

# LINGUISTIC HUMAN RIGHTS AND SECURITY

## 1. THEORETICAL ASSUMPTIONS

### 1.1. Language and state

Over the last couple hundred years, linguistic identity and ethnicity (which perpetuates and amplifies linguistic identity) have become significant factors in society. The transformation of the citizenry into a body politic meant higher requirements with regard to the language in use. For laws to have legal force, sufficient consensus was needed – dialogue in a language that the participants could understand. The judicial and tax systems also required proficiency in the official language. The development of a domestic transport network led to linguistic homogenization of different regions. As a consequence of military reform, Europe introduced compulsory universal military service, which resulted in greater integration of male citizens in their respective countries. This development was accompanied by a rise in patriotism and the rise of common attitudes and values in a given national linguistic and cultural space.

The cultural paradigm shift at the turn of the millennium, from a modern to a postmodern one (O’Riagain 1997, Giddens 1984), has led to changes in functioning of society. Virtual environments have increased alienation due to the dearth of direct contacts (which were based on language). The growth of services as opposed to goods has increased the instrumental value of language(s).

In general, linguistic policy and linguistic human rights are not in the political focus of any country (although the decrease in power has forced many states – such as France in connection with the Multilateral Agreement on Investment – to put greater importance on language), a status traditionally reserved for security, economic and social affairs. Thus national language policies end up being derived from objectives that have little to do with language. The basis of this process is the marketplace, which the state makes corrections to, influencing its development, creating order and endowing it with a suitable structure. Among these corrective factors are linguistic human rights, which must be ensured regardless of the laws of supply and demand, enabling people to live with dignity in their linguistic and cultural environment; and the right to one’s (national) identity.

In addition, “soft” social policies where emphasis has been placed on identity and integration/fragmentation processes through multilingualism/multiculturalism, keeping tensions from growing in society and societal groups. This position has made minorities and other vulnerable groups visible. The emphasis has shifted from production to service, the concept of the workplace has changed, as has competition on the global scale. Language and culture are also harnessed for the good of these phenomena. As a result, language is playing a stronger role in society, becoming an essential instrument. It is a political object and resource, a component in integrative ethnicity and a natural symbol of collective rights, and because of its exclusivity, it is one of the greater causes of barriers in human relations. Thus, more than ever before, language is breeding ethnic dividing lines supported by ideologies, rules and customs.



Simultaneously, because of its greater instrumental value, language is correlated with the economic and social well-being of its speakers. Language thus regulates access to power. The primordial and instrumental values work in synergy, making language one of the most important factors in today's political life.

Countries and international organizations have recognized the nature of language as a resource, a right and a risk, and more and more is being invested into language policies that would eliminate risks stemming from language and allow a stable and democratic social order to be established, with attendant generation of economic and political advantages over competitors. The visible side of this process is that advanced countries have established a legal system, national programmes and institutions for language issues. One method of achieving success in global competition is language technology, where linguistic technologies and linguistic demand are coupled together through the multilingualism of goods and services.

A nation-state system presupposes a common language, which increases linguistic and cultural unity of the population and – because the language is in use in a unique area – reduces the possibilities for conflicts, by increasing security and integration. The civil service, economic interest groups and the ethnic majority determine a country's language policy. The civil service requires increasingly formalized document management systems and, in turn, language proficiency. In addition to putting importance on internal language functions, the state in its role as purchaser and provider of employment and economic opportunities has increased the instrumental value of language in the second and third sector as well. It is in this field in particular that countries see as the basis for shaping language policies. There also exists a hidden side where language is used as an instrument of power. Pre-existing language proficiency is linked to educational and employment opportunities, giving applicants who are proficient in the official language an advantage over the rest.

The role of the ethnic majority is of determining importance in defining the common language. If the national majority defines itself with a specific language and is in power, this will also determine the language used by the civil service and in the economy.

There are no qualitatively superior or inferior languages, there are only languages that receive social protection and others that are snubbed (Rannut 2001). Language is not a thing in itself; rather its value is determined by a society with a specific power structure. The value of language is reflected as a component in the price of every good and service. This component – the economic value of a language – increases in society due to a decrease in the share of products and a concurrent rise in the share of services, which requires greater and higher-quality use of language. Standards have risen for generation and comprehension of text, requiring employees to be more proficient in language.

