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Balázs Szabolcs Gerencsér[*]

LAW AND POLICY-MAKING AS A TOOL FOR THE PEACEFUL COEXISTENCE OF LANGUAGES

1 Languages in Competition – Why Intervene?

Language is a particularly important medium for human communication. It conveys messages and makes connections. Nevertheless, 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 few, *lingua francas* and local languages, as well as surviving and extinct languages.

Let us imagine a country where the citizens speak three languages: one is the dominant language, which is also the country's official language and two minority languages that are spoken by indigenous communities. One of the minority language groups in this country has a strong cultural value, but the language is on the verge of extinction, having fewer speakers year after year. The other minority group has economic value as well, as they represent a significant sector of the country's economy. The first language group is peaceful; the other one strikes for autonomy, sometimes even in an aggressive way. Their survival contributes to the total value of society, but not in equal ways. Minority languages do not compete with each other, but with the majority language – each in a completely different way.

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This competition – within one country – is basically different from economic competition,[1] as here different groups of the same society are the subjects, society itself is the place where the "*competition of languages*" takes place. This competition is about how many languages are spoken, which one has a social prestige. Do they speak the language in the private sphere, on social media? Can it be used orally or in writing in official communication? In this sense, however, although it is a social phenomenon,[2] languages behave similarly to players in a competition that may be distorted, just as in economic competition.[3] In such cases, top-down intervention is necessary for the conditions of competition to be fair. Intervention can be implemented in the way of positive law or policy-making, depending on what is required by groups or competing languages in a given society, and aims at protecting the vulnerable parts of the society.

Approaching all this not from linguistics or economics but from the point of view of 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. The state's so-called "defence function" was given a prominent role in the modern and postmodern age. This refers to the manifold ways in which the state protects its citizens,[4] and by which the security of the society (in various respects) has received special attention. If a group wishes to speak a minority language in a country, the protection of their (linguistic) rights may also be characterised as one of the state's defence tasks, that

[1] George J. Stigler: Economic Competition and Political Competition. In: *Public Choice*, Vol. 13, 1972, 91–106.

[2] Charles Goodwin – Antonio Duranti: Rethinking Context: an introduction. In: Alessandro Duranti – Charles Goodwin (eds): *Rethinking Context: Language as an Interactive Phenomenon*. Cambridge University Press, 1997. 14–16.

[3] Brian D Joseph – Johanna de Stefano – Neil G Jakobs – Ilse Lehiste: Language Conflict, Competition and Coexistence: some preliminary remarks. In: Bruce Bueno De Mesquita – Professor Brian D Joseph (eds): *When Languages Collide: Perspectives on Language Conflict, Language Competition, and Language Coexistence*. Ohio State University Press, 2003. vii.

[4] Liesbet Hooghe: *Multi-Level Governance and European Integration*. Rowman & Littlefield Publishers, 2002. 30. and Patyi András: *A közigazgatási működés jogi alapjai*. Budapest: Dialog Campus. 2017, 29.

is to protect the citizens and their rights. Below we will examine four possible means to achieve this goal.

However, what should the state do if its residents speak different languages? Making the use of a dominant language compulsory may only facilitate its own operation. On the other hand, the part of the population that does not speak the official language could become disadvantaged or subordinated. Therefore, a good and humanistic solution lies probably not in the direction of mandatory monolingualization. In any case, the state will need to respond in a legal or political way in order to come up with a framework (policy) that allows for the peaceful coexistence of all languages spoken in that country and, by extension, to strengthen the security of the population – in physical, legal, economic and political terms.

In the following pages, I examine four possible fields of policy intervention where language- and minority protection may have a significant role.

2 Law of Coexisting Languages

For the following study, I examined two significantly different language areas: the United States of America[5] and the Central European region.[6] In each of the countries studied, several languages are spoken, but the relationship between the languages and even the official status of the dominant language is very different.

The largest non-native English-speaking ethnic group in the United States is the Spanish-speaking Latino or Hispanic community. They make up 18.5% of the whole population (cca. 60 of 320 million), and their numbers are growing year by year.[7] Today, they have become

[5] Gerencsér Balázs Szabolcs: *A latínók az Amerikai Egyesült Államokban*. Budapest: Pázmány Press. 2019.

[6] Gerencsér Balázs Szabolcs: *„Nyelvében él..." Kárpát-medencei körkép a határon túli magyarok hivatalos anyanyelvhasználati jogairól*. Budapest: NSKI, Méry Ratio. 2015.

[7] Data of August 2021 see US Census Bureau https://www.census.gov/ quickfacts/ fact/table/US/PST045219 2 25. USC 31. § 2910-2906.

a determining political and economic factor, so it is inevitable to consider their situation, whether it is in relation to voting, healthcare, education, the labour market or the protection of human rights. The United States is, at the same time, an English-dominated country, while other languages are also used in both the private and public spheres. 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, including 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 public services in multiple languages, often without any normative authorisation.

The literature classifies the languages that appear on this continent into three categories.[8] The indigenous, *native languages,*[9] the *colonial languages*[10] and the *languages of immigrants*.[11] However, one cannot draw

[8] Moleski, Jean: Understanding the American Linguistic Mosaic: A Historical Overview of Language Maintenance and Languange Shift. In: Sandra Lee McKay – Sau-ling Cínthia Wing (eds.): *Language Diversity – Problem or Resource?* Cambridge: Newbury House Publishers. 1988, 34.

[9] 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* 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.

[10] 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, Terrence: The imposition of World War I era English-only policies and the fate of German in North America. In Thomas K. Ricento – Barbara Burnaby (eds.): *Language and Politics in the United States and Canada*. Mahwah, NJ: Lawrence Erlbaum Associates. 1998, 213.)

[11] This category includes the languages of groups having been immigrating since the 19th century. The relevant academic literature applies this class from the founding of the independent United States (1776). (Moleski 1988 *op. cit.*, 35.)

a sharp line between certain colonial and immigrant languages. An especially good example of this is Spanish, which clearly belongs to both categories.

The languages of Native Americans 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. Regarding 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 specifies that on the lower level of execution.[12] 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 through 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; yet, it also reflects on the presence of languages other than English. The two categories are not separated by a straight and clear line, there are major overlaps in regulation. A kind of *flexibility* can be seen in the U.S. legislation and language policy that always reflects society's current demand.[13] This feature drew my attention to the fact that, in addition to the peculiarities of Civil Law tradition in European language rights protection, I should also examine the experience of Anglo-Saxon legal

[12] Tiersma, Peter M.: Language Policy in the United States. In: Tiersma - Solan (eds.): *The Oxford Handbook of Language and Law*. Oxford: Oxford University Press. 2012, 258-259.

[13] For example, 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. See for example in the USA regulations of the federal government and agencies that are included in the *Code of Federal Regulations* (CFR): 16 CFR 437.5, 24 C.F.R. § 35.92, 28 CFR 55.2 (a), 28 CFR 55.11. 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 integration of these minority groups.

thinking.[14] Above all, is there any other way, besides positive legislation that helps citizens who speak a minority language and at the same time benefits the state?

When I examined the comparability of Central European and U.S. linguistic laws, I discovered a new and complex approach in the regulation of minority languages, which I call *"the Law of Coexisting Languages"*. This can be the common ground to compare the legal regulations concerning languages. It also goes beyond the traditional approach of linguistic laws because it is not a single field of law, but rather a method of regularisation that 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 that applies to them. Instead, a it is a diverse set of legal norms and policy objectives that can adapt flexibly 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 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 presupposition:

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 state's decision but by the fact that a precisely measurable, demonstrable, and definable community speaks a certain language. Both the language and the minority have objective, measurable criteria. Therefore, protection under the law should 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

[14] De Cruz, Peter: *Comparative Law in a Changing World*. London: Routledge. 1999. 108-119., and Kischel, Uwe: *Comparative Law*. Oxford: Oxford University Press. 2019, 272-275.

social cohesion is a well-understood common interest of all states. Regulations facilitating peaceful coexistence regard languages as a resource rather than a problem. Needless to say, this is in connection with the mutual recognition of cultures.

I place the Human Being in the focus of regulation, which has both individual and social (political) characteristics. Furthermore, I view the person not in isolation but in his network of multiple relations. As a citizen, a refugee, or a guest worker, a person is somehow connected to the state. That relation always determines the legal status of the individual.

As for the subjective matter, if we look at the development of minority law of the 20th century in either Europe or the USA, the mandatory monolingualism mentioned above can, from time to time, put the minority language in the background, but all such methods remain ineffective against living languages. Similar to the subjective criteria of minority identity,[15] concerning language use, we can state that there is a strong social cohesion force that must be taken into account by law. In other words: the language that *wants* to be spoken, *will* be spoken. Examples of small, often endangered European minority languages (such as Frisian, Breton, or some Middle and Eastern European minority languages such as the Hungarian in Romania or Slovakia, the German in Hungary etc.[16]) also support this assertion.

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 that may have a significant role in stabilising the peaceful coexistence of dominant and non-dominant languages are:

[15] Heintze, Hans-Joachim: Autonomy and Protection of Minorities Under International Law. In: Günther Bachter (ed.): *Federalism against ethnicity?* Zürich: Verlag Rüegger. 1997, 81.

[16] For data on the minority languages see the monitoring documents of the Council of Europe's Charter for Regional or Minority Languages. https://tinyurl.com/2p9mkzkx

1 human rights,
2 functioning democratic institutional framework,
3 good governance,
4 security policy.

3 Human Rights as a Pillar of Language Protection

This research focuses on human rights not just as universal, fundamental rights but also as Linguistic Human Rights (LHRs).[17] LHRs, also referred to as the right to one's own language, is a human right not recognised by international legislation today. Fundamental international law instruments on human rights do not expressly declare or refer to it. Although prominent authors have made several efforts to win recognition for this right,[18] the fact on the ground is that no specific protection is provided for the use of one's own language in global international fora.[19]

Great tension lies in the fact that, on the one hand, the use of a language is not a recognised international human right in itself. However, on the other hand, a variety of "interfaces" linked to language are protected: the fundamental right to freedom of speech, the rights to education, to a fair trial, human dignity or identity – to mention a few examples. These are all well-defined fundamental rights in themselves, and at the same time, they concern spheres of life where language is a key factor.

[17] Skutnabb-Kangas, Tove: Linguistic Human Rights. In: Lawrence M. Solan and Peter M. Tiersma (eds): *The Oxford Handbook of Language and Law*. Oxford: Oxford University Press. 2012, 238–240.

