

# THE LAW OF COEXISTING LANGUAGES EXAMINING THE QUARTET OF LANGUAGE POLICY FIELDS

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**Abstract** This study examines the citizen-to-citizen and citizen-to-state relationship focusing on the use of different languages in society. According to the basic assumption, there is necessarily a kind of competition between the different languages spoken in one state, which determines the relations between the languages. The development and maintenance of peaceful coexistence between languages (thus social groups of different languages) is part of the protection function of the state. This study examines the four key points of intervention needed to develop appropriate language policy and legislation, which it summarizes as the “law of coexisting languages”.

**Keywords** language rights, human rights, public administration, governance, language policy, USA, latinos

## Competing Languages

Language is a particularly important medium for human communication. It conveys messages, makes connections. Yet it is more than just a channel of communication; it is a part of the personal identity. It is also suitable for defining ourselves and distinguishing others.

Borders of languages and countries typically differ from each other. If several languages are spoken within a country, the languages begin to interact with each other. A competition will evolve and as a result, we can discover differences: languages of many and of few, *lingua franca*s and local languages, as well as surviving and extinct languages.

Approaching all this not from linguistics but from jurisprudence, we can see that all historical eras have raised the question of whether the legal and political system needs to reflect on the phenomenon of multilingualism. In the modern and postmodern age, we consider the state's so-called "defense function" (Patyi, 2017, 29.) to be important, by which the security of the society (in various respects) has received special attention by today.

However, what should the state do if its residents speak different languages? By making the use of a dominant language compulsory, it may only facilitate its own operation. On the other hand, the part of the population that does not speak the official language begins to be disadvantaged or subordinated.

A good and humanistic solution is therefore probably not in the direction of mandatory monolingualization. However, the state will need some legal or political response in order for the languages spoken in the country to coexist in peace, thus strengthening the security of the population - in physical, legal, economic and political terms.

In the following pages, I present one of the results of my empirical research in the Carpathian Basin (Gerencsér, 2015) and the United States of America (Gerencsér, 2019) in the field that seeks to answer the following question: what are the areas and points of intervention that promote the peaceful coexistence of the different languages spoken in a given country?

## The Case of the Multilingual USA

The largest non-native English-speaking ethnic group in the United States is the Spanish-speaking Latino community. They make up 18.5% of the whole population (cca. 60 of 320 million) and their numbers are growing year by year.<sup>1</sup> Today, they have become a determining political and economic factor, it is inevitable to take into account their situation, whether it is in relation to voting, healthcare, education, the labour market or the protection of human rights.

To understand the US language policy we should state that the United States is a multilingual country. The linguistic diversity of its residents "is not an irregularity", but a fact. (Moleski, 1988, 29.) Another specificity

of the United States is that it is, at the same time, an English-dominated country, while other languages are also used in both the private and public spheres. One of the observations I concluded in my research that *it is a monolingual and multilingual country at the same time*. It is monolingual when we are speaking of the primary language (English) of public bodies, the bureaucracy, and all public service bodies, also used by the federal government and state governments. On the other hand it is also a multilingual country when the state wants to address its citizens whose mother tongue is not English and enables the use of public services in multiple languages, often without any normative authorization.

The literature classifies the languages that appear on this continent into three categories. (Moleski, 1988, 34)

- (i) The first group are the indigenous, *native languages*. Before the conquests, there was a great linguistic diversity on the North American continent. The Indian tribes developed their own languages and dialects which ebbed gradually away (irreversibly, as we can say today) as European settlers were conquering more and more territories. It is, therefore, not a coincidence that the *Native Language Act of 1990*<sup>2</sup> tried to protect and preserve the handful Indian languages with legal means. Such a statutory framework can, however, only slow down the process that resulted in the dramatic shrinking and relocation of the natives by the end of the 1800s, especially in the northern part of the USA.
- (ii) The second language category is that of the so-called *colonial languages*. These are the languages of the first settlers—Spanish, English, French, and German. Among them, English was dominant already at the founding of the United States. Its leading role was not really challenged during the history of the country either. Besides the four largest colonial languages, the relevant literature regards Russian, Swedish, and Dutch as belonging to the same type. (Wiley, 1998, 213) It is an interesting example, that the Amish population still speaks a specific dialect of Dutch even today.<sup>3</sup>
- (iii) Finally, the third category of the languages of the USA are the *languages of immigrants*. This category includes the languages of groups having been immigrating since the 19<sup>th</sup> century. The relevant academic

