FREEDOM OF LANGUAGE AS A PARTLY TERRITORIAL RIGHT OF EVERYONE AND THE ISSUE OF MINORITY LANGUAGE RIGHTS

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Abstract. International law recognizes language rights within international human rights law and the study shows that while codifying human rights within the UN and the Council of Europe, legislators have made two serious mistakes that affect language rights. The competent bodies of implementation have corrected, to some extent the first mistake, but they have not recognized the second one or if they have recognized it, they have not interpreted it appropriately. Then the study concludes that what is most lacking from international law regarding language rights is the explicit recognition of freedom of language and a satisfactory definition of minority language rights. However, since minority language rights cannot be properly defined in the absence of the definition of freedom of language, the study seeks to define this freedom and according to the definition found, freedom of language is a partly territorial human right.

Keywords. international human rights law, personal universality of human rights, recognition of freedom of language, territorial human rights, minority rights as additional rights, minority language rights

Introduction

Man-made law and its application are not perfect and this is also true of international law. Therefore, it is an important task for theorists and commentators to discover or identify the weaknesses of both the

provisions of international law and their application and thus to contribute to their elimination. These tasks seem to be especially important with regard to language rights, since several theorists and commentators think that current recognition of these rights is not satisfactory. I have also held for decades that international regulation on language rights and interpretation of this regulation by competent international bodies of implementation are, to a certain degree, problematic and incomplete. Since the very beginning, I have reasoned for these propositions, raising arguments from political philosophy, political and legal theory, international and constitutional law, history of law and occasionally from social linguistics.

In this study, I first argue that in connection with language rights the UN and Council of Europe (CoE) legislation has two serious weaknesses and though the UN Human Rights Committee (HRC), the European Commission of Human Rights (ECommHR) and the European Court of Human Rights (ECtHR) have eliminated the first weakness, to a certain extent, they have not yet recognized the second one properly. This critical analysis leads to the proposition that what is most lacking from international law regarding language rights is a) the explicit recognition of freedom of language in a well-defined form and b) a much more satisfactory definition of minority language rights. It is important to stress, however, that the realization of this claim does not necessarily entail amendments to existing international instruments. The reason is that international law, in my opinion, includes both freedom of language in a well-defined form and a much more precise definition of minority language rights implicitly or tacitly, and accordingly, the claim could be realized through interpretation of law within the process of implementation of the respective instruments. Nevertheless, it would be desirable to amend the instruments in question in the long run.

As for the relationship between freedom of language and minority language rights, it will turn out that the latter cannot be satisfactorily defined in the absence of a detailed definition of the former. Therefore, in contrast with the usual approach, this study does not focus on a more precise definition of minority language rights□ instead, it attempts to deduct freedom of language and a relatively detailed definition of it mainly from the provisions of the relevant instruments and their interpretation given by the competent bodies of implementation.

The First Serious Mistake of Legislation

Current international law recognizes language rights in international human rights law and in a closely related legislation. According to this legislation, human rights are (personally) universal rights, i.e. rights of everyone and therefore, the wording of most rights in UN and CoE human rights documents begins with the terms "everyone" or "no one".[1]

Nevertheless, in the case of language rights, the legislators have drafted these rights not so much as universal rights, i.e. as rights of everyone but exclusively or almost exclusively as minority rights, i.e. as rights of persons belonging to linguistic minorities. And this seems to be a serious mistake or inconsistency. Moreover, two professors of international law, Hersh Lauterpacht and John P. Humphrey made the mistake already at the very beginning of international codification of human rights that took place within the UN just after the Second World War. For some reason Humphrey (who served at that time as director of the Division of Human Rights of the UN Secretariat) prepared the first draft of the Universal Declaration of Human Rights (UDHR) or that of the International Bill of Human Rights (IBHR) (Hobbins, 1989, 22.) and he included a provision that dealt with, inter alia, language rights. He took this provision, i.e. Article 46 of the so-called Secretariat Outline (Draft Outline of an International Bill of Human Rights, 1947, 486.) from Lauterpacht's book entitled 'An International Bill of the Rights of Man' almost word by word. (Lauterpacht, 1945, 72␣Morsink, 1999, 270-272.)[2] Lauterpacht's provision (i.e. Article 12 of his Bill) intended to transpose important elements of the general substantive law of the international minority protection system established after the First World War into the emerging international human rights law and Humphrey agreed. However, Lauterpacht made a mistake and not so much as he transposed certain minority rights, but as he did not transpose a language right, actually freedom of language which was certainly not a minority right in the minority protection system (Polish Minorities Treaty, 1919, Art. 7(3)).[3] Unfortunately, Humphrey did not correct Lauterpacht's mistake and this contributed to the strange fact that while the international minority protection system recognized freedom of language as a non-minority right, as a right of every national, international human rights law does not (Andrássy, 2013, 238-261, 383-392.).

