From the perspective of those living with the minority language crisis, the initially-promising process envisaged in the European Charter for Minority and Regional Languages has been reduced to an institutionalised box-ticking exercise, devoid of strategic dynamism and lacking sincere social engagement. Much of the language scheme processes and the monitoring of minority language provision and rights demonstrates a formulaic response to increasingly difficult social challenges.

It provides linguistic camouflage for a gate-keeper mentality in the policy class, many of whom are disinclined to engage with the minority native-speaking crisis because the societal issues are difficult and uncomfortable. Given the easy answers of the institutional approach, it is no wonder that there is an underdeveloped aspect to the social domains of language planning. Neglecting social engagement serves also to exacerbate the processes of minoritisation in relation to the threatened language group and heightens the feeling that minority speakers are abandoned to their own individual struggles – a case of the declining collective of the minority being atomised and treated as undefined at the same time.

From the joint perspective of the current dysfunction in the language rights framework, a growing sense of powerlessness and

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fragility among many of our language minorities, and in many cases, an official failure to recognise the seriousness of current circumstances, there is urgent need for a co-ordinated emergency strategy in support of the highly-endangered language minorities of Europe, among which I would include Irish and Scottish Gaelic. This EU strategy should be devised at directorate level (Directorate for Education and Culture) in conjunction with the European Parliament's Committee on Culture and Education (CULT) and implemented locally with the cooperation and inputs from the relevant jurisdictions. A first step in this process would be to set up an EU Emergency Commission on Language Endangerment. The principal aim of the commission would be to identify the minority groups in need of emergency intervention and then to monitor the implementation of key initiatives aimed at preventing the social collapse of the remaining group. The strategy of this commission would suggest key targets for affirmative action in conjunction with community leaderships, support agencies, local and national governments regarding the most vital domains for language maintenance, i.e. family supports, youth socialisation, intergenerational solidarity, educational development, communal cohesion and mechanisms for identifying socio-economic advantages which bolster minority language adherence and social transmission. In many instances, the commission may have to consider assisting communities in efforts to engage in documenting, recording and retrieving various aspects of their linguistic inheritance and the existing cultural capital of the threatened group. I am suggesting a form of anthropological intervention that assists communities in the current challenging circumstances, with an eye to preparing for both positive and negative contingencies in the future.

History will not be kind to us if we fail to act in this difficult situation. There is a duty of care to those who possess these threatened cultures and who are struggling with the social pressure of demise, but there is also a duty of care to the future that we would act in the most productive and empathetic manner possible, despite the challenging state of affairs.

EU Emergency Commission on Language Endangerment

- The principal aim of the commission would be to identify the minority groups in need of emergency intervention and then to monitor the implementation of key initiatives aimed at preventing the social collapse of the remaining group.
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