literature applies this class from the founding of the independent United States (1776). (Moleski 1988, 35.) Naturally, one cannot draw a sharp separating line between certain colonial and immigrant languages. An especially good example of this is Spanish, which clearly belongs to both categories.

## Language Policy and Regulatory Assumptions

As we see, there are many languages in the United States and these developed or appeared on the North American continent at different times. From the three categories mentioned in the previous chapters, the native languages are the ones that developed organically in the North American continent. (Unlike the languages of colonies and immigrants.) These are the languages of the native Americans, which have drifted to the brink of disappearance by now, they, however, resemble most of the European minority languages to the extent that those are also languages with a long past, few speakers, and isolated. The European Union also tried to save lesser used languages<sup>4</sup>, however, the EU do not demonstrate such a commitment in this regard as the one we can see in the United States to the preservation of Indian languages and dialects. As regards all the measures and actions in connection with linguistic rights and the protection of language, the American law is only consistent in terms of native Indian languages, it declares the protection of these languages at a high level, and also specifies that on the lower level of execution. As regards all the other languages, legislation is encouraged rather by practical considerations such as social inclusion, the functioning of the democratic institutional framework or economic interests, and not the expressed protection of languages.

This also demonstrates that American law distinguishes between “protected languages” and other “minority languages”, or “heritage languages”. It provides stronger support to Indian languages, still, it reflects on the presence of languages other than English as well. The two categories are not separated by a straight and clear line, there are major overlaps in regulation.

In my study, I could still find proof of the fact that the American law is good and flexible in treating differences between the saving of the languages of native tribes and the Spanish needs of the Latinos.

I found regulations on the use of language by Latinos mainly in the administrative legislative corpus, i.e. among the lower levels of regulations concerning governance. This implies that the use of the Spanish language is to be investigated on the part of administrative bodies (agencies). I could also establish that the regulations on the Spanish language and the languages of immigrants primarily serves the normal integration of these minority groups.

When I examined the comparability or incomparability of European and U.S. linguistic laws, I discovered a new and complex approach in the regulation of minority languages, which I called “*the Law of Coexisting Languages*”. This can be the common ground to compare the legal regulations concerning language, and it also goes beyond the traditional approach of linguistic laws, because it is not a single field of law, but much rather a method of regularization which combines different approaches.

The Law of Coexisting Languages is not a “language law” that in some way identifies one or more languages and lays down a set of rules. Rather, a mixed set of legal norms and policy objectives that can adapt flexibly enough to societal changes. As each country considers its own characteristics when designing the legal environment of languages, we cannot talk about uniform models here either. In the following, I undertake to attempt to identify four areas that are crucial in defining the language policy of each country, highlighting the example of the United States as an illustration, but keeping in mind the known experiences of European countries too.

To ensure the stability of the theoretical model, I make two objective and one subjective presuppositions□

- (i) I regard the languages (minority languages) that are present and spoken in any country as *a matter of fact*. The existence of a minority language is not justified by the law or any decision of the state but by the fact that a precisely measurable, demonstrable, and definable community speaks a certain language. Both the language and the minority have objective criteria which are measurable. The protection under the law

should, therefore, adapt to the geographical, social, historical, and other characteristics of a given non-dominant language. The state must be aware of these conditions to properly determine the conditions for the peaceful coexistence of dominant and non-dominant languages. Strong social cohesion is a well-understood common interest of all states. Regulations facilitating peaceful coexistence regard the language as a resource and not as a problem. Needless to say, this is in connection with the mutual recognition of cultures as well.