[18] Varennes, Fernand de: Language as a Rights in International Law: Limits and Potentials. In: Szerk. Richter, Dagmar Richter, Ingo - Toivanen, Reetta - Ulasiuk, Iryna (eds.): *Language Rights Revisited – The Challenge of global Migration and Communication*. Nijmegen: Wolf Legal Publishers. 2012. Andrássy György: Freedom of Language: A Universal Human Right to be Recognised. In: *International Journal on Minority and Group Rights 2012/2.,* 195–232, and Kontra, Phillipson, Skutnabb-Kangas, Várady: Conceptualising and Implementing Linguistic Human Rights. In: Kontra, Miklós – Phillipson, Robert – Skutnabb-Kangas, Tove – Várady, Tibor (szerk): *Language: A right and a resource – Approaching linguistic human rights*. Budapest: CEU Press. 1999.

[19] Gerencsér 2015. *op. cit*., 67.

It goes out from the above that the use of a language has a direct human rights aspect. More specifically, it also has a similarity to civil rights. An example of this can be the language-sensitive employment of a native speaker public servant or a doctor with language competencies, or the possibility of establishing special language educational facilities.

That being said, exercising fundamental rights connected with the use of a language is often fragile. In this context, the case law of the European Court of Human Rights (ECtHR) may provide interesting insights.[20] Although the ECtHR is not a court established for the protection of minorities, even less for language rights. The ECtHR examines cases violating provisions of the European Convention on Human Rights (ECHR) that, however, do not contain any provisions on the protection of minorities, except the prohibition of discrimination. Still, this case law is essential for interpreting the pan-European protection of minorities and language rights.[21]

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 certain fundamental political rights, social rights, procedural rights and/or anti-discrimination. The ECtHR often rejects applications based on minority rights and not on the ground of human rights.

[20] 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).

[21] Kovács, Péter: Ethnic and Linguistic Minorities and International Law. In: Shelton, Dinah L (ed): *Encyclopedia of Genocide and Crimes Against Humanity.* Detroit (MI): MacMillan Press Ltd. 2004, 692-700. See also: Noémi Nagy: Language Rights as a sine qua non of Democracy - A Comparative Overview of the Jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union. In: *Central and Eastern European Legal Studies, 2018/2.*, 247-269.

All this means that the infringement of minority rights does not always result in the infringement of human rights under the ECHR, 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 the use of languages (language rights), it is *no longer protected in the same way*. The education of minorities is a good example of this phenomenon. It is not self-evident that a minority-language student has the 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 society and has to be solved.

Moria Paz, professor at the Stanford University, has pointed out that international institutions devoted to protecting human rights, especially the ECtHR and 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 recognise minority languages or not.[22]

It is particularly interesting that cases involving both the issue of language use and fundamental rights have to pass a stricter test.[23] This means that these international institutions give a narrower interpretation for fundamental rights cases that are linked to the issue of language use, while they use a wider interpretation for "ordinary" cases that lack this linguistic dimension. In this context, the linguistic dimension almost "undermines" the value of fundamental rights, and given that there is no universal recognition for a right to the use of languages in general, the fundamental rights implications can be asserted in a more difficult way in such cases. So, I agree with professor

[22] Moria Paz: The Tower of Babel: Human Rights and the Paradox of Language. In: *European Journal of International Law. Vol. 25. 2014/2.* 495. 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.

[23] 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).

Fernand de Varennes, who believes that general human rights still need to be supplemented as far as language protection is concerned.[24]

The countries of Europe are in a unique 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.

4 Functioning of Democracy as a Motivation for Protecting Languages

Language is also an essential factor in the *functioning of democracy,* and at the same time it is linked to fundamental rights through universal suffrage. The United States is a good example for this, 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 U.S. since 1965 (Voting Rights Act) is the question of having bilingual (English and Spanish) ballot papers during elections.[25]

The relationship between the right to vote and the Hispanic linguistic minority is not new. In the 1960s, human rights movements marked by the name of Martin Luther King stimulated the srealisation of equality, which affected not only the system of black-and-white relations but also Spanish-English language relations.

Thus, from the second half of the 20th century, and especially from the two decades in 1960-1980, we can observe the strengthening of the Spanish language in the public sphere. During this period, not only did the Spanish-speaking population increase in number, but the freedom to use the language brought with it the strengthening of the Latino identity.

[24] Varennes 2012 *op. cit*., 43–52.

[25] Draper, Jamie B. – Martha Jimenez: Language Debates in the United States. In: *Epic Event, 1990/2 (5).* 17.

We should also pay attention to the development of the legal environment. The 1975 Amendment to the Voting Rights Act introduced more lenient regulations on bilingual ballot papers. In areas where at least five per cent of the population spoke some form of non-English, they could cast their ballots on a bilingual ballot paper. The linguistic groups selected were the Asian-American, American-Indian, Alaskan Indigenous, and Spanish-speaking peoples ("peoples of Spanish heritage"). In addition, the Bilingual Education Act of 1968 opened the door to multilingual education, which further strengthened non-English communities. The extent to which these rights and benefits have favoured the integration of the Spanish-speaking community is still a matter of debate. On the one hand, it can be observed that Hispanics achieved a higher level of education in a bilingual environment that facilitated their integration into American society. On the other hand, monolingual, and in many cases segregated, blocks have emerged, especially in the western coastal states (and particularly in California). We can call these "linguistic bubbles" that are still present in areas inhabited mainly by Spanish-speaking communities. Significant rules on linguistic equality also include the Equal Employment Opportunity Act (1972) and the Court Interpreters Act (1978). The latter law made it easier for federal courts to access language support.

According to the election rules[26] "linguistic minority" or "linguistic minority group" are to be understood as the American Indians, the Asian Americans, the Alaskan natives, and the Spanish-speaking communities. The provisions formulated in the 1990s, which granted language benefits in the exercise of the right to vote, were based on the recognition that these "linguistic minorities" suffer from inequalities, especially in education, with a very high rate of illiteracy among them. The explicit reason for the amendment was to bring the rules of suffrage into line with the Fourteenth and Fifteenth Amendments to the Constitution, i.e. to reflect equality in the law in this sense, which, however, makes important findings. The first is that illiteracy is still a major cause of the social problems that afflict these minorities in

[26] 52 U.S. Code Chapter 105 § 10503 - Bilingual election requirements

particular. Although the problems of equality of the 1960s have now been eliminated, the issue of illiteracy, especially for Latinos, is far from being resolved. However, as bilingual education is now available in many places and also many public services "speak Spanish".

However, a very important additional idea is that under-education (or limited English proficiency, LEP) is related to the willingness to vote. If, on the other hand, language is behind all social activities, then the logical conclusion is that linguistic communities, which are not (well) integrated into society, are less interested in running the country's democratic institutions. Neglected language communities thus not only cause (local) tensions in society, but also bring deficits to democratic institutions as a whole. In this regard, U.S. law has concluded that it is more important to operate a democracy than to wait or force minorities who otherwise do not (or not properly) speak the majority language to begin speaking English. With this, Congress has chosen the path of integration into society, which can also be called the method of "involvement," that is, the aspiration that linguistic minorities participate more consciously in the country's operation, even if English is not their mother tongue. Of course, there is still much criticism of this policy today.

The language provisions are subject to a double census in the U.S. Code.[27] On the one hand, it stipulates that the number of persons belonging to a minority language (monolingual or otherwise barely speaking, LEP) in a state should reach 5% of the population, or at least 10,000 in a political subdivision, and in the case of an Indian reservation 5% of the population. On the other hand, the rate of illiteracy in a given language community is higher than the national average. In today's US law, illiteracy means that a person could not complete 5th grade in elementary school. Therefore, these two conditions must be met for the language gates in the electoral rules to open. It should be noted that with "minority censuses" of 10-30% considered "general" by European standards, this proportion appears to be rather low. Perhaps it is no coincidence that the goal here is indeed to allow minority citizens to

[27] 52 U.S. Code Chapter 105 § 10503 (a)

participate in one of the greatest celebrations in American society: the elections.

Otherwise, bilingualism may appear in various election documents: information papers, notices, forms, regulations, or any document supporting the election process, including the ballot paper. These documents must be published in English, but they can be published in a minority language.

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.[28] In his opinion, the states provide pretty few bilingual public services. There is, however, a group of public services where federal competencies are more accepting toward other languages (Spanish in particular) 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 citizens' quality of life (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 its local affairs in its language (e.g., chairing board meetings and making decisions), it can also serve social integration and political stability.

5 Language as a Matter of Good Governance and Internal Security

The issue of the *language of governance and public administration* derives from the preceding point. The prerequisite to proper, reliable, and

[28] Tiersma 2012 *op. cit.*, 255–257.

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 a country, which is related to the language spoken by citizens due to the previously mentioned factual conditions.

Comparing the U.S. language rules and the most relevant positive legal international norm for protecting minority languages in Europe (European Convention on Regional or Minority Languages, ECRML), it is clear that the specific normative regulation is mostly reflected in administrative instruments. Language regulation is particularly common in the following areas of public administration:

- education,
- healthcare,
- media administration,
- procedural rights (both in government offices and the administration of justice),
- preserving culture
- public signs, and
- running self-governments.

In my opinion, any legal regulation can be effective and proper if it guarantees that individuals speaking the minority language can exercise their rights and fulfil their obligations in the same way that citizens speaking the dominant language do while also allowing them to participate in the functioning of democratic institutions and preserve their language and culture.

While aiming to make public services equally accessible, states should consider the language competencies present in society and provide flexible access to the necessary interfaces (such as the abovementioned health care or education).

Establishing a legal environment which encourages the peaceful coexistence of dominant and non-dominant languages within a state is probably the most crucial task of legislation. This is a fact that even the UN reflects on in Declaration 47/135:

> "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…"[29]

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 internal security.[30] In the twentieth century, bomb attacks and other violent actions raised the question of security in some West-European autonomous regions: South Tyrol, Corsica, the Basque Country, just to mention the most-known ones.[31] As *Noémi Nagy* puts it: "Although linguistic difference alone is not a source of conflict, […] insufficient application of language rights in practice can lead to bloody ethnic conflicts".[32]

The most recent and sad topicality of the issue of language and security is the story of Ukraine. In my view, Russia's invasion of Crimea in March 2014 is incomprehensible without addressing the situation of minorities in Ukraine. The largest minority group in Ukraine is Russian. Compared to them, other minorities (such as the Polish, Romanian, Crimean Tatar or Hungarian, for example) are insignificant.[33] That is why the Ukrainian minority law was adopted, focusing on the Russian-speaking minority while neglecting smaller minorities that were under-represented and adversely affected by the

[29] A/RES/47/135 Resolution adopted by the General Assembly on the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (emphasis added).