After heavy debates, the minority article was deleted from the draft UDHR but in the end, the General Assembly (GA) adopted a separate resolution, in which it declared that the UN 'cannot remain indifferent to the fate of minorities'. (Fate of Minorities, 1948.) Nevertheless, due to the omission of the minority article, the UDHR contains only one provision concerning language, which states that '[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, *language [...]*. (UDHR, 1948, Art. 2(1), *Emphasis added.*)

In 1950 the CoE adopted the European Convention on Human Rights and Fundamental Freedoms (ECHR 1950) and thereby took '[...] the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration' (ECHR 1950, preamble). The wording of the rights recognized in the ECHR follows the wording of the corresponding articles of the UDHR, but the ECHR defines these rights in more detail and therefore, certain rights in the ECHR already contain some linguistic right elements. Namely, Article 5.2. sets forth that '[e] veryone who is arrested, shall be informed promptly, *in a language which he understands*, of the reasons of his arrest and of any charge against him'. Further, Article 6.3 sets forth that '[e]veryone charged with a criminal offence shall have the following minimum rights□(a) to be informed promptly, in a *language* which he understands and in detail, of the nature and cause of the accusation against him□[...] (e) to have the free assistance of an interpreter if he cannot understand or speak the *language* used in court'. (*Emphases added.*) Thus, since everyone has these linguistic right-elements, these are consistent with the personal universality of human rights. Finally, Article 14 of the ECHR transposed the non-discrimination provision of the UDHR with some differences□ accordingly, '[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, [...] association with a national minority [...]'.

In 1966 the UN adopted the International Covenant on Civil and Political Rights (ICCPR, 1966.) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966.) and Article 14 of the ICCPR transposed the two universal right-components relating language use

of Article 6 of the ECHR. As far as non-discrimination is concerned, Article 2 (1) of the ICCPR sets forth that each State Party '[...] 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* [...]'. (*Emphasis added.*) Further, Article 26 of the ICCPR provides another provision on non-discrimination that mentions also the requirement of non-discrimination on the ground of language. Article 2 (2) of the ICESCR also secures non-discrimination on the ground of language.

Last, but not least, the ICCPR contains a minority article – this is actually a simplified version of the original Lauterpacht/Humphrey article, however, it is deprived of most specific right-elements. This minority article, i.e. Article 27, recognizes three minority rights, out of which one is a language right – the right of persons belonging to linguistic minorities '[...] to use their own language'.[4] Article 27 provoked heavy debates – for example, a commentator wrote that Article 27 '[...] raises more problems than it really resolves [...]' (Tomuschat, 1983, 950.). Nevertheless, it was a real step ahead that in 1992 the UN, inspired by Article 27 adopted its minority declaration (UN Minority Declaration, 1992), and that in 2005 the UN Working Group on Minorities adopted a Commentary to the Declaration (UN Commentary 2005).

The CoE has extended the range of rights protected by the ECHR by a number of protocols but language rights have not been included, although the Heads of States and Governments in 1993 envisaged and initiated the inclusion of a minority right (CoE, 1993, Appendix II, para. 10. (4)). Nevertheless, the CoE adopted the European Charter for Regional or Minority Languages (Charter) in 1992 and the Framework Convention for the Protection of National Minorities (Framework Convention) in 1995 and thus the emphasis was placed on minority language provisions in the CoE as well.