## **1.2. Language and security**

Security is conventionally defined as the absence of threats. That means authorities that are interested in social transformation outside the norms of democracy and the limits of international acceptability (e.g. revolt, war, coup) will not be capable of realizing its intentions. One of the leading theoreticians of the Copenhagen School of security studies, Waever (1993: 23) distinguishes societal security (security of a society or a part thereof) and national security. Societal security pertains to society's ability to preserve its principal identity without prejudice to changing conditions and threats. Above all, it is based on sustainability of linguistic, cultural, religious and ethnic identity and customs in its evolutionary development. Society is endangered when its identity is endangered.

National security is a derivative of societal security. National security is influenced by the security of its underlying society. In the case of nation-states, the distinctions between these two categories are of no



consequence. If nation and state do not coincide, security of a given nation may increase threats to the state (such as Corsicans as part of France). The solution is to unite two categories of security, defining it on the basis of political criteria of nation and society, creating a unified cultural identity or hierarchical composite identity where everyone has more than one identity.

Security is one of the factors that contribute to language policy. Ager (1999) divides it into three, the first being territorial security as fear of regional languages. Government policy vis-à-vis regional languages is based on linguistic national unity and the primacy of the official language over other languages spoken in the country (which may be in use in official functions alongside the official language). The main channels for implementing the policy have in the past been education, the military, social and political domination (language of the judicial system and the public sphere). Thus regionalism, fragmentation and disintegration are recognized as threats. Besides protecting one's own language, the use of other languages is rendered as complicated as possible, with an attempt made to drive them out of use or to dismantle the associated regional identities. Up until the Renaissance and Age of Discovery, language did not pose a problem for those in power. Subjugation to power was the important thing, and this presumed that people comprehended edicts. For this reason, courts in that era used the language that was acceptable to everyone, including dialects and local languages.

Second, Ager highlights social security – a fear of social outsiders. One danger is that the destruction of integrity on the basis of class characteristics, social fragmentation and segregation, which could lead to a confrontation between different social groups. Thus it must be ensured that all inhabitants are socially accepted and that no one feels ostracized. The methods that can be used are assimilation, in which differences are eliminated, and its opposite, integration, which allows cultural differences to be preserved.

In language policy, social acceptance is realized through avoiding coinciding of language groups and groups formed on the basis of social characteristics and interests. Typical groups may be youths, the poor and immigrants. For younger people, social acceptance is ensured by acquisition of sufficient proficiency in the official language in the course of compulsory schooling. This has been made a main objective of education in most countries, expressed in the amount of class time allocated to it. Realizing the goal in the case of all young people regardless of ethnic and linguistic background ensures sufficient engagement with society and keeps dividing lines from forming within society. This enables socialization and social mobility.

The poor are defined differently in each society. In general, the poor are considered to be people who have a low status in society and lack economic, social and political power. The language of this group is characterized by major social variation, in general not conforming written language standards. Such use of language is seen as a threat to written language because it is not consistent with the standards and thus is seen as debasing the standards. The other threat is that the scope of application of written language standards will become reduced and continue to become more. In addition to the education system, the field of language planning deals with this aspect. Thus the question of language is at once also a social issue.

Immigrants and their languages are generally seen as a source of a threat as they can violate the written language in use. The objective of immigrants learning their home language – something enabled under international law – is to allow them to return to their country of origin. This was related to the older view that immigration is short-term, economic and temporary. Thus the objective of official language policy is to let the immigrants master the official language and preserve very limited use of home language. Proficiency in the home language is generally not counted toward educational attainment at school. Even though there is officially a lack of social exclusionary policy, only those who acquire language already in childhood and who are competitive with mainstream society are successful. Although the state must ensure equal opportunity for everyone, non-Estonians are less successful at national examinations (and



gaining the right to sit for the examinations). Adult language education is not widespread and encompasses only a limited share of the target group. Younger and more educated people are interested in learning the language – these people find that it gives them advantages on the labour market. Interest is related to the language needed in one’s work, and the language is learned in short cycles. The result is segregation and exclusion from society.