[30] Roe, Paul (2004): Securitization and Minority Rights: Conditions of Desecuritization. In: *Security Dialogue. 2004; 35(3)*, 279–294.

[31] Hurst Hannum: *Autonomy, Sovereignty, and Self-Determination – The Accommodation of Conflicting Rights*, University of Pennsylvania Press, 1996. 263, 370, 432.

[32] Nagy, Noémi: *A hatalom nyelve – a nyelv hatalma*. Budapest: Dialog Campus. 2019, 12., 15., 25–26.

[33] See state reports of Ukraine on the webpage of the Framework Convention on National Minorities, Council of Europe or the ECRML.
https://www.coe.int/en/web/minorities/ukraine

legislation. The revolution in 2014 was also rooted in minority-related legislation,[34] more precisely: a language act, which was so controversial that the independent Committee of Experts of the ECRML expressed its concerns.[35] All this means that language minorities may cause serious tensions that, in the worst case, like in Ukraine, could undermine the state's foreign relations or at least pour oil on an already flaming fire.

6 Conclusions

The Human Being is both an individual and a communal being. As a citizen in his/her relations with the state, she/he is subject to the state's functioning and the stability and security policy thereof. Overall, therefore, the rules on the peaceful coexistence of languages should take those factors into account that are based on the reality of the state. 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.

Flexible frameworks can be supported by a model that considers multiple aspects. Our analysis concluded that language policy for the peaceful coexistence of languages should take into account the four factors: (i) human rights, (ii) democratic institutions, (iii) good governance and (iv) security. All other minority rights or language rights measures can be derived from these.

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 appreciated,

[34] Gerencsér 2015 *op. cit.*, 153–154.

[35] Statement by the Committee of Experts of the European Charter for Regional or Minority languages on the situation in Ukraine. MIN-LANG (2014) 42. https://rm.coe.int/16806d83e1

which is becoming the key to European language protection (and linguistic research) today.

The multipolar approach explained above presupposes 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, thereby outlining the way to establish law supporting the peaceful coexistence of languages.

Bibliography

Andrássy, György: Freedom of Language: A Universal Human Right to be Recognised. In: *International Journal on Minority and Group Rights*, 2012/2.

De Cruz, Peter: *Comparative Law in a Changing World*. London: Routledge. 1999.

Gerencsér Balázs Szabolcs: *„Nyelvében él..." Kárpát-medencei körkép a határon túli magyarok hivatalos anyanyelvhasználati jogairól*. Budapest: NSKI, Méry Ratio. 2015

Gerencsér Balázs Szabolcs: *A latínók az Amerikai Egyesült Államokban*. Budapest: Pázmány Press. 2019.

Heintze, Hans-Joachim: Autonomy and Protection of Minorities Under International Law. In: Günther Bachter (ed.): *Federalism against ethnicity?* Zürich: Verlag Rüegger. 1997.

Hannum, Hurst: *Autonomy, Sovereignty, and Self-Determination – The Accommodation of Conflicting Rights*. Philadelphia: University of Pennsylvania Press. 1996.

Kischel, Uwe: *Comparative Law*. Oxford: Oxford University Press. 2019.

Kiss, István – Magyary, Zoltán: *A közigazgatás és az emberek*. Budapest: Magyar Közigazgatástudományi Intézet. 1939.

Kontra, Miklós – Phillipson, Robert – Skutnabb-Kangas, Tove – Várady, Tibor: Conceptualising and Implementing Linguistic Human Rights. In: Kontra, Miklós – Phillipson, Robert – Skutnabb-Kangas, Tove – Várady, Tibor (eds): *Language: A right and a resource – Approaching linguistic human rights*. Budapest: CEU Press. 1999.

Kovács, Péter: Ethnic and Linguistic Minorities and International Law. In: Shelton, Dinah L (ed): *Encyclopedia of Genocide and Crimes Against Humanity*. Detroit (MI): MacMillan Press Ltd. 2004, 692–700.

Moleski, Jean: Understanding the American Linguistic Mosaic: A Historical Overview of Language Maintenance and Languange Shift. In: Lee McKay, Sandra – Wing, Sau-ling Cínthia (eds.): *Language Diversity – Problem or Resource?* Cambridge: Newbury House Publishers. 1988.

Nagy, Noémi: *A hatalom nyelve – a nyelv hatalma. Nyelvi jog* és *nyelvpolitika Európa történetében*. Budapest: Dialóg Campus. 2019.

Nagy, Noémi: Language Rights as a sine qua non of Democracy – A Comparative Overview of the Jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union. In: *Central and Eastern European Legal Studies, 2018/2.,* 247–269.

Patyi, András: *A közigazgatási működés jogi alapjai*. Budapest: Dialóg Campus. 2017.

Paz, Moria: The Tower of Babel: Human Rights and the Paradox of Language. In: *European Journal of International Law*. Vol. 25. 2014/2.

Roe, Paul: Securitization and Minority Rights: Conditions of Desecuritization. In: *Security Dialogue. 2004; 35(3).*

Skutnabb-Kangas, Tove: Linguistic Human Rights. In: Lawrence M. Solan, Lawrence – M. Tiersma, Peter (eds.): *The Oxford Handbook of Language and Law*. Oxford: Oxford University Press. 2012.

Tiersma, Peter M.: Language Policy in the United States. In: M. Tiersma, Peter – Solan, Lawrence (eds.): *The Oxford Handbook of Language and Law*. Oxford: Oxford University Press. 2012.

Varennes, Fernand de: Language as a Right in International Law: Limits and Potentials. In: Richter, Dagmar - Richter, Ingo - Toivanen, Reetta - Ulasiuk, Iryna (eds.): *Language Rights Revisited – The Challenge of global Migration and Communication*. Nijmegen: Wolf Legal Publishers. 2012.

Wiley, Terrence: The imposition of World War I era English-only policies and the fate of German in North America. In Thomas K. Ricento – Barbara Burnaby (eds.*): Language and Politics in the United States and Canada*. Mahwah, NJ: Lawrence Erlbaum Associates. 1998.

Andrássy György[*]

EGY POROSODÓ GYÖNGYSZEM: AZ 1868. ÉVI XLIV. TC. A NEMZETISÉGI EGYENJOGÚSÁGRÓL[1]

1 Bevezetés

Az 1868. évi XLIV. törvénycikkről sokan és sokat írtak már, s az utókor irodalmában a szerzők általában elismerték-elismerik, hogy a törvény egészében véve előremutató volt (amennyiben figyelemre méltó nyelvhasználati lehetőségeket és komoly nyelvi jogokat biztosított a nemzetiségeknek, illetve a hozzájuk tartozó személyeknek), ehhez azonban a szerzők nagy része mindjárt hozzáfűzte-hozzáfűzi, hogy a törvényt nem, illetve csak kevéssé hajtották végre.[2] Ami a törvény előre mutató voltát illeti, az elemzések általában történeti, jog-és politikatörténeti megközelítésben mozogtak, illetve mozognak, de kitértek, illetve kitérnek elméleti kérdésekre is. Mindazonáltal a törvény mélyreható el-

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[1] A tanulmány a szerzőnek a tárgyról korábban publikált írásaira támaszkodik, azoknak részben rövidített, részben továbbgondolt változata. L. például Andrássy György: Hány hivatalos nyelve volt Magyarországnak az 1868. évi XLIV. tc. szerint? *Jogtörténeti Szemle*, 2017/3. 4–12; Andrássy György: A magyar nyelv és a magyar nyelvközösség jogi helyzete. In: Tolcsvai Nagy Gábor (szerk.): *A magyar nyelv jelene és jövője*. Budapest: Gondolat Kiadó. 2017, 64–90. és Andrássy György: Az 1868. évi XLIV. törvénycikk mai szemmel, elméleti megközelítésben. In: Nagy Noémi (szerk): *Nemzetiségi-nyelvi szuverenitás a hosszú 19. században*. Budapest: Gondolat Kiadó. 2020, 11–40.

[2] L. például Mikó Imre: *Nemzetiségi jog és nemzetiségi politika*. Kolozsvár: Minerva. 1944. Letöltés helye: www.library.hungaricana.hu; letöltés ideje: 2022.04.18.; Ács Zoltán: *Nemzetiségek a történelmi Magyarországon*. Budapest: Kossuth Könyvkiadó. 1984. 271–274.; Péter László: *Az 1868.évi XLIV. t.c „A nemzetiségi egyenjogúság tárgyában" és a törvényhatóságok hivatalos nyelve*. Letöltés helye: www.acta.bibl.u-szeged.hu; letöltés ideje: 2022.04.18; Schlett István: *A nemzetiségi törvényjavaslat országgyűlési vitája 1868*. Budapest: Kortárs Kiadó. 2002.; Csernicskó István: Államok, nyelvek, államnyelvek: Nyelvpolitika a mai Kárpátalja területén (1867-2010). Budapest: Gondolat Kiadó. 2013. 65–57.; Szentgáli-Tóth Boldizsár – Gera Anna: *Az 1868-as nemzetiségi törvény és a politikai nemzet koncepciójának utólagos értékelése*. Letöltés helye: www.real.mtak.hu; letöltés ideje: 2022.04.18; Nagy Noémi: *A hatalom nyelve – a nyelv hatalma*. Budapest: Dialóg Campus Kiadó. 2019. 171–182.

méleti, jog- és politikafilozófiai megvitatására eddig még nem került sor, s a jelen írás épp e még előttünk álló vizsgálódásokhoz igyekszik néhány adalékkal hozzájárulni.