So far, the UN and CoE legislation has largely reached the above-mentioned results in recognizing language rights. The main weakness in this achievement is that while human rights are (personally) universal rights, rights of everyone, the UN and CoE human rights (and related) instruments recognize, except penal affairs, only minority language rights – as if outside penal affairs only persons belonging to linguistic

minorities would use language, persons belonging to linguistic majorities not. In sum, current recognition of language rights in UN and CoE human rights (and the related) instruments is in contrast with the (personally) universal character of human rights on the one hand, and is unreasonable in light of the actual use of languages by humankind, on the other.

Recognition of Freedom of Language by Bodies Implementing UN and CoE Instruments

Bodies implementing international instruments may be able to address the shortcomings of the instruments at least in part, and there have been such rectifications regarding language rights, too. In a case, the French-speaking Belgian applicants stated that pursuant to the Belgian regulation concerning language use, they did not '[...] receive administrative documents in French' and claimed that this constituted a violation '[o]f Articles 9 and 10 of the Convention since freedom of thought and expression imply *linguistic freedom*' (ECommHR 1965, p. 340, *emphasis added.*). Well, neither Article 9 of the ECHR on freedom of thought, religion and conscience, nor Article 10 on freedom of opinion and expression specify the language(s) in which everyone has these freedoms. Nor is it clear whether, if freedom of thought and expression imply 'linguistic freedom,' this freedom extends to administrative matters.

The Belgian Government took its position by quoting the ECommHR□ 'It is clear that one has to distort the usual meaning of the passages if one is to transform the right to express one's thought freely in the language of one's choice into a right to complete, and insist on the completion of all administrative formalities in that language.' (ECommHR, 1965, p. 348□Nagy 2020, 12.) This suggests that the ECommHR and the Belgian Government acknowledged that freedom of thought and freedom of expression include 'the right to express one's thought freely in a language of one's choice' but this right does not extend to relations with administrative authorities. Then the ECommHR stated that 'in the last analysis,' the applicants were '[...] claiming the right to be able to use the language of their choice or of their mother tongue or usual

language, in their relations with the authorities […]'. However, '[…] it appeared that the guarantee of this right' lied 'outside the scope of the Convention, in particular of Articles 9 and 10.' The ECommHR also stated that there was '[…] no article in the Convention or First Protocol to expressly guarantee "*linguistic freedom*" as such' (ECommHR 1965, p. 360, *emphasis added*).

From all these, two propositions are especially important for our subject. One is that 'in the last analysis,' the applicants did not insist on the right to use the language of their choice in their relations with the authorities or they were satisfied with this right in a limited sense□they claimed this right as the right to use their mother tongue (as a chosen language) in these relations. The other proposition was made by the ECommHR□accordingly, there was 'no article in the Convention or First Protocol to *expressly* guarantee "linguistic freedom" as such' (*emphasis added*.). This ascertainment suggests that the ECommHR concluded that because Articles 9 and 10 include the right of everyone 'to express one's thought freely in the language of one's choice', these articles include, though only tacitly, 'linguistic freedom'.

While considering two Canadian cases, the HRC also dealt with the linguistic aspect of freedom of opinion and expression. Like Article 10 of the ECHR, Article 19 of the ICCPR does not specify the language(s) in which everyone has the right to freedom of expression. However, in contrast with Article 10 of the ECHR, Article 19 of the ICCPR sets forth that everyone has this freedom e.g. 'orally and in writing' which is impossible without using a language□therefore, it is not easy to avoid the question□in which language(s) does everyone have the right to freedom of expression? The answer of the HRC□'A State may choose one or more official languages, but it may not exclude, outside the spheres of public life, the freedom to express oneself in a language of one's choice'. (HRC, 1993, para. 11.4.)