The biggest threat is segregation, which creates closed ghettos. The main fears are being outperformed by immigrants: they speak of low native population growth and high birth rate among immigrants, immigrants as a social burden and vector for crime, allegedly unclean lifestyles and lack of concern and scorn for local culture. The corresponding racism cliché lies in the creation of a generalized “them” model and depicting the rift between “us” and “them” as unbridgeable (Wievorka 1992:342): “they” are not prepared to adopt the concept of nation-state and cast aside language and other social norms.

Nor have the tensions and conflicts of past periods gone away. New language policy phenomena have arisen, of which Ozolins (2002) cites the following, classifying them as phenomena of linguistic imperialism:

1. direct or concealed establishment of a non-local language in an increasing number of fields in public and social relations;
2. prevalence of asymmetric bilingualism based on diglossal attitudes;
3. restriction of functions in which local languages are used, often accompanied by ideological stigmatization of the languages in favour of a more “modern”, “developed” or “international” language;
4. when a large country such as a superpower ceases to exist, the colonists identify themselves as a minority that is under attack to ensure that the language of the former superpower remains in place as the lingua franca and they demand asymmetric bilingualism (along with their monolingualism) based on minority rights, which essentially do not regulate the situation.

### 1.3. Language policy

Language policy is used for directing, influencing and shaping the linguistic environment. It encompasses the social environment and influences society, changing its linguistic properties. Thus the function of language policy is to manage and control society’s linguistic development toward objectives defined by those in power, consisting of intentional attempts to influence use of language and communication through the legal system, administrative affairs and public relations system. Still, the field of language policy is narrower than the language environment, mainly encompassing language officials and public functions. According to Calvet (1986: 20), language policy is the set of instruments deliberately brought to bear on the common tangents between language and society. Language policy instruments originate from the legal, administrative and oversight system (e.g. ombudsman, chancellor of justice or special tribunal) and public relations, while planning of activity and evaluation are classified as language planning<sup>1</sup>. Language policy is a reflection of the power relations in society, allowing them to be transposed into the language environment. Some outcomes of language policy are unplanned, arising

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<sup>1</sup> Phillipson and Skutnabb-Kangas (1996) define language policy as follows: “Language policy is concerned with language matters at the collective level, whether suprastatal, statal, or substatal. It is guided by overall policy concerns such as appropriate educational policy or the facilitation of democratic citizenship. The focus in language policy studies on the collective level implies a concern with social structure and power.”



from standards and administrative measures established for other purposes (such as consumer protection, issuing of documents, judicial and police activity) while others are based on a specific administrative system with defined functions where each institution within the system has a specific language policy function. Such institutions are established and their activity organized based on language planning, consisting of an applied programme the performance of which is verifiable in practice.

The main activity of language policy is to regulate the language environment through creation of a language planning-based legal environment and administrative apparatus as well as through linguistic image creation, based on its own objectives (such as preservation of language, increasing competitiveness, excluding other languages). Lo Bianco's (1987) **4-e-policy** highlights the primary language policy fields:

- **enrichment** (related to cultural heritage);
- **equality** (human rights, chiefly);
- **economy** (e.g. obtaining added value through adding or removing a language, increasing efficiency and economic success by the right choice of educational programme or foreign language education policy);
- **external**, foreign policy and economic aspects, including conflict avoidance and resolution and good-neighbourly relations.

Lack of language policy may lead only to creation of a majority government that serves mainstream interests and which marginalizes other groups, resulting in lack of educational attainment, rise in crime, unemployment, increased xenophobia and reduced security throughout society. Ineffective foreign language policy can result in reduced competitiveness on the international level and a costly and unbalanced social structure due to language barriers within and around society.

Baldauf and Kaplan (1997) note that some of the activities that make up language policy take place without intervention of the language planners, as they are part of the solution to a problem in some other field, the result of laissez-faire language planning, taking place spontaneously or haphazardly or evolving from a narrowly defined ad hoc solution. Most language policy solutions at the microlevel (e.g. interaction of personnel with a French-speaking chef at a food service company) do not require the intervention and assistance from the language planners.