Felvethető persze, hogy mivel úgy tűnik, a törvény több tekintetben is politikai kompromisszumként született meg, a mélyebb elméleti vizsgálódásoktól valószínűleg nem lehet túl sokat remélni: a kompromisszumok ugyanis általában kikezdik a törvények elvi-elméleti alapjait és nem használnak koherenciájuknak. E nehézségekkel pedig számolni kell akkor is, ha kétségtelen, hogy a törvény annyiban nem tükröz politikai kompromisszumot, hogy a képviselőknek végül választaniuk kellett a többségi, Eötvös és Deák nevével fémjelzett javaslat, valamint a kisebbségi, a Mocsonyi Sándor és 23 társa által benyújtott javaslat között;[3] más összefüggésekben ugyanis a törvény még lehetett politikai kompromisszumok kifejezője és ezt nem kevesen így is gondolták.[4]

[3] Megjegyzem, a törvény évekre visszanyúló előkészületei közben még e két nézet közelítési kísérletei nyomán is született egy *„verbális kompromisszum"*. (Vö. Schlett: *i.m.* 12 és 19.) Figyelmet érdemel továbbá, hogy a szavazásnál a kisebbségi javaslat mellett csak a javaslatot benyújtó 24 nemzetiségi képviselő voksolt, 113-an különféle okok miatt távol maradtak a szavazástól, a többségi javaslatot ugyanakkor 267-en támogatták, köztük nem magyar nemzetiségű képviselők is, ami részint nyilván annak volt köszönhető, hogy a többségi javaslat kidolgozásában nem magyar nemzetiségű képviselők is közreműködtek. Említésre méltó végül, hogy a nyelvhasználat szabályozása körében a többségi és a kisebbségi javaslat rendelkezéseinek tartalma nem állt nagyon távol egymástól. (Schlett: *i.m.* 22. és 191–202.)

[4] A főrendiházban a törvényjavaslatról a Hármas bizottság által készített jelentés például kimondta, hogy *„Magyarország összes honpolgárai politikai tekintetben egy nemzetet képezvén, a külön nemzetiségek nyelveiknek hivatalos használata nem terjesztetett ki annyira, hogy általa az ország egysége, a kormányzat és közigazgatás gyakorlati lehetősége kockáztassék"*. (Idézi Mikó: i.m. 238.) Szögyén László főispán ezzel összhangban akként nyilatkozott, hogy *„ez a javaslat az a szélső határ, ameddig el lehet menni"*. (Idézi Mikó: i.m. 241.) Tomcsányi József főispán azt mondta, hogy *„adja meg akár a román, akár a szerb nemzet csak egyötöd részét annak, mi ezen törvényjavaslatban van, az ottlakó magyarok számára, s dicsérni fogom érte. De ők ennek tizedrészében sem részesülnek"*. (Idézi Mikó: *i.m.* 242.) Maga Mikó pedig a kiegyezést követő második nemzedékről írva egyetértően idézte Szilágyi Dezsőt, aki expressis verbis kijelentette, hogy a nemzetiségi törvény egy bizonyos értelemben kompromisszum volt: *„Szilágyi Dezső éles logikával mutatott rá arra, hogy »a nemzetiségi törvény a magyar nemzet és a nemzetiségek közti jogviszonyokat meghatározó kompromisszum; midőn megadtuk másajkú honfitársainknak mindazt, mit jogosnak és méltányosnak elismertünk, azt ama feltevésben tettük, hogy viszont ők is megadják a magyar államnak, amivel minden polgára neki tartozik; fájdalom, ebben csalódtunk…«"*. (Mikó: *i.m.* 252.)

Vegyünk ezért egy híres példát a közelebbi múltból: a Kanadai Legfelső Bíróság 1986-ban arra a máig gyakran idézett következtetésre jutott, hogy a nyelvi jogok, s kivált a hivatalos nyelvi jogok „politikai kompromisszumon alapulnak", szemben a „természetes igazságossággal", illetve – a Kanadai Jogok és Szabadságok Chartája szóhasználata szerint – a „törvényi" vagy alapvető jogokkal, melyek „elvekben gyökereznek".[5] A Legfelső Bíróságnak ezen álláspontja kapcsán egy ismert kommentátor rámutatott, hogy a legtöbb nagy becsben tartott jognyilatkozatnak és más elnevezésű dokumentumnak

> *„a Magna Chartától az Ember Jogainak Nyilatkozatáig, a Nagy Reform Törvénytől a Nemzetközi Egyezségokmányig siralmas a múltja. Vonakodva és csak hosszas politikai harcok és kompromisszumok után fogadták el őket, amelyekben az ideológiának nagyobb hatalma volt, mint a politikai elméletnek… Ha a Magna Chartát a képviseleti kormányzat rendszerében fogadták volna el, lámpák vakító fényében és videó-felvevők zümmögésétől kísérve, nos, akkor kétségkívül ebben is csupán politikai kompromisszumot látnánk."*[6]

Mindebből annyi egészen bizonyos, hogy a nagy emberi jogi dokumentumok szövegezése közben az elméleti-filozófiai megfontolások, érvek és belátások mellett komoly szerepet játszottak más tényezők, köztük politikaiak is, s hogy a végső szövegek jelentős részben politikai kompromisszumok eredményei. Ennek ellenére a szóban forgó okmányoknak az elmélet kiemelkedő jelentőséget tulajdonít és igen nagy energiákat fordít értelmezésükre. Ha azonban így van, akkor egyáltalán nem kizárt, hogy az 1868. évi XLIV. törvénycikk rendelkezései is „elvekben gyökereznek", s így megvan az elméleti jelentőségük, csak ennek feltárása bizonyos mértékben még várat magára. A jelen tanulmány egyik fő állítása mindenesetre épp az, hogy az 1868. évi XLIV.

[5] Kanadai Legfelső Bíróság: különösen a *Société des Acadiens v. Association of Parents ügy.* (1986) 1 S.C.R. 549. Letöltés helye: www.scc-csc.lexum.com; letöltés ideje: 2022.04.20.

[6] Green, Leslie: Are Language Rights Fundamental? In: *Osgoode Hall Law Journal, Vol. 25, No. 4.* 1987. 645-646.

tc. főbb rendelkezései „elvekben gyökereznek", s ezért ahhoz, hogy a mainál jóval reálisabb képünk legyen e törvény valódi értékéről és jelentőségéről, a már elvégzett elemzéseken túl szükség van újszerű elméleti vizsgálódásokra is.

Ami a törvény végrehajtását illeti, a jelen írás nem bocsátkozik bele ennek részleteibe, mindazonáltal felmutat egy eddig meglepően mellőzött tényt, éspedig egy olyan tényt, amely önmagában is elegendő ahhoz, hogy kimondjuk: az a széles körben elterjedt nézet, hogy a törvényt nem, vagy csak alig hajtották végre, alapos felülvizsgálatra szorul.

2 A törvény címe és ennek jelentősége

A törvény egyes kutatók véleménye szerint voltaképpen nyelvtörvény volt, hiszen szinte kizárólag nyelvi rendelkezések alkották.[7] Ezzel persze a jogalkotók is tisztában voltak, ám mégis úgy döntöttek, hogy a törvényt a „nemzetiségi egyenjogúságról" szóló törvénynek nevezik. Vajon miért? Úgy tűnik, a válasz benne rejlik a preambulumban:

> „Magyarország összes honpolgárai az alkotmány elvei szerint is politikai tekintetben egy nemzetet képeznek, az oszthatatlan, egységes magyar nemzetet, melynek a hon minden polgára, bármely nemzetiséghez tartozzék is, egyenjogú tagja".

Ezt a Deáktól származó felvezetést sokan a magyar szupremácia megnyilvánulásaként értelmezték,[8] véleményem szerint azonban a lényeg a következő: Magyarország összes honpolgárai, bármely nemzetiséghez, a magyarhoz, a szlovákhoz, a románhoz stb. tartoztak is, „politikai tekintetben" egy nemzetet, azaz egyetlen politikai közösséget,

[7] L. például Gyurgyák János: *Ezzé lett magyar hazátok. A magyar nemzeteszme és nacionalizmus története.* Budapest: Osiris Kiadó. 2007, 78 és Nagy Noémi: *i.m.* 171.

[8] Bizonyos fokban Romsics is osztja e nézetet; vö. Romsics Ignác: *Történelem, történetírás, hagyomány.* Budapest: Osiris Kiadó. 2008, 207. A jelen tanulmány szerzőjének állápontját l. Andrássy György: Az 1868. évi XLIV. tc. mai szemmel, elméleti megközelítésben. In: Nagy Noémi (szerk.): *Nemzetiségi-nyelvi szuverenitás a hosszú 19. században.* Budapest: Gondolat Kiadó, 2020. 14–17.

egyetlen államot alkottak, a magyar államot, „melynek a hon minden polgára egyenjogú tagja" volt. Témánk szempontjából mindazonáltal legalább ilyen fontos a szöveg folytatása, mely leszögezi, hogy

> „ezen egyenjogúság egyedül az országban divatozó többféle nyelvek hivatalos használatára nézve, és csak annyiban eshetik külön szabályok alá, amennyiben ezt az ország egysége, a kormányzat és közigazgatás gyakorlati lehetősége s az igazság pontos kiszolgáltatása szükségessé teszik".

Mindennek fényében a törvény azért kaphatta a „nemzetiségi egyenjogúságról" címet, mert Magyarországon nemzetiségre tekintet nélkül az összes honpolgár egyenjogúsága volt az alkotmányos alapelv, a főszabály, s ezen egyenjogúság alól csupán a nyelvek hivatalos használata eshetett „külön szabályok alá", képezhetett kivételt, s ez is csak annyiban, amennyiben ezt „az ország egysége, a kormányzat és közigazgatás gyakorlati lehetősége s az igazság pontos kiszolgáltatása szükségessé" tette. Más szóval igaz ugyan, hogy a törvény szinte kizárólag a nyelvek hivatalos használatát szabályozta, ám címe arra emlékeztetett és emlékeztet ma is, hogy e szabályozásnak, amennyire csak lehetséges volt, a főszabályhoz kellett igazodnia, azaz csak a legszükségesebb mértékben volt szabad eltérnie a főszabálytól, az alkotmányi alapelvtől, minden honpolgár nemzetiségre tekintet nélküli egyenjogúságától. A törvénynek a főszabályra utaló címe tehát annak ellenére is indokolt volt, hogy maga a törvény épp azt az egyetlen területet szabályozta, amely bizonyos fokban kivételt képezhetett a főszabály alól.

A kérdés már csak az, hogy miért, milyen elvi, elméleti okoknál fogva képezhetett a nyelvek hivatalos használata kivételt az egyenjogúság alkotmányi elve alól, vagy hogy miért gondolta úgy a magyar jogalkotó, hogy ebben a szférában – és csakis ebben a szférában – már nem lehetséges a főszabály, az egyenjogúság érvényesítése maradéktalanul? Mielőtt azonban a válasz keresésére indulnánk, röviden ki kell térnünk a törvénynek egy olyan értékére, amelyet szintén a preambu-

lum hordoz, csak alig láthatóan, s ezért mindeddig nem is részesült kellő figyelemben.