- (ii) I place the Human Being in focus of regulation, who has both individual and social (political) characteristics. Furthermore, I view the person as a *citizen* not in isolation, but in his network of multiple relations.
- (iii) If we look at the development of minority law of the 20th century in either Europe or the USA, the mandatory monolingualism introduced from above can, from time to time, put the minority language in the background, but all such methods remain ineffective against the living languages. Similar to the subjective criteria of the minority identity (Heintze, 1997, 81), with regard to language use, we can state that there is a strong social cohesion force that must be taken into account by law, in other words—*which language want to be spoken, it will be spoken*. This is also supported by examples of still-alive small European minority languages (such as Frisian, Breton, or Middle and Eastern European minority languages).

## The Complex Way of Thinking: Law of Coexisting Languages

As an outcome of all these, I have gained, using the method of comparative law, a complex approach in which I distinguish four factors underlying the development of proper linguistic policies and legal regulations. The four elements of the theory of the law of coexisting languages are the following. A good language-policy reflects the language as a matter of

- (i) Human Rights,
- (ii) functioning democratic institutional framework,
- (iii) way the governance and administration,

(iv) security policy.

- (i) Several factors need to be considered to develop sound regulations in the field of language law. We can regard the use of the mother tongue as a matter of *human rights*. In this connection we investigate the human rights status of the language and its relationship with other fundamental rights (Skutnabb-Kangas, 2012, 238–240).<sup>5</sup>

Language rights, also referred to as the right to own language, is a human right not recognized by international legislation today. Fundamental international law instruments on human rights do not expressly declare or refer to it. Although first line authors have made several efforts to recognize this right (Varennnes, 2012. Andrásy, 2012. Kontra et al 1999), it still remains to be a fact that no specific protection is provided for the use of own language in global international fora. (Gerencsér, 2015, 67.)

Great tension lies, however, in the fact that although the use of language is not a protected right in itself, most “interfaces” are protected. Freedom of speech, the right to education, to fair trial, to human dignity or to identity – just to mention a few examples – are all well-protected fundamental rights in themselves, and at the same time they concern spheres of life where language is a key factor. This, however, concerns, not “any language” but “the language” which the person has chosen to be the communication channel, and which he can use for his self-expression.

So the use of language has a direct human right aspect, while it also has a characteristic similarity to civil rights. The latter characteristics go beyond human rights; an example for this can be the language-sensitive employment of a native speaker public servant or a doctor with language competences, or the possibility of establishing special language educational facilities.

Exercising fundamental rights concerned with the use of own language, however, are often fragile. Now, let me bring here a European example to unfold what I mean. The case law of the European Court of Human Rights (ECtHR) may provide interesting experiences for us.

Although we are aware that the ECtHR is not a court established for the protection of minorities, even less it is a court aimed at language rights. The ECtHR examines cases violating provisions of the European Convention on Human Rights (ECHR) that, however, does not contain any provisions on the protection of minorities. Still, this case law is important for the interpretation of the pan-European protection of minorities and language rights (Kovács, 2004, 692-700.).

In the case law of the ECtHR the protection of minorities relates to the infringement of another human right. Accordingly, a minority or language right dimension can be discovered particularly in cases relating to some fundamental political right, social right, procedural right or anti-discrimination.<sup>6</sup> The ECtHR often rejects those applications, which are based on minority rights and not on the ground of human rights.

All this means that the infringement of minority rights do not definitely result in the infringement of human rights, and the judgements of the court may serve the aim of protecting minority rights or language rights only in a secondary way.

On the other hand, if a human right is combined with use of languages (language right), it is *no more protected the same way*. Education of minorities is a good example for this phenomenon. It is not self-evident that a minority-language-student has equivalent right to access education as the majority student. This *internal conflict of human rights* has a significant negative impact on the vulnerable part of the societies and has to be solved.