Language policy is an integrated part of social policy. Usually it encompasses culture (ensuring the sustainability and creativity of the main ethnicity's culture and language through films, literature, media, music etc), trade and commerce (the ability to use the official language effectively within the country and to use appropriate foreign languages in foreign relations), foreign policy (ensuring the fluid activity on the part of diplomats, officials and experts in a foreign-language environment, distribution of language(s), shaping international language law corresponding to the respective country's interests), and education (ensuring that one's own citizens have proficiency in the official language(s) and the necessary foreign languages). In some countries, (a) separate government institution(s) or department is in charge of the relevant area, but in some countries the different functions are divided up among ministries in different spheres. There are a total of 600 such institutions worldwide.

Language planning and related activities are ordinarily related to broader social restructuring, the objectives of which lie outside of language. By this means, the linguistic choices of language planning are made depending on multilingual factors, making language planning a part of larger political objectives.

In the course of language policy activities, a language regime is established – a system of measures in legal, administrative and public arenas – for ensuring stability and sustainability of the linguistic environment. More than one regime may be in simultaneous use in the same administrative unit. For example, Estonia has three: the territorial monolingual regime in the sense of an official language, a bilingual regime (simultaneous use of an official language and minority language) on the principle of territoriality and cultural autonomy, and foreign-language regime in fields determined by the Cabinet



(such as customs, foreign trade and tourism). In the case of multiple languages, the user chooses the language being used (personal principle) or this is determined by territory (territorial principle). In essence, diglossia also follows the principle of a language regime, where a language is switched by field, such as the use of one language in church, government office or school, and the use of another at home or in an informal setting (minorities, immigrants). The language regime may be exclusive, precluding the use of other languages; or liberal, allowing other languages to be used alongside the required language.

## 1.4. Official language

An official language is a term used in language law. It defines the language in which public administration is conducted, and the use of that language (Rannut et al 2003). In general, the official language has to also be the primary language of government in order to fulfil all the linguistic functions required in the state. The purposes of an official language is to ensure the country's linguistic identity and unity of the citizenry, effective and sustainable functioning by way of upholding a high quality of language and to preserve the official language in international relations. The official language has a symbolic (ties the country's identity to the language) and practical function, defining the use of language in different fields.

The state influences language in four ways:

- through its own use of language – the language of the civil service, politicians and legal acts and other documents;
- through legal instruments;
- using educational planning measures, such as the planning of linguistic aspects of education or public media;
- through image-building measures.

The official language defines the status of language and, to some extent, the language corpus. Thus the concept does not directly define the quality of the relevant language. However, it does give a legal basis for requiring state and local government officials, and personnel at institutions in their jurisdiction and institutions under public law, state enterprises, foundations to adhere to a written language standard, and to apply sanctions to enforce the standard. This requirement also pertains to the virtual field, such as websites.

On this basis, government representatives can be required to always use high-quality official language and compile comprehensible texts.

Official language is a concept whose sphere varies from one country to another. The broadest interpretation is seen in France, while the scope of application of the official language in other countries is smaller. In some cases, the fields of application are left undefined, with room left for merely a symbolic function (in such a case, the language is usually in prevalent use and no legal support is needed).

The use of the official language cannot generally be required of individuals in private dealings (this would go against the freedom of speech as a fundamental human right). However, the state can require that official language be used for employment, healthcare and insurance contracts as well as in documentation pertaining to work conditions, discipline and other agreements within an entity, as well as in job advertisements. In private companies, though, use of language falls outside the concept of official language, although there are exceptions here. In business, use of official language applies not just to contracts and accounting but also to packaging, labelling and user manuals. In their absence, the state can levy sanctions.





The official language requirement in media channels may also encompass quality of language (correct grammar, vocabulary and pronunciation, and the furnishing of translations, precision and prominence). In education, the state must have set forth the required standard of proficiency in the official language by the end of basic education (9th grade). The use of other languages in the state proceeds from the principle that they must not harm the official language.

In Estonia, the sphere of the official language follows general standards of international law. One of the most important differences is the limitation of the scope of use of the official language in the private sphere, as there is no direct need for it or, indeed, an internationally accepted legal basis.

The requirement of proficiency in and use of the official language is usually related to spheres of use of the language, such as administration, service, media, education, the court system and citizenship.