3 Hivatalos és nem-hivatalos nyelvhasználat

A törvény csak „az országban divatozó különféle nyelvek *hivatalos használatára*" vonatkozott, a nyelvhasználatnak csak ezt a körét szabályozta, a nem-hivatalos nyelvhasználatot nem (a köztes területekre azért tartalmazott néhány, főként magyarázó jellegű rendelkezést). Ennek megfelelően a hivatalos nyelvhasználaton kívüli nyelvhasználat tág szféráját a jogalkotó már az egyenjogúság szférájának tekintette, amelyben a nyelvhasználat nem eshetett „külön szabályok" alá. De mit jelenthetett e körben ez a bizonyos egyenjogúság? Nos, a szabályozás hiányát, mi több, a tilalmát, s ezzel a tetszés szerinti nyelvhasználat elismerését a nem-hivatalos nyelvhasználat egész szférájában: azt, hogy minden honpolgár, bármely nemzetiséghez tartozott is, tetszése szerint használhatta a saját nyelvét vagy választása szerint valamely más nyelvet a szóban forgó nyelvhasználati színtereken. És véleményem szerint ez volt a törvény egyik legnagyobb, de mindeddig igen kevéssé felismert értéke.

Ahhoz, hogy a törvénynek ezt az értékét jobban megvilágíthassuk, idézzük fel a 19. század egyik nagy hatású alkotmányának, az 1831. évi belga alkotmánynak a 23. (ma 30.) cikkét, amely a következőképpen hangzik: *„Belgiumban a beszélt nyelvek használata fakultatív; a nyelvhasználatot csak törvény szabályozhatja és csak a hatósági aktusok és a bírósági ügyek tekintetében."*[9]

Nem nehéz észrevenni, hogy a belga és a magyar szabályozás a nyelvek nem-hivatalos használata körében megegyezett és a szabályozás lényegét a tetszés szerinti nyelvhasználat képezte, vagyis a modern természetjogi gondolkodásban és a modern alkotmányokban egy addig még fel nem ismert szabadság, egy nyelvi szabadság elismerése:

[9] A Belga Királyság Alkotmánya. In: Trócsányi László – Badó Attila (szerk.): *Nemzeti alkotmányok az Európai Unióban.* Budapest: KJK KERSZÖV. 2005, 118.

egy olyan szabadságé, amelynek elismerése még ma sem általános. Ezt a szabadságot ugyanakkor sem a belga, sem a magyar jogalkotó nem nevezte meg és ez minden bizonnyal hozzájárult ahhoz, hogy e szabadság elismerése – különösképp a helyes megnevezéssel – igen vontatottan halad mind a mai napig.

A szóban forgó szabadságot első látásra a nyelvhasználat szabadságaként lehet definiálni. Ha azonban jobban meggondoljuk, ez a szabadság maga után vonja a saját nyelv megtartásának és megváltoztatásának, vagyis a saját nyelv megválasztásának a szabadságát is, hiszen a tetszés szerinti nyelvhasználat nincs időhatárhoz kötve. Ennélfogva bárki dönthet úgy, hogy adott körülmények között a saját nyelve helyett egy más nyelvet használ akár évtizedeken át, aminek következtében a saját nyelvét akár el is felejti, vagy már csak kevéssé érti és beszéli, ebben a helyzetben pedig már joggal tarthatja ezt a másik nyelvet a sajátjának. Ilyen nyelvváltásra gyakran látni példát, különösen a bevándorlók és a történelmi nyelvi kisebbségekhez tartozó személyek körében, s azok az államok, amelyek területén az ilyen nyelvváltások megtörténnek, a legkevésbé sem tiltakoznak. Összegezve, erős elméleti és erős gyakorlati érvek szólnak amellett, hogy kimondjuk: a nyelvhasználati szabadság maga után vonja a saját nyelv megtartásának és megváltoztatásának, vagy – röviden – a saját nyelv megválasztásának szabadságát is.

A fentiekből folyóan azt a szabadságot, amelyet a modern jogalkotás korában elsőként ismert el a belga és a magyar jogalkotó, nyelvszabadságnak kell neveznünk. Ennek indoka ugyanaz, mint a vallás és a lelkiismeret, valamint a vélemény és a kifejezés szabadságának esetében. A lelkiismeret és a vallás szabadságát ugyanis az teszi a lelkiismeret és a vallás szabadságává (ami aztán alapja az elnevezésnek is), hogy a) mindenkinek szabadságában áll megválasztani, azaz megtartani vagy megváltoztatni a saját meggyőződését vagy vallását, s hogy b) mindenkinek szabadságában áll kinyilvánítani a saját meggyőződését, s gyakorolni a saját vallását, s *mutatis mutandis* ugyanez áll a vélemény és a kifejezés szabadságára is. És épp ezt látjuk vizsgált nyelvi szabadság esetében is: mindenkinek joga van a) a saját nyelve

megtartásához vagy megváltoztatásához, s mindenkinek joga van b) a saját és bármely más nyelv használatához (a nem-hivatalos nyelvhasználat színterein). Az a szabadság tehát, amelyet a belga és a magyar jogalkotó elismert már a 19. században, valóban a nyelvszabadság volt. E szabadság, mint már jeleztem, ma is kevéssé ismert és elismert helyesen megnevezésével. Ezért különösen fontos, hogy egy nagyra becsült európai állam, Svájc szövetségi alkotmánya a 18. cikkében 1999 óta kimondja: „A nyelvszabadság biztosított".

Mindehhez már itt érdemes hozzáfűzni, hogy a legtöbb ember az elsőként elsajátított nyelvét, az anyanyelvét tartja a saját nyelvének, ezt beszéli a legjobban és a leggyakrabban és ezt is beszéli a legszívesebben (ha beszél egyáltalán más nyelvet is).[10] Érdemes továbbá megjegyezni, hogy az 1868. évi XLIV. tc. messzemenően tiszteletben tartotta a szóban forgó a körülményt: 23.§-ában kimondta például, hogy „az ország minden polgára községéhez, egyházi hatóságához és törvényhatóságához, annak közegeihez, s az államkormányhoz intézett beadványait anyanyelvén nyújthatja be".

4 A hivatalos nyelv problémája

Térjünk most vissza ahhoz a kérdéshez, hogy miért épp a nyelvek hivatalos használata az az egyetlen terület, ahol egy olyan országban, mint amilyen a dualizmuskori Magyarország volt, már nem érvényesülhet maradéktalanul a nemzetiségi vagy nyelvi egyenjogúság. A válasz kiindulópontja az, hogy az emberekhez hasonlóan az államok sem nélkülözhetik a nyelvhasználatot: amint nincs igazán emberi élet nyelvhasználat nélkül, úgy nincs valódi államélet sem nyelvhasználat nélkül. Amint az embereknek szükségük van legalább egy nyelvre, amelyen élhetik az életüket, úgy az államoknak is szükségük van legalább egy nyelvre, amelyen működhetnek: törvényeket alkothatnak, kormányokat, közigazgatási szerveket működtethetnek, bíráskodhat-

[10] Skutnabb-Kangas, Tove: *Nyelv, oktatás és a kisebbségek*. Budapest: Teleki László Alapítvány. 1997, 12–18. Vö. még Göncz Lajos: A vajdasági magyarság kétnyelvűsége. Letöltés helye: www.mtt.org.rs; letöltés ideje: 2022.04.21.

nak. Az államok esetében ezt a nyelvet rendszerint hivatalos nyelvnek vagy államnyelvnek nevezik, de előfordul a nemzeti nyelv megnevezés is ebben az értelemben.

De hol itt a probléma, miben is áll a hivatalos nyelv problémája? Ez a nemzetközi jogalkotásban az első világháború után, a Nemzetek Szövetsége Egyezségokmányának szövegezése közepette merült fel talán először élesebb formában, éspedig Wilson amerikai elnök második (első párizsi) Egyezségokmány-tervezete kapcsán. Ebben a többi közt ez állt:

> „A Nemzetek Szövetsége megköveteli minden új államtól, hogy kötelezze el magát előzetes feltételként független és autonóm államként való elismeréséhez, hogy a joghatósága alá tartozó minden faji vagy nemzeti kisebbségnek pontosan ugyanazt a bánásmódot és biztonságot fogja nyújtani mind jogilag, mind ténylegesen, mint népe faji vagy nemzeti többségének."[11]

Amit ezzel Wilson előirányzott, az voltaképpen a jogi és a tényleges egyenlőség a faji vagy nemzeti többség és az ilyen kisebbségek között. Wilson jogi tanácsadója, David Hunter Miller ehhez az alábbi megjegyzést fűzte:

> „E cikk célja üdvös, de azt tartják, hogy általános bánásmód nem lehetséges. Kétségkívül egyenlő privilégiumokat kellene nyújtani mindegyik esetben, de lehetetlen megkívánni minden faji kisebbség feljogosítását arra, hogy például használhassák nyelvüket hivatalos nyilvántartásokban és okmányokban. Számos egy országon belüli kis kisebbség esetében ez még helyileg sem lenne kivihető."[12]

Jól látszik, hogy Miller egyetértett a jogi és a tényleges egyenlőség, s ennek megfelelően az egyenlő bánásmód eszméjével, de lehetetlennek

[11] Miller, David Hunter: *The Drafting of the Covenant.* New York – London: Putnam's Sons. 1928, II. kötet 91.

[12] Uo.

tartotta ennek kivitelezését a nyelvek hivatalos használata körében. Mindebből világos, hogy a probléma lényegében ugyanaz volt 1919-ben Wilson és Miller számára, mint amivel a magyar jogalkotók találták szembe magukat 1868-ban: az, hogy a nyelvek hivatalos használata körében is érvényt kellene szerezni az egyenjogúság eszméjének, illetve alkotmányos alapelvének, csakhogy ez lehetetlennek látszik. (Jegyezzük meg, hogy Wilson elvi alapállása azért hellyel-közzel tükröződött az 1919-ben létrehozott nemzetközi kisebbségvédelmi rendszer ún. általános anyagi jogában, de persze ugyanígy tükröződött e jogban Miller álláspontja is. És persze a rendszernek ez az általános anyagi joga azért lényegesen jobban is megközelíthette volna az eszményt, mint amennyire végül tette.)