It seems that with this statement the HRC recognized freedom of language or 'linguistic freedom' and, at the same time, pointed out that this freedom does not extend to the spheres of public life. As for recognition of freedom of language, my argument is that 'the freedom to express oneself in a language of one's choice' is the freedom to choose the language to use, and this freedom includes, after all, the freedom

to maintain or to change one's own language. However, in this case, the freedom in question is not only the freedom to choose the language to use, but it is freedom of language, just as the freedom to 'have or to adopt a religion or belief of his choice,' together with the freedom 'to manifest his religion or belief' is called freedom of conscience and religion. Thus, just as freedom of opinion and expression, as well as freedom of thought, conscience and religion include the freedom to choose one's own opinion, thought, conviction and religion, so does freedom of language include the freedom to choose one's own language. And just as freedom of opinion and expression, as well as freedom of thought, conscience and religion include the freedom to express the chosen (and any other) opinion, thought and conviction or the freedom to practice the chosen religion, so does freedom of language include the freedom to use the chosen (and any other) language.

It must be added that language change or 'language shift' often takes place in reality, mostly among descendants of migrants and descendants of persons belonging to national or historical minorities or indigenous groups and that the CoE expressly lays down the obligations of the Parties concerning such voluntary language change and maintenance (Framework Convention, 1995, Art. 5).

The above-mentioned statements by which the ECommHR and the HRC seem to recognize freedom of language (and the similar statements of the ECtHR (ECtHR 2012, paras. 71-77.)) are incomplete and this is understandable to a certain extent□ when considering a case it may hardly be the task of such bodies, for example, to define in detail a new freedom they deduct. This is already more a matter for commentators and (possibly) legislators. On the other hand, it is already debatable whether these bodies ought to have named the deducted freedom. However, since these bodies have refrained from doing so, the naming also awaits commentators and theorists□ the problem is that they have not taken this task seriously enough so far. In any case, freedom of language is still a lesser-known freedom.

At the same time, it is clear from the statements of the ECommHR, the ECtHR and the HRC that freedom of language is *a private-life freedom*, insofar as it does not extend to the spheres of public life. It is also clear

from the same statements that this private-life freedom is everyone's freedom (mostly) everywhere in the world, since freedom of expression from which freedom of language derives is everyone's freedom (mostly) 'regardless of frontiers'.

Freedom of Language as a Partly Territorial Human Right

In the so-called Belgian linguistic case, the ECtHR explained why the right of education recognized in Article 2 of the First Protocol (P1) does not include the right to choose the language of education. In connection with this, the ECtHR noted that Article 14 on non-discrimination, '[…] even when read in conjunction with Article 2 of the Protocol (Art. 14 + P1-2), does not have the effect of guaranteeing to a child or to his parent the right to obtain instruction in a language of his choice'(ECtHR, 1968, B, para. 11.). 'Furthermore, to interpret the two provisions as conferring on everyone within the jurisdiction of a State a right to obtain education in the language of his own choice would lead to absurd results, for it would be open to anyone to claim any language of instruction in any of the territories of the Contracting Parties'. (ECtHR 1968, B para. 11.)

Most theorists and commentators came to similar conclusions. For example, de Varennes wrote that '[t]he state machinery must function in a language, or at most in a few languages, for most of its communication, work and service activities, making it impossible not to make any distinctions as to language. […] this is an unavoidable situation, since no state has the resources to provide all of its services in every language spoken within its jurisdiction'. (DeVarennes, 1996, pp. 80 and 88.) The problem is commonly referred to as the official language problem and '[t]he theory of official languages echoes with pessimism as to whether any elegant solution could exist'. (Pool, 1991, p. 495.). According to most theorists, the reason is that there are only two ways through which '[a] solution that treats all speakers of all languages identically' could be reached□one is to officialize everyone's language in all states and the other is to make an entirely alien language official in all countries, but both are impractical (Pool, 1991, pp. 495-496.)

However, I think that the positions of the ECtHR and the theorists/commentators are improper because they all neglect that international human rights law recognizes territorial and in part territorial rights and that therefore, there exists a third solution to the problem and this third solution is the 'elegant' one which may even prove to be practicable.