## **1.5. Regulation of language and linguistic human rights**

Regulation of language becomes necessary when one language group considers its language threatened by other languages (speakers of the other languages, more precisely) in the same region.

Linguistic co-existence based on linguistic contacts is a natural source of problems and conflicts. Governments try to cope with such phenomena by laying down legal standards, defining the official and public use of languages above all in law, administration and education and, to a lesser extent, in the private sphere (culture, communication, work, commerce and business). No country has to be proficient in the languages of all citizens and permanent residents, and thus, to maintain order and comprehensibility, the state thus mandates one or more languages as official and public-use languages in different regions and areas of use.

The more concrete a state's language policy, the more precise the corresponding legal system, consisting of linguistic rights, responsibilities and restrictions established for that purpose.

States have obligations to their citizens and permanent residents pertaining to language or languages. These obligations are linguistic human rights, used by the state to lay a basis for use and study of recognized languages. Such rights are laid down in national and international law.

Skutnabb-Kangas and Phillipson (1994: 71) have said that linguistic human rights encompass two fundamental rights, which are:

- \* the right to learn the state's official (written) language;
- \* right to one's native language, i.e. right to a native language identity, education and public services.

The other special characteristic is individuality, where the rights belong to each member of the group. Most linguistic rights are non-transportable: they belong to regional language groups of sufficient size that must meet specific socioeconomic, demographic and linguistic requirements. The hallmark of a collective right is the corresponding number of those with the rights and responsibilities (such as minority and majority).

Yet there is no right (or related obligations) for preservation of a language group.

In most cases, international law does not treat languages directly but rather regards them as characteristics of people in a certain group, identity and dignity, expressed in different fields of use of a language.

Aliens are the most vulnerable group in a society and suffer most due to discrimination. When we look at immigrants and other expatriates, difficulties arise from sharing of responsibility between the country of origin and the receiving country. In the case of stateless people and those who have lost contact with



their homeland (such as refugees and asylum seekers), special protection is needed to determine who should bear responsibility and the obligations to the relevant persons (Drzemcewski 1988).

According to Alfredsson (1990: 14), immigrants who have arrived voluntarily from various countries do not require minority protection. They may be acting due to economic pressure or some other factor, but they arrive voluntarily and thus they should take into account both the good and bad sides of their decision. This position gibes with the view that minorities cannot arise overnight by way of migration. Thornberry (1991: 171) shares this view, asserting that countries cannot have the obligation to promote foreign culture at their own expense; the country of origin should have this obligation.

To sum up, it can be said that there is no legal protection that guards against assimilation of aliens. The primary basis for protection – equality in the eyes of the law – is not sufficient or appropriate for ensuring sustainability of language. Both functional change of language, where language is switched by field of use, and demographic change of language, where language changes in the next generation happen anyway upon implementation of a relevant language law, leading to loss of the immigrants' native tongue and transition to the local language within two or three generations.

The rights of individuals and special rights – minority rights – are much more extensive.

The OSCE High Commissioner on National Minorities has issued guidelines and recommendations specifying the rights of minorities. These are recommendations that extend educational and other rights of minorities, based on the following fundamental human rights and liberties (Sieminski 1997: 5):

- the right of everyone to education (Article 13: International Covenant on Economic, Social and Cultural Rights);
- liberty of individuals and bodies to establish and direct educational institutions (Article 29.2: UN Convention on the Rights of the Child);
- right to non-discrimination (Article 2: International Covenant on Civil and Political Rights);
- rights of people belonging to a minority (Article 27: International Covenant on Civil and Political Rights);
- freedom of assembly (Article 21: International Covenant on Civil and Political Rights);
- right to take part in the conduct of public affairs (Article 25: International Covenant on Civil and Political Rights);
- minority education issues (CE European Charter for Regional and Minority Languages; CE Framework Convention for the Protection of National Minorities; OSCE Copenhagen document).

The main emphasis of the recommendations is on equality and freedom through integration. Individuals belonging to national minorities are encouraged to learn the official language of the state. The recommendations stress that isolated parallel education structures do not support social integration of the society in a given state. Attention is drawn to the need for decentralization of the education system, which would allow education to be organized more democratically at the local level. Parents must have the opportunity to choose between different forms of education. The solution seen as achieving the right balance in multilingualism is to use the minority language where possible as a language of instruction, gradually increasing the share of the official language, thus giving the native language a chance to become instilled in the child's mind, facilitating subsequent cognitive learning independent of language.