Ugorjunk most ismét előre az időben az 1960-as évek közepéig és innen tovább a '80-as évek végéig. Ekkoriban lezajlott egy komoly elméleti vita a hivatalos nyelvekről, s e vitában éppúgy az egyenjogúság képezte a problémát, mint az 1868.évi XLIV. tc-ben, valamint Wilson tervezetében, illetve Miller kritikájában. Az újabb, az 1960-as években indult vitáról egy kommentátor a többi közt ezt írta:

> „A hivatalos nyelvek elmélete pesszimizmustól visszhangzik a tekintetben, hogy lehetséges-e bármilyen elegáns megoldás. Azt a megoldást, amely minden nyelv minden beszélőjét azonos módon kezeli, kivihetetlennek tartják."[13]

E vita résztvevői már konkrétabban is megfogalmazták, hogy miért is látszik lehetetlennek az egyenjogúság biztosítása a nyelvek hivatalos használata körében. Arra a következtetésre jutottak, hogy a hivatalos nyelv vonatkozásában az egyenjogúság, illetve az egyenlő bánásmód biztosítása csak két módon volna lehetséges: vagy úgy, hogy az egyes államokban hivatalos nyelvvé teszik az államban saját nyelvként beszélt összes nyelvet, vagy úgy, hogy egy teljesen idegen nyelvet (egy kihalt nyelvet vagy egy mesterséges nyelvet) tesznek hivatalos nyelvvé,[14]

[13] Pool, Jonathan: The Official Language Problem. In: *American Political Science Review, 85 (2).* (1991), 495-496.

[14] Uo. 496.

ám mindkét megoldás irracionálisnak és megvalósíthatatlannak tűnt számukra. Hasonló véleményt fogalmazott meg a '90-es évek közepén Fernand de Varennes, aki ma az ENSZ kisebbségi jelentéstevője:

> „Az államgépezetnek egy vagy legfeljebb néhány nyelven kell működnie legtöbb kapcsolata, ténykedése és szolgáltatási tevékenysége során, ami lehetetlenné teszi, hogy ne tegyen különbséget a nyelvek között. […] Ez egy elkerülhetetlen helyzet, mivel egyetlen államnak sincsenek erőforrásai ahhoz, hogy az általa nyújtott minden szolgáltatást a területén beszélt összes nyelven biztosítsa"[15]

Gondoljuk meg: mindez voltaképpen azt jelenti, hogy nincs ma a világon talán egyetlen állam sem, amely a hivatalos nyelv intézményével kapcsolatban teljeskörűen biztosítaná az egyenjogúságot, csak erről éppenséggel nem esik túl sok szó. Ebben az összefüggésben az 1868. évi XLIV. tc. érdeme a különleges őszinteség: az, hogy nyíltan, minden kertelés nélkül kimondta, hogy teljes egyenjogúságot a nyelvek hivatalos használata tárgyában nem képes biztosítani.

Föl lehet vetni persze azt is, hogy miért épp a magyar jogalkotó ismerte fel ilyen világosan a problémát már az 1860-as években? Nos, ebben bizonyosan közrejátszott, hogy Magyarországon a latin jóval tovább megtartotta hivatalos nyelvi jogállását, mint a legtöbb európai államban. Angliában például a *Pleading in English Act* már 1362-ben előírta az angol használatát az ún. *law French* és a latin helyett a bírósági nyelvhasználatban, Franciaországban pedig az 1539-es *villler-cotteretsi ordonnance* a latin (és részben a helyi nyelvek) használata helyett a franciát vezette be kötelezően a hivatalos iratokban és a bírósági szervezetben.[16]

De miért is segítette a tisztánlátást a latin hivatalos nyelvi jogállása a 19. századi Magyarországon? Azért, mert a 19. század már egyértelműen a modernitás világa, s a latin neutrális nyelv volt, amennyiben senkinek sem volt az anyanyelve, saját nyelve, s így senki sem élvezett

[15] Varennes, Fernand de: *Language, Minorities and Human Rights.* The Hague, Boston, London: Martinus Nijhoff Publishers. 1996, 80, 88.

[16] A részleteket l. Nagy Noémi: i.m. 39–69. és 80–83.

előnyt vagy szenvedett hátrányt a hivatalos nyelvhasználat színterein (legalábbis írásban). Amikor tehát egyre sürgetőbbé vált a latin lecserélése valamely, az országban „divatozó" élő nyelvre, azonnal érzékelhető volt, hogy ez egyeseknek előnyös, másoknak hátrányos lesz. Jól tanúskodnak erről Eötvös József szavai: „a diák nyelvnek a törvényhozás és közigazgatás körében elhagyása által… az ország magyarúl szóló polgárai oly előnyben részesültek, mellyel előbb nem birtak".[17]

Nézzük meg ezek után, hogy az 1868. évi XLIV. tc. hozzávetőleg milyen fokban volt képes biztosítani az egyenjogúságot immár nem egy neutrális holt nyelv révén, hanem a másik elvi lehetőség útján, azaz az országban divatozó élő nyelvek hivatalos használatával.

5 A nyelvek hivatalos használatának egyes alapvető szabályai a törvényben

A törvény 1. §-a leszögezte, hogy *„Magyarország államnyelve a magyar"*, a további rendelkezések pedig olykor az állam hivatalos nyelveként hivatkozták a magyar nyelvet. E rendelkezések pedig éppenséggel nem az egyenjogúságot tükrözték, hiszen az egyik nemzetiség, a magyar nemzetiség nyelve államnyelv, illetve hivatalos nyelv lett a törvény értelmében, a többi nemzetiség nyelve pedig nem. Láttuk azonban, hogy a törvény preambuluma nem a magyar nyelv, hanem *„az országban divatozó többféle nyelvek hivatalos használatáról"* beszélt, s ez arra utal, hogy a törvény rendelkezései értelmében magyaron kívül más nyelvek is hivatalos használatban voltak. Nézzünk néhány ilyen rendelkezést.

Az egyik legfontosabb az 1. szakasznak az az előírása, miszerint *„a törvények magyar nyelven alkottatnak, de az országban lakó minden más nemzetiség nyelvén is hiteles fordításban kiadandók"*. Nos, ha csak az ún. országos nemzetiségek nyelvével számolunk, ez akkor is további öt nyelv: a német, szlovák, román, szerb és a rutén/ukrán/orosz, s ezekhez bizonyos eltérő szabályokkal ugyan, de hozzá kell még számítani

[17] Báró Eötvös József: *A nemzetiségi kérdés*. Pest: Ráth Mór. 1865, III. rész. Letöltés helye: www.mek.oszk.hu; letöltés ideje: 2022.04.22.

a horvátot,[18] s egy időben hozzászámították az olaszt is. Mindez tehát nem kevesebbet jelentett, mint azt, hogy Magyarország egy hét- vagy nyolcnyelvű jogrendszer kiépítését irányozta elő. Ennek célja nyilvánvaló: hogy amennyire lehetséges, biztosítsák a nemzetiségi egyenjogúságot még a nyelvek hivatalos használatának körében is, más szóval, hogy amennyire csak lehetséges, kialakítsák az államgépezet hét vagy nyolc nyelven való működését. A törvény további rendelkezései épp erről szóltak: hogy mely nyelven és hogyan működjék a kormány, hogy mely bíróságok mely nyelven vagy nyelveken ítélkezzenek, hogy mely közigazgatási hatóságok mely nyelvet vagy nyelveket használják és milyen körben, s hogy a közoktatás mely területeken, községekben és városokban mely nyelven vagy nyelveken folyjék, illetve, hogy az államgépezet különféle szervei mely nyelven vagy nyelveken érintkezzenek egymással.

Vessük most egybe ezt a hét vagy nyolcnyelvű jogrendszer kiépítésére és működtetésére vonatkozó magyar szabályozást egy nagy hatású 20. századi elmélettel, majd egy ugyancsak 20. századi nemzetközi egyezmény előírásaival. Az elmélet egy tekintélyes nyelvész, Heinz Kloss nevéhez fűződik, akinek az adott összefüggésben a fő tétele így hangzik:

> „Úgy tűnik, legfeljebb három nyelvet lehet a nemzet egyenrangú hivatalos nyelveivé tenni. Egy ország igazgatásának napi ügyei, sőt még törvényhozási eljárásai is hamar túlterheltek, kuszák és hatékonyságot nélkülözők lesznek, ha háromnál több nyelven bonyolódnak."[19]

[18] A nemzetiségi törvény hatálya a 29. szakasz értelmében nem terjedt ki Horvát Szlavón és Dalmátországra, mindazonáltal a magyar-horvát kiegyezésről szóló 1868. évi XXX. tc. 60. szakasza kimondta, *hogy „Horvát, - Szlavon- és Dalmátországok részére a közös törvényhozás által alkotandó törvények Őfelsége által aláírott, horvát eredeti szövegben is kiadandók, s a nevezett országok gyűlésének megküldendők." Amihez annyit még mindenképp hozzá kell tenni, hogy ugyanezen törvény 56. szakasza értelmében „Horvát-Szlavonországok egész területén mind a törvényhozás, mind a közigazgatás és törvénykezés nyelve a horvát".*

[19] Kloss, Heinz: Types of Multilingual Communities: A Discussion of Ten Variables. In: Stanley Liberson (ed.): *Explorations in Sociolingusitics*. Bloomington: Indiana University Press. 1966, 7.

Azt jelenti ez, hogy a 19. századi magyar jogalkotó eleve a lehetetlenre vállalkozott? Nem feltétlenül. Az Európai Gazdasági Közösség intézményeinek már a kezdet kezdetén négy hivatalos nyelve és négy munkanyelve volt, igaz, a bővítések során mindig felmerült, hogy a rendszer túl drága és nem kellően hatékony. Bármily hihetetlen ma már, de a bővítés első hullámában, amikor az Egyesült Királyság, Írország és Dánia csatlakozott, angol részről erős volt a félelem, hogy az angol nem lesz hivatalos nyelv az EGK-ban.[20] Azóta a hivatalos nyelvek és a munkanyelvek száma az immár Európai Unióvá lett közösségben 24-re nőtt és a rendszer, melyet továbbra is vádak érnek, működőképes. Az Európai Unió persze nem állam, mindazonáltal a tagállamok jogának nagyobb részét már az uniós jog szabályai alkotják.