What led me to discover this third and 'elegant' solution was, in particular, Article 21 of the UDHR. Para. 1 of this Article sets forth that '[e]veryone has the right to take part in the government of *his country*, directly or through freely chosen representatives' and para. 2 states that '[e]veryone has the right of equal access to public service *in his country*' (*emphases added*). The special feature of these rights or right-components is that everyone has them but only regarding one country or in one country only. In other words, these rights or right-components are territorial rights or right-components. From this, I concluded that official language rights must also be such rights because in this case it is sufficient if everyone has these official language rights in one state only. Consequently, the number of languages that each state should officialize would greatly be reduced and thus the official language problem would become resolvable.

Of course, the number, size and prevalence of (native) languages in each country varies, therefore, there would remain countries that should still officialize too many languages. However, there are certain ways to cope with these problems without compromise. For example, it is not necessary to make a language official in a part of a country in which the language is not really in use. For the problems that may remain after the application of this and other auxiliary measures, the governing rule could be what the ECtHR worked out in the Belgian linguistic case. The HRC adopted this rule and laid it down as follows: '[...] the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria of such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.' (HRC, 1989, para. 13.)

However, where do persons have the right to use their own language as an official language and, accordingly, where do persons have the right to have their own language as an official language? From an analysis of the

IBHR and its preparatory work (Andrássy, 2013, 148-173□Andrássy, 2017, 185-231.) and of certain theoretical sources such as Kymlicka's consent theory and its critique given by Patten (Kymlicka, 1995, Patten, 2006) (Andrássy, 2018), as well as from the UN Commentary (UN Commentary 2005, paras. 10-11.), the following main conclusions derive[5]□

1. Most people have the two official language rights in the state of which the territory includes the area where their own language has traditionally been spoken and they live belonging to the traditional speakers of their language in the area in question or they live elsewhere within the state but originate from the area and the said linguistic community. This obviously includes that persons belonging to historical linguistic minorities (whether these minorities are called e.g. 'indigenous', 'historical', 'autochthonous', 'traditional' or 'national' minorities), all have the two official language rights in this state and needless to say how important this is for them, even for those who already enjoy these official language rights pursuant to national law.

2. Those persons who live in a state as immigrants or descendants of immigrants and they originate from an area of another state in which their own language has traditionally been spoken, have the two official language rights in the state to which their area of origin belongs.

3. Those persons who live in a state as immigrants or descendants of immigrants and they or their ancestors have changed their own language (practicing their freedom of language), have the two official language rights in their new home state (provided that their new own language has been a traditionally spoken language there).[6]

Freedom of language and official language rights are closely linked. This follows mainly from their common characteristic□the 'own language'. Official language rights are everyone's rights regarding one's own language but freedom of language as a private-life freedom also includes one's own language as a fundamental component□the strongest right of this freedom is, as we have seen above, the right of everyone to change (or maintain) her/his own language. Therefore, freedom of language has a wider concept that includes not only freedom of language as a private

life freedom but official language rights, too. And because freedom of language as a private life freedom is a non-territorial right, at the same time official language rights are territorial rights, freedom of language in a wider sense is a territorially mixed right.

However, there is a serious problem with this result□it is that while its basis is the claim that the ECHR and the ICCPR (and the ICESCR) recognize at least some territorial and territorially mixed rights, such rights are practically unknown within the interpretation and application of the said instruments.

The Second Mistake of Legislators and the Related Errors of Bodies of Implementation

Pursuant to Article 1 of the ECHR and Article 2(1) of the ICCPR (and Article 2(3) of the ICESCR) each State Party must respect and ensure to all individuals within its territory and/or subject to its jurisdiction the rights and freedoms recognized in the ECHR and the ICCPR (and the ICESCR). From this, the ECtHR and the HRC conclude that *everyone everywhere* has the rights and freedoms recognized in the ECHR or the ICCPR (ECtHR 1968, B, para. 11□HRC 1986, paras. 2 and 7.). Accordingly, all the rights recognized in these instruments are conceived as non-territorial rights and this is the challenge for the 'elegant' solution to the official language problem.

On the other hand, the wording of certain rights of both the ECHR and the ICCPR contains references that suggest that everyone has these rights but not everywhere. In some cases, the HRC perceives the contradiction and therefore considers a 'general rule' that everyone everywhere has the rights and freedoms recognized by the ICCPR, but adds that there are some rights that comprise exceptions to this rule. The mistake the HRC makes in this case is that it conceives of these rights not as exceptions to the clause 'everywhere', but to the clause 'everyone'.