## 1.6. Equality in the eyes of the law – non-discrimination

The principle of non-discrimination must be seen as a right of the individual that does not apply to a language group. All differences cannot be a basis for discrimination: namely, equality and the right to non-discrimination to protect the individual from unjustifiably and unacceptably being treated on a different footing (see the comment from the UN Human Rights Committee<sup>2</sup>).

The question of discrimination in language issues comes up in connection with language requirements related to work, position or citizenship. Many countries have a language requirement linked to naturalization. The international human rights standard proceeds from the idea that it is not unfair to demand that people communicate in the respective country's language. At the same time, people who seek citizenship may be required to have proficiency in the official language, which encompasses reading, writing and communicating in the official/state language.

Such an interpretation of international law has apparently spread to other cases dealing with language requirements for employment or position. European Union regulation no. 1612/68 Article 3 allows to establish requirements of linguistic knowledge by reason of the nature of the post to be filled. A number of court decisions have refined this principle. The European Union allows member states to introduce policies necessary for protection and furtherance of their respective official languages.

The legitimacy of the objective and social and cultural aspects are important when it comes to language issues. The objective of official language or state language policy is to ensure the integration of all citizens on the basis of a common language so that they can actively take part in society's development and benefit from it. Such a policy is legally correct and widespread in the world. Some aspects must be adhered to in this regard: first, the objective cannot be the elimination of language differences. The goal must not be the creation of linguistic ghettos in which people have limited territorial and social mobility. The requirement of proficiency in the official language is this consistent with human rights as long as it does not require other languages to be completely driven out.

Besides equal treatment, another aspect that must be examined is guarantees for equal opportunities, which generally pertains to institutional reorganization for fulfilling long-term objectives, such as in education, labour policy etc.

## 1.7. Integration

Democracies that respect human rights are expected to have a society that has a significant degree of integration, where the members of society:

- have a sufficient knowledge of laws and the legal rules and respect them;
- are loyal to the country of location and view it and its national majority, language and culture with respect;

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<sup>2</sup> The UN Human Rights Committee's general comment on non-discrimination from 1989 states: "The term 'discrimination' should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as...language...and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. The enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance."



- are familiar with the culture of the country of location and respect it;
- keep up to date with news from the country of location and follow its media;
- do not take contrarian positions and views with respect to the official positions and mainstream media of the country of location;
- have security policy views similar to those of the national majority in the country of location;
- acquire the official language in preschool and school years (i.e. as part of compulsory schooling);
- use predominantly the official language in conducting business and communicating with each other (not including speakers of other languages who share the same native language).

The exception may be people who lack the citizenship of the relevant country – people who have recently arrived or are more associated with some other country. At the same time, there should not be exceptions in regard to the relevant principles made based on ethnicity, language and religion, place of residence, age and gender.

In Estonia's case, allowances must be made for the Soviet occupation, which lasted half a century (until 1991), during which time settlement took place by predominantly Russian-speaking immigrants with knowledge, views and behaviour that were different to (and sometimes the opposite of) those of the national majority, who generally did not adopt the local culture, language and views and thus led a separate existence. For this reason, the responses from older age groups can be expected to vary to a greater extent from the responses from people of the national majority. But responses should be expected to coincide between those who have acquired education and become socialized in independent Estonia, that is, people under the age of 40. The mainstream itself could be expected to have developed a minority complex during the long occupation period (see Tajfel 1974), due to which those in the older generation of the mainstream may cling to positions that do not correspond with their interests and values and coincide with past responses to those representing Moscow-based power, so that "there would be no problems."

Integration with the mainstream is a process that can take more than one generation. If the initial state is that the group is clearly at odds with and differentiated from the mainstream, then adaptation will take place little by little, leading to the fading of significant differences in public space and resulting in an integrated society (Erikson 1968, Skutnabb-Kangas 2000, Rannut et al 2003).

In the following section, we will analyse how the survey results conform to the given integration model. 71–110.