Nézzük most a Regionális vagy Kisebbségi Nyelvek Európai Chartáját. Ez az egyezmény a hivatalos (és a nem-hivatalos) nyelvhasználat bizonyos területein figyelemre méltó választási lehetőségeket biztosít a részes államoknak, olyannyira, hogy az egyezményt à la carte típusú egyezményként is szokás emlegetni. Ehhez képest rendkívül szerény és még csak pontokba sem szedett választási lehetőségeket kínál az a rendelkezés, amely a részes államok jogszabályainak regionális vagy kisebbségi nyelveken történő kiadására vonatkozik. A rendelkezés, azaz a 9. cikk (3) bekezdése így szól:

> „A Felek vállalják, hogy kisebbségi vagy regionális nyelveken hozzáférhetővé teszik a legfontosabb állami törvényszövegeket, valamint azokat, amelyek különösen érintik e nyelvek használóit, feltéve, hogy e szövegek másként még nem hozzáférhetők."

Hát hol van ez a zsinórmérték, melyhez ma Európában az államoknak igazodniuk kell, az 1868. évi XLIV. törvénycikknek az 1. §-ában lefektetett előírástól? Attól az előírástól, mely szerint *„a törvények magyar nyelven alkottatnak, de az országban lakó minden más nemzetiség nyelvén*

[20] Stevens, Lisbeth: The Principle of Linguistic Equality in Judicial Proceedings and in the Interpretation of Plurilingual Legal Instruments: The Régime Linguistique in the Court of Justice of the European Communities. In: *Northwestern University Law Review, 62, 5, 1967,* 701.

is hiteles fordításban kiadandók". Messze, nagyon messze. Innen nézve is igen jól látszik, mennyire megelőzte korát, s a rá következő 150-160 évet is a szóban forgó magyar törvény.

6 A hét/nyolcnyelvű jogrendszer és az igazságszolgáltatás, valamint a közigazgatás

Egy hét- vagy nyolcnyelvű jogrend jelentősége nem csupán az, hogy az országnak azok a polgárai, akiknek a saját nyelve megegyezik a hét vagy nyolc nyelv egyikével, saját nyelvükön tanulmányozhatják ezt a jogrendet akár magánszemélyként, akár mint valamely gazdasági vállalkozás vagy kulturális intézmény, társulat, egylet tulajdonosa/vezetője, jogásza stb. A hét- vagy nyolcnyelvű jogrendszer lehetőséget nyújtott egy hét-vagy nyolcnyelvű jogalkalmazási rendszer kialakítására is. Ha ugyanis a törvények rendelkezésre álltak hiteles formában mindezen nyelveken, akkor a bíróságok, közigazgatási hatóságok és más állami szervek viszonylag könnyen alkalmazhatták is e joganyagot valamennyi nyelven. Ehhez már csak az kellett, hogy megfelelő nyelvtudással rendelkező személyzet álljon rendelkezésre az adott állami szervekben, ennek megteremtését pedig lehetővé tette a lakosság nemzetiségi összetétele. Ezért mondhatta ki például a törvény 23.§-a nagyobb kockázatok nélkül, hogy „az ország minden polgára községéhez, egyházi hatóságához és törvényhatóságához, annak közegeihez, s az államkormányhoz intézett beadványait anyanyelvén nyújthatja be".

A törvény természetesen más fontos szabályokat is tartalmazott a közigazgatás és az igazságszolgáltatás működésére vonatkozóan. Előírta például, hogy a törvényhatóságokban a jegyzőkönyvvezetés nyelve a magyar mellett bármely más nemzetiség nyelve is lehetett a testületi/bizottmányi tagok egyötödének kívánságára (2.§), a községekben pedig ez a szabály az ügykezelési nyelvre (azaz az eljárás nyelvére) is vonatkozott (20.§). A törvényhatósági tisztviselőknek a községekkel, valamint a magánszervezetekkel és magánszemélyekkel való érintkezésükben lehetőleg ez utóbbiak nyelvét kellett használniuk (6.§), a

községi tisztviselők pedig a községbeliekkel való érintkezésükben kötelesek voltak azok nyelvét használni.

E száraznak tetsző szabályok olvasása közben jusson eszünkbe, hogy Szlovákiában ma az állam „nem biztosít és nem is köteles biztosítani magyarul értő közalkalmazottakat".[21] Rozsnyóban például, amikor a városi hivatal kulturális osztályára a magyar kultúráért felelős előadót kerestek, s a város előírta a magyar nyelv ismeretét, ez országos ügy lett, mert a közvélemény a követelményt diszkriminációként értelmezte, s így a város visszavonta a feltételt. Az ügy a Nemzeti Kisebbségek Védelmének Keretegyezménye felülvizsgálatára hivatott Tanácsadó Bizottság elé került, ám a Bizottság nem ítélte a Keretegyezmény normáiba ütközőnek, hogy a Szlovákiában kisebbségi kultúrának számító magyar kultúra városi felelősének nem szükséges ismernie a magyar nyelvet.[22] Ez esetben vagy a Keretegyezmény, vagy annak alkalmazása áll igen mélyen az 1868. évi XLIV. tc. normái alatt.

Ami a bírósági nyelvhasználatot illeti, az 1868. évi XLIV. tc. 7.§-a szerint az elsőfokú bíróságoknak a községek ügykezelése nyelvén kellett ítélkezniük, s a 12.§ értelmében a magyar nyelven hozott másodfokú végzéseket, határozatokat és ítéleteket kötelesek voltak a magyar mellett a felek által választott nyelven is kiadni vagy kiállítani, amennyiben e nyelv az elsőfokú bíróság ügykezelési, vagy a törvényhatóság valamely jegyzőkönyvvezetési nyelve volt.

7 A hét- vagy nyolcnyelvű jogrend és a közoktatás

Már az 1868. évi XXXVIII. tc. kimondta (58.§-ában), hogy minden növendék anyanyelvén nyerje az oktatást, amennyiben ez a nyelv a községben divatozó nyelvek egyike. Az 1868. évi XLIV. tc. 17.§-a ehhez kapcsolódva előirányozta, hogy

[21] Fiala-Butora János: Mit védenek a nyelvi jogok? In: *Magyar Tudomány 183, 2022/06,* 719.

[22] Uo.

> „az állami tanintézetekben lehetőségig gondoskodni kell arról, hogy a hon bármely nemzetiségű, nagyobb tömegekben együtt élő polgárai az általuk lakott vidékek közelében anyanyelvükön képezhessék magukat egészen addig, ahol a magasabb akadémiai képzés kezdődik. A törvény 19.§-a ehhez hozzáteszi, hogy az országos egyetemben az előadási nyelv a magyar, azonban az országban divatozó nyelvek és azok irodalmai számára, amennyiben még nem állíttattak, tanszékek állíttatnak".

Fentebb már említettem, hogy a törvény tartalmazott olyan rendelkezéseket is, amelyek a hivatalos és a nem-hivatalos nyelvhasználat köztes területeire vonatkoztak, s amennyiben a nem-hivatalos nyelvhasználatot érintették, inkább magyarázó jellegűek voltak, annál is inkább, mert – mint láttuk – a törvény preambuluma voltaképpen kizárta a nem-hivatalos nyelvhasználat jogi szabályozásának lehetőségét. Az egyik ilyen szakasz a 23. volt, mely a többi közt kimondta:

> „Valamint eddig is jogában állott bármely nemzetiségű egyes honpolgárnak, épen úgy, mint a községeknek, egyházaknak, egyházközségeknek: úgy ezentúl is jogában áll saját erejökkel, vagy társulás útján alsó, közép és felső tanodákat felállítani. E végből, s a nyelv, művészet, tudomány, gazdaság, ipar- és kereskedelem előmozdítására szolgáló intézetek felállítása végett is, az egyes honpolgárok az állam törvényszabta felügyelete alatt társulatokba, vagy egyletekbe összeállhatnak, és összeállván szabályokat alkothatnak, az államkormány által helybenhagyott szabályok szerint eljárhatnak, pénzalapot gyűjthetnek, és azt, ugyan az államkormány felügyelete alatt nemzetiségi törvényes igényeiknek megfelelően kezelhetik.
>
> Az ilyen módon létrejött művelődési és egyéb intézetek – az iskolák azonban a közoktatást szabályozó törvény rendeleteinek megtartása mellett, – az állam hasonló természetű s ugyanazon fokú intézeteivel egyenjogúak.
>
> A magán intézetek és egyletek nyelvét az alapítók határozzák meg."

Korábban rámutattam arra is, hogy a törvény preambuluma azzal, hogy voltaképpen kizárta a nem-hivatalos nyelvhasználat szabályozását, elismerte a tetszés szerinti nyelvhasználat jogát, azaz a nyelvszabadságot az élet e szféráiban. A törvény most idézett utolsó rendelkezése, mely szerint *„a magánintézetek és egyletek nyelvét az alapítók határozzák meg"*, ezt a szabadságot ki is nyilvánította, igaz, anélkül, hogy megnevezte volna magát ezt a nyelvi szabadságot.

8 Végül is hány hivatalos nyelve volt Magyarországnak az 1868. évi XLIV. tc. szerint?

A hivatalos nyelvnek nincs elfogadott meghatározása a nemzetközi jogban és nincs ennek egységes definíciója a tudományos irodalomban sem. Mindazonáltal a törvények hivatalos irományok, s így azok a nyelvek, amelyeken íródnak és hiteles formában közzéteszik őket, az adott összefüggésben bizonyosan, fogalmi okoknál fogva hivatalos nyelvek, s azok akkor is, ha e nyelvek közül a jog csak egyet nyilvánít hivatalos nyelvnek. A bíróságok eleve hivatalos szervek, így egy vagy több eljárási nyelvük is hivatalos nyelv, ugyancsak fogalmi okoknál fogva, s éppígy áll ez a közigazgatási és önkormányzati szervekre is.

A közoktatás egy vagy több nyelvét általában beleértik a hivatalos nyelv fogalmába – az 1868. évi XLIV. tc., mely elvben csak a nyelvek hivatalos használatát szabályozta, mint láttuk, szintén tartalmazott rendelkezéseket e tárgyban – vannak azonban államok, amelyek a közoktatás nyelvét élesen elhatárolják a hivatalos nyelv fogalmától, viszont ezen országok egy vagy több hivatalos nyelve rendszerint közoktatási nyelv is.