For example, the HRC holds that Article 13 right against arbitrary expulsion of aliens is not a right of everyone (in the State Parties)□only aliens have it in each State Party, citizens of the given State Party do

not. I agree, however, I believe that the appropriate interpretation of the right is different and it is that everyone has this right but only in those states in which (s)he counts as an alien. The reason why I consider this the appropriate interpretation is that the right is really a right of everyone (because everyone becomes an alien if s/he leaves her/his own country) and only this interpretation reveals the compliance of the right with personal universality of human rights. To make the argument even more complete, let us take Article 12 (4) of the ICCPR that sets forth that '[n]o one shall be arbitrarily deprived of the right to enter his own country'. Obviously, this is a right of everyone as 'no one shall be arbitrarily deprived of' it□however, the HRC holds that 'mere aliens' do not have this right regarding any single country (HRC, 1999, para. 20). I agree again but I raise the question□how is it possible that a right of everyone is not a right of everyone regarding any single country? And my answer is that this is possible if and only if the right is an exception to the 'general rule', according to which *everyone everywhere* has the rights and freedoms recognized in the ICCPR and the point is that the right in question is not an exception to 'everyone,' but to 'everywhere'. In other words, everyone has this right but not everywhere and therefore, I call this and the similar rights territorial rights.

A more thorough analysis also reveals that at least 40 per cent of the rights recognized in the ECHR and the ICCPR (together with the ICESCR) are in full or in part territorial rights, i.e. rights that everyone has but not everywhere or rights that everyone has partly everywhere, partly not everywhere. Therefore, these rights are no longer exceptions□what we see is rather a territorial division of human rights and a corresponding classification of them (Andrássy, 2021). Nevertheless, this territorial division of human rights does not lead to a collapse of the interpretation given by the ECtHR and the HRC of the rights recognized in the ECHR or the ICCPR and the ICESCR□the interpretation in question is largely correct, only incomplete, and sometimes expresses the correct content by bad terms.

To sum up, the second serious mistake made by UN and CoE human rights legislators was that they defined the obligations of the States Parties wrongly in Article 1 of the ECHR, in Article 2(1) of the ICCPR and in Article 2 (3) of the ICESCR. The reason was that the legislators assumed

that all the rights recognized by the ECHR, the ICCPR and the ICESCR were rights of everyone everywhere, i.e. that all these rights were non-territorial rights. On the other hand, the related mistakes of the bodies of implementation were that these bodies did not realize the mistake of the legislators, or if they realized it, they misinterpreted it.

Freedom of Language and the Issue of Minority Language Rights

At the beginning of this writing, I expressed my view that in connection with language rights two things are mainly missing from international law today□a) the explicit recognition of freedom of language in a well-defined form and b) a much more satisfactory definition of minority language rights. I added that both things are implicit in international law and are interlinked□minority language rights cannot be precisely defined in the absence of an express recognition of freedom of language in a well-defined form. The latter proposition is supported by an important thought of Capotorti and Thornberry and that of the HRC. Accordingly, the minority rights recognized in Article 27 must be interpreted as *additional rights* to the rights of everyone recognized in the ICCPR (Capotorti, 1979, para. 242, Thornberry, 1991, p. 180.). The HRC stated this thought both regarding all the three minority rights recognized in Article 27 and specifically regarding the language right□

'The Committee observes that this article establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is *distinct from*, *and additional to*, all the other rights which, as individuals in common with everyone else they are already entitled to enjoy under the Covenant.' (HRC, 1994, para. 1. E*mphasis added.*) 'The right of individuals belonging to a linguistic minority to use their language among themselves, in private or in public, is distinct from other language rights protected under the Covenant. In particular, it should be distinguished from the general right to freedom of expression protected under article 19. The latter right is available to all persons, irrespective of whether they belong to minorities or not." (HRC, 1994, para. 5.3.)