Moria Paz, professor at the Stanford University has pointed out that international institutions devoted to protecting human rights, especially ECtHR or the United Nations Human Rights Committee do not provide universal protection for language rights, but similarly to the American model, they let the states decide about whether they recognize minority languages or not (Paz, 2014, 495.).<sup>7</sup>

It is particularly interesting that cases involving both the issue of use of language and fundamental rights have to pass a stricter test.<sup>8</sup> This means that these international institutions give a narrower interpretation for



cases of fundamental rights with dimensions of use of language, while they use a wider interpretation for “ordinary” cases of fundamental rights in order to provide a wider protection for fundamental rights. The linguistic characteristics in this way nearly “undermines” the value of fundamental rights, and due to the non-universal recognition of the use of language fundamental right implications can be asserted in a more difficult way in such cases. So I agree with professor Fernand de Varennes, who is of the view that general human rights still need to be supplemented as far as language protection is concerned (de Varennes, 2012. 43-52).

The countries of Europe are in a special situation because the European Charter for Regional or Minority Languages (ECRML) ensures special protection for regional and minority languages, allowing a better follow up of language-protection systems.

- (ii) Language is also an important factor in the *functioning of democracy* and at the same time it is linked to fundamental rights through the universal suffrage. The United States is a good example for us, where the Spanish-speaking community has been a constant political target since the 1960s. The aim of the functioning of the democratic institutional system is to involve the citizens and to increase their political activity. An issue that has been on the agenda in the US since 1965 (Voting Rights Act) is the viability of a bilingual (English and Spanish) ballot paper.

Peter M. Tiersma, a former researcher at the Loyola University of Los Angeles, mentioned three groups of public services that are key for language groups. (Tiersma, 2012, 255-257) In his opinion, the states provide pretty few bilingual public services. There is, however, a group of public services in case of which federal competences are more accepting toward other languages (especially Spanish), so that they are easier to use for the citizens. The three most common public services or functions with bilingual components, in his opinion, are *public education*, *public health* (social administration), and *voting rights* (bilingual ballots).

The suggestion is therefore topical and direct: the use of the mother tongue must be ensured in areas where the quality of life of citizens (including political relations in the case of democracy) can

be directly supported. Moreover, the part of the population, which does not enjoy its democratic rights due to language barriers, has a political deficit, so there are several arguments in favour of their political integration.

All this includes the language of the local (municipal) bodies as well. If the community can conduct their local affairs in its own language (e.g., charring board meetings, making decisions), it can also serve social integration and political stability.

- (iii) The issue of the *language of the governance and public administration* is related to the preceding point. The prerequisite to proper, reliable, and efficient governance and administration is that the state is aware of the specificities of the languages used in its territory. The purpose of governance is to ensure the functioning of its inhabitant and the country, which is, due to the previously mentioned factual conditions, related to the language spoken by the citizens.

Laws regulating the peaceful coexistence of languages should, on the whole, consider the above four factors. In my opinion, any regulation concerning the law can be effective and proper if it serves the purpose that the individuals speaking the minority language can exercise their rights and fulfil their obligations like the citizens speaking the dominant language can do, and they can also take part in the functioning of democratic institutions, while their language and culture remain preserved.

States, for making public services equally accessible, must take into account the language competencies present in society and provide flexible access to the necessary interfaces (such as health care or education). An excellent tool for the legal regulation of all this is the ECRML, which promotes precisely this differentiated access.

- (iv) At last, language can be a matter of *security policy*. We do not need to go far for an example—during the events in Ukraine during 2014 and 2015, political instability was eventually a result of linguistic tensions. (Gerencsér, 2015, 153–154.) In the twentieth century, a bombing attack or other aggressive actions could also raise the

question if security in the majority of the West-European autonomous regions—South Tirol, Åland, the Basque Country, just to mention the most-known ones (Hannum, 1996, 263, 370, 432).