It is clear that the language right the HRC refers to regarding freedom of expression is the right it recognized in the Ballantyne case, i.e. the right of everyone to 'the freedom to express oneself in a language of one's choice,' 'outside the spheres of public life'. From this perspective, however, we must realize a serious problem, namely that what Article 27 states as the right of persons belonging to linguistic minorities is less than the right of everyone the HRC deduced from freedom of expression recognized in Article 19. Because while Article 27 states that persons belonging to linguistic minorities have the right only to use their own language, Article 19, according to the HRC, recognizes the right of everyone to use both her/his own language and any other one, too. Then it is quite clear why Capotorti argued so persistently that all the implications of Article 27 "must also be understood' (Capotorti, 1979, p. iv and paras. 615 and 617.) and why Thornberry wrote the following□'The point here is that, unless Article 27 is given a more forceful content, it adds nothing to the Covenant. Freedom of thought, conscience and religion is already protected by Article 18, and there is also, for example, as far as language and culture are concerned, the provision on freedom of expression in Article 19.' (Thornberry, 1991. p. 180.) Unfortunately, these 'implications' or the 'more forceful content' of Article 27 rights have not yet been derived completely so far.

In the above, I derived freedom of language as a right of everyone□ therefore, the minority language right recognized in Article 27 must be distinct from, and additional to, just this freedom and, of course, the explicit linguistic right-components of Article 14 right. And if starting from this right of everyone to freedom of language and the linguistic right-components of Article 14 right, it is already possible to derive the implications or the more forceful content of the minority language right recognized in Article 27 and to provide a fairly precise definition of this minority right. It is worth noting that the content of this definition of Article 27 language right is likely to be more forceful than the explicitly stated content of most language rights recognized in the UN Minority Declaration or the Framework Convention. However, these issues are already beyond the scope of this study.

References

Andrássy, György (2013), Nyelvszabadság – Egy egyetemes elismerésre váró egyetemes emberi jog. Budapest – Pécs□Dialóg Campus.

Andrássy, György (2016), Article 27 of the International Covenant on Civil and Political Rights. In, Marcel Szabó, Petra Lea Láncos és Réka Varga (eds.), Hungarian Yearbook of International Law and European Law, 2016, The Hague□ Eleven, 263-291.

Andrássy, György (2017), Történelmi kisebbségek, bevándorlók, emberi jogok. In, Andrássy György és Baranyi Ákos (szerk.), A történelmi és a bevándorló kisebbségek kulturális, vallási és nyelvi jogai. PTE ÁJK Pécs, 137-231.

Andrássy, György (2018), Az emberi jogok terület szerinti tagolódása. In Medias Res, 1, 35-59.

Andrássy, György (2021), Az emberi jogok területi tagoltsága és új, területi tipológiája, Forthcoming.

Beitz, Charles (2009), The Idea of Human Rights. Oxford□Oxford University.

Capotorti, Francesco (1979), Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities. New York□United Nations.

Csernicskó, I. – Kontra, M. (forthcoming, 2022)□The Linguistic Human Rights Plight of Hungarians in Ukraine. In□Skutnabb-Kangas, T. – Phillipson, R. (eds.) *The Handbook of Linguistic Human Rights*. Oxford□Wiley–Blackwell.

De Varennes, Fernand (1996), Language, Minorities and Human Rights. The Hague□Martinus Nijhoff

Donnelly, Jack (2007) The Relative Universality of Human Rights. *Human Rights Quarterly*, 2. 281-306.

Hobbins, A. J. (1989), René Cassin and the Daughter of Time□The First Draft of the Universal Declaration of Human Rights. *Fontanus*, 2, 7-26.

Kymlicka, Will (1995), Multicultural Citizenship. Oxford□Clarendon.

Lauterpacht, Hersh (1945), *An International Bill of the Rights of Man*. New York□ Columbia.

Morsink, Johannes (1999) The Universal Declaration of Human Rights. Origins, Drafting and Intent. Philadelphia□University of Pennsylvania.

Nagy Noémi (2020), Nesze semmi, fogd meg jól. A nemzeti kisebbségek nyelvi jogainak védelme az Emberi Jogok Európai Bizottságának és Bíróságának joggyakorlatában. *Pro Minoritate*, 3, 3-19.

Patten, Alan (2006), Who Should Have Official Language Rights? Supreme Court Law Review, 101-115.

Pool, Jonathan (1991), The Official Language Problem. American Political Science Review, 2, 495-514.

Raz, Joseph (2015), Human Rights in the Emerging World Order. In, Cruft, Rowan, Liao, Matthew and Renzo, Massimo (eds.) *Philosophical Foundations of Human Rights*. Oxford Oxford University, 217-231.

Thornberry, Patrick (1991), International Law and the Rights of Minorities. Oxford. Clarendon.

Tomuschat, Christian (1983), Protection of Minorities under Article 27 of the International Covenant on Civil and Political Rights. In, Bernhardt, Rudolf, Geck, Wilhelm, Karl, Jaenicke, Günther and Steinberger, Helmut (eds.) Völkerreicht als Rechtsordnung Internationale Gerichtsbarkeit Menschenrechte. Festschrift für Hermann Mosler. Berlin Springer, 949-979.

Van Parijs, Philippe (2011), Linguistic Justice for Europe and for the World. Oxford Oxford University.

Legal materials

CoE (1993) Vienna Declaration.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992). UN Doc. A/Res/147/135

Draft Outline of an International Bill of Human Rights (Prepared by the Division of Human Rights of the Secretariat), (1947). In Yearbook on Human Rights for 1947. New York, United Nations, 1949, p. 486.

ECommHR (1965), Inhabitants of Leeuw-St. Pierre v. Belgium (1965). App. No.2333/64 partial decision

ECtHR (1968), Case "relating to certain aspects of the laws on the use of languages in education in Belgium" (1968). App. No. 2126/64, Judgment, 23 July, 1968.

ECtHR (2012) Egitim ve Bilim Emekcileri Sendikasi v. Turkey, App. no. 20641/05

European Charter for Regional and Minority Languages (1992) ETS. 148.

European Convention of Human Rights (1950). ETS. No. 005.

Fate of Minorities (1948). UN Doc. A/Res/217 (III) E

Framework Convention for the Protection of National Minorities (1995) ETS. 157.

HRC (1986). General Comment No. 15

HRC (1989). General Comment No. 18

HRC (1993), Ballantyne, Davidson, McIntyre v. Canada, 358/1989. and 385/1989.

HRC (1994). General Comment No. 23

HRC (1999). General Comment No. 27

International Covenant on Civil and Political Rights (1966). UNTS Vol.999, I-14668.

International Covenant on Economic, Social and Cultural Rights (1966). UNTS Vol. 993.

Polish Minorities Treaty (1919) http://www.forost.ungarisches-institut.de/pdf/19190628-3.pdf

UN Commentary (2005), Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, E/CN.4/Sub.2/AC.5/2005/2.

Universal Declaration of Human Rights (1948). UN Doc. A/Res/217 (III) C

Endnotes

1 This personal universality has been questioned, mainly in the context of the 'timelessness' of human rights (Beitz 2009, 30, 58.) but some have pointed out that the rights in international human rights law are '[...] synchronically universal [...]' or that they are '[...] universal – for us, today.' (Raz, 2015, 225□ Donnelly, 2007, 288.)

2 Article 12 of Lauterpacht's Bill was the following□'In States inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right to establish and maintain, out of an equitable proportion of the available funds, their schools and cultural and religious institutions and to use their own language before the courts and other authorities and organs of the State.' Article 46 of the Secretary Outline stated□'In States inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right to establish and maintain, out of an equitable proportion of any public funds available for the purpose, their schools, and cultural and religious institutions, and to use their own language before the courts and other authorities and organs of the State and on the Press and in public assembly.'

3 The provision was as follows□'No restriction shall be imposed on the free use by any Polish national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings.'

4 The full text of Article 27 is as follows□'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'.

5 I note that these conclusions are, to a certain extent in accordance with van Parijs' theory on linguistic territoriality, too (Van Parijs, 2011, 133-159.)

6 For more details, see Andrássy, 2016, 289-290.