Establishing a legal environment, which encourages the peaceful coexistence of dominant and non-dominant languages is probably the most important task of legislation. This is fact that even the UN reflects on in the 47/135 declaration saying

*“Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live...”*

Internal stability is a priority for all states, which is also served by the peaceful coexistence between different social groups. Proper regulation of language use and its integration into the legal system can be a tool to reduce potential social tensions and increase physical (and even military) security.

## Conclusion: a Multipolar Approach to Peaceful Coexistence

The Human Being is both an individual and a communal being. Just as (i) human rights are due to their human nature, so (ii) their social and political relations are also decisive. As a citizen in his/her relations with the state (iii) she/he is a subject to the functioning of the state, on the other hand (iv) to the stability and security policy. Overall, therefore, the rules on the peaceful coexistence of languages should take these four factors into account. In my opinion, a language law regulation is effective and appropriate only if it serves the purpose of enabling persons speaking a minority language to exercise their rights (even at the local level) and fulfil their obligations in the same way as citizens who speak the dominant language - while preserving their language and culture.

European countries are in a special position in that the ECRML provides special protection for regional or minority languages, which makes language protection systems traceable. Looking at the language regimes of other continents, the Language Charter is really appreciated, which is becoming the key to European language protection (and linguistic research) today.

The multipolar approach explained above thus also facilitates a change of attitude, which no longer expects a solution from a rigid normative rule (language law), but looks at society and intervenes in a differentiated way - taking into account necessity and proportionality. Therefore it is able to establish law supporting the peaceful coexistence of languages.

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## Endnotes

- 1 Data of August 2021 see US Census Bureau <https://www.census.gov/quickfacts/fact/table/US/PST045219>
- 2 25. USC 31. § 2910-2906.
- 3 The Amish belong to a Christian small church with Swiss German anabaptist roots. They are known for their close-to-nature lifestyle, strict internal rules, and outstanding quality artisan products. I had the chance to see it with my own eyes that the families living in Ohio still use their particular language of German and Dutch origin among themselves.
- 4 European Bureau for Lesser-Used Languages (EBLUL) 1982-2010. Though the network has been already wound up and replaced by a cooperation such as the European Language Equality Network (ELEN). <https://elen.ngo/>
- 5 SKUTNABB-KANGAS goes further saying we can distinguish internal (core) and external language rights, moreover, the collective character of the language rights also have to be underlined.
- 6 See, in particular *Bideault v. France* No. 9106/80 (1998), *Conka v. Belgium* No. 51564/99 (2002), *Isop v. Austria* No. 808/60 (1962), *Zana v. Turkey* No. 18954/91 (1997), *23 inhabitants of Alsemberg and Beersel v. Belgium* 1474/62 (1963), *case „Relating to Certain Aspects of the Laws on the use of languages in education in Belgium” v. Belgium* Nr. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64 (1968), *Inhabitants of Les Fourons v. Belgium* 2209/64 (1974), *Roger Vanden Berghe v. Belgium* Nr. 2924/26 (1968), *Skender v. FYRM* Nr. 62059/00 (2001), *Fryske Nasjonale Partij and other v. the Netherlands* Nr. 11100/84 (1985), *Inhabitants of Leeuw-St. Pierre v. Belgium* Nr. 2333/64 (1965).
- 7 Moria Paz makes special reference to that the protection of languages is too expensive, which expenses are not borne by the states. Thus international organizations do not wish to allocate costs to states by setting up universal regimes for language protection.
- 8 In the *Diergaardt v. Namibia* case “the UN Human Rights Committee has confirmed that states cannot reject a request for the provision of services and information in a minority language if it is not well justified.” *Diergaardt v. Namibia* (No.760/1997), UN Doc. CCPR/C/69/D/760/1997 (2000).