Az eddigiekből úgyszólván magától folyik, hogy mivel az 1868. évi XLIV. tc. értelmében a törvényeket a magyaron kívül még hat/hét nyelven kellett hiteles módon közzétenni, s a közigazgatási hatóságok és a bíróságok kötelesek voltak bizonyos körben eljárási nyelvként használni e nyelveket, s minthogy emellett a közoktatási intézmények tannyel-

vei alap- és középfokon szintén e nyelvek voltak, Magyarországnak valójában hét vagy nyolc hivatalos nyelve volt.

Következésképpen helyesebb lett volna, ha az 1868. évi XLIV. tc. nem azt mondta volna ki, hogy Magyarország államnyelve (és hivatalos nyelve) a magyar, hanem hogy Magyarország első államnyelve és első hivatalos nyelve a magyar, de államnyelve és hivatalos nyelve a német, horvát, szlovák, román, szerb és rutén nemzetiség nyelve is a törvényben előírt módon. Ez felelt volna meg ugyanis a törvény rendelkezéseinek. És mennyi, de mennyi félreértésnek és félremagyarázásnak lehetett volna ily módon elejét venni!

Ellenvetésként fel lehet persze hozni, hogy eltérő szabályok vonatkoztak egyfelől a magyar, másfelől a többi hivatalos nyelvre, sőt a horvátnak is volt egy bizonyos különállása, s hogy vajon ez az eltérő szabályozás összefér-e a szóban forgó nyelvek hivatalos nyelvi jogállásával?

Fogalmi oldalról a válasz önként adódik: mivel a hivatalos nyelvnek nincs sem a nemzetközi jogban, sem a tudományos irodalomban széles körben elfogadott meghatározása, az a körülmény, hogy egy országban a különböző hivatalos nyelvekre bizonyos fokban eltérő szabályok vonatkoznak, nem kérdőjelezi meg e nyelvek hivatalos nyelvi jogállását.

A vázolt következtetés helyességét alátámasztják azok a rendelkezések is, amelyek az egynél több hivatalos nyelvű államokban ma irányadók az egyes hivatalos nyelvekre. A különbségek már ott kezdődnek, hogy ezen országok nagy részében különbséget tesznek országos és valamilyen elnevezésű regionális hivatalos nyelvek, olykor országos hivatalos nyelv és kisebbségi hivatalos nyelvek, regionális és helyi hivatalos nyelvek, szövetségi államokban szövetségi, tagállami, regionális és esetleg helyi hivatalos nyelvek között, ami eleve azt jelenti, hogy e különféle nyelvek különféle szabályok alá esnek. Emellett gyakran előfordul, hogy még az azonos jogállású nyelvekre sem ugyanazok a szabályok irányadók minden összefüggésben. Ezt látjuk például ma Svájcban, Belgiumban, Finnországban és például Dél-Afrikában is.

A mondottak mind megerősítik, hogy az 1868. évi XLIV. tc. értelmében Magyarországnak valóban nem egy, hanem legalább hét államnyelve és hivatalos nyelve volt.

9 Végrehajtották-e az 1868. évi XLIV. tc. rendelkezéseit?

Elöljáróban megjegyzem, hogy a törvény végrehajtásáról egy oxfordi kutató azt a véleményt fogalmazta meg, hogy erről nem állnak rendelkezésre részletes adatok, s ezért a kérdés nyitott,[23] s a magam részéről ezzel alapvetően egyetértek. Mindazonáltal azért úgy vélem, vannak olyan fontos támpontok, amelyek erősen azt valószínűsítik, hogy a törvényt sokkal jobban végrehajtották, mint ahogyan azt a ma uralkodó hazai tudományos vélemények feltételezik.

Az első tény, amelyre nézetem szerint érdemes felhívni a figyelmet az, hogy a magyar jogalkotók igencsak komolyan gondolták, hogy az Országgyűlés által elfogadandó valamennyi törvényt kiadják majd a magyaron kívül hiteles fordításban még legalább hat nemzetiség nyelvén. Ez ugyanis már pusztán abból is kitűnik, hogy erről valójában nem is az 1868. évi XLIV. tc. elfogadásával döntött az Országgyűlés: a döntés már vagy fél évvel korábban megszületett. Már a törvények kihirdetése tárgyában elfogadott 1868. évi III. tc. 8. §-a kimondta ugyanis a következőket:

> „A ministerium gondoskodni fog, hogy minden törvény, kihirdetése után azonnal, a magyar korona országaiban divatozó nyelveken hitelesen fordításokban is köztudomásra hozassék, s az illető törvényhatóságoknak megküldessék."

Egyébiránt be kell valljam, magam nem folytattam kutatómunkát a törvény végrehajtásának tárgyában, viszont egyszer, több mint öt évvel ezelőtt az Országgyűlési Könyvtárban megkérdeztem a jogi

[23] Fellerer, Jan: Multilingual states and empires in the history of Europe: the Habsburg Monarchy. In: Kortmann – Auwera (eds.): *The Languages and Linguistics of Europe: A Comprehensive Guide.* Berlin – Boston: Mouton de Gruyter. 2011, 723-724.

szakreferenst, hogy vannak-e állományukban a dualizmus korából származó törvénynek a magyaron kívül más nemzetiségek nyelvein, minthogy a nemzetiségi egyenjogúságról szóló törvény ezt előírta. A szakreferens azt ígérte, utánajár a dolognak és ezt meg is tette: legközelebb, amikor ismét a könyvtárban jártam, egy külön kocsi várt, rajta mintegy 25 könyv, melyek közül 16 vaskos kötet az általam keresett kiadványok közé tartozott, jóllehet, mint kiderült, a Könyvtár nem gyűjtőhelye e kiadványoknak.

A szóban forgó joganyagok voltaképpen törvénygyűjtemények: egy-egy év magyarországi törvényeit tartalmazzák egy-egy magyarországi nemzetiség nyelvén. Hét évkönyv német, egy horvát (ez csak egyetlen, de 300 oldalnál hosszabb törvényt tartalmaz), négy szlovák, két román, egy szerb és egy orosz nyelvű, ezek egy részének címlapját e tanulmány függeléke tartalmazza. A maradék mintegy tíz könyv a korabeli szakirodalomnak a könyvtárban fellehető anyagát foglalta magában. E szakirodalom szerint is a szóban forgó hat nyelven adták ki – a magyaron kívül – a törvényeket 1868-tól kezdődően, de 1881-től megjelentették a törvényeket olaszul is.

Mindez persze még nem bizonyítja, hogy az 1868. évi XLIV. törvénycikknek azt az előírását, hogy „a törvények magyar nyelven alkottatnak, de az országban lakó minden más nemzetiség nyelvén is hiteles fordításban kiadandók", teljes mértékben végrehajtották volna, a törvény egyéb rendelkezéseinek végrehajtását pedig még kevésbé. Azt azonban önmagukban is bizonyítják a szóban forgó törvénygyűjtemények és szakirodalmi munkák, hogy volt végrehajtás, komoly mértékben és tartósan. Ami engem illet, csak azt nem értem, hogy ezek a kiadványok hogyan kerülhették el ennyire a kutatók, s különösen a történészek figyelmét, vagy ha nem kerülték el a figyelmüket, akkor miért nem írtak, illetve írnak e kiadványokról többet, hiszen ezek létének jelentősége aligha vitatható.

Irodalomjegyzék

Andrássy György: Az 1868. évi XLIV. tc. mai szemmel, elméleti megközelítésben. In: Nagy Noémi (szerk.): *Nemzetiségi-nyelvi szuverenitás a hosszú 19. században*. Budapest: Gondolat Kiadó. 2020. 11-40.

Ács Zoltán: *Nemzetiségek a történelmi Magyarországon*. Budapest: Kossuth Könyvkiadó, 1984.

Báró Eötvös József: *A nemzetiségi kérdés*. Pest: Ráth Mór. 1865.

Csernicskó István: *Államok, nyelvek, államnyelvek: Nyelvpolitika a mai Kárpátalja területén (1867-2010)*. Budapest: Gondolat Kiadó. 2013.

Varennes, Fernand de: *Language, Minorities and Human Rights*. The Hague, Boston, London: Martinus Nijhoff Publishers. 1996.

Fellerer, Jan: Multilingual states and empires in the history of Europe: the Habsburg Monarchy. In: Kortmann – Auwera (eds.): *The Languages and Linguistics of Europe: A Comprehensive Guide*. Berlin – Boston: Mouton de Gruyter. 2011. 713-728.

Fiala-Butora János: *Mit védenek a nyelvi jogok?* Kézirat, megjelenés előtt a Magyar Tudomány 2022. júniusi számában.

Göncz Lajos: A vajdasági magyarság kétnyelvűsége. Letöltés helye: www.mtt.org.rs; letöltés ideje: 2022.04.21.

Green, Leslie: Are Language Rights Fundamental? In: *Osgoode Hall Law Journal, Vol. 25, No. 4*, 1987. 639-669.

Gyurgyák János: *Ezzé lett magyar hazátok. A magyar nemzeteszme és nacionalizmus története*. Budapest: Osiris Kiadó. 2007.

Kanadai Legfelső Bíróság: különösen a Société des Acadiens v. Association of Parents ügy. (1986) 1 S.C.R. 549. Letöltés helye: www.scc-csc.lexum.com; letöltés ideje: 2022.04.20.

Kloss, Heinz: Types of Multilingual Communities: A Discussion of Ten Variables. In: Stanley Liberson (ed.): *Explorations in Sociolingusitics*. Bloomington: Indiana University Press. 1966. 135-145.

Miller, David Hunter: *The Drafting of the Covenant*. New York – London: Putnam's Sons, 1928.

Nagy Noémi. *A hatalom nyelve – a nyelv hatalma*. Budapest: Dialóg Campus Kiadó. 2019.

Péter László: *Az 1868.évi XLIV. t.c „A nemzetiségi egyenjogúság tárgyában" és a törvényhatóságok hivatalos nyelve*. Letöltés helye: www.acta.bibl.u-szeged.hu; letöltés ideje: 2022.04.18.

Pool, Jonathan: The Official Language Problem. In: *American Political Science Review, 85 (2), 1991*. 495-514.

Romsics Ignác: *Történelem, történetírás, hagyomány*. Budapest. Osiris Kiadó. 2008.

Skutnabb-Kangas, Tove: *Nyelv, oktatás és a kisebbségek*. Budapest: Teleki László Alapítvány. 1997.

Stevens, Lisbeth: The Principle of Linguistic Equality in Judicial Proceedings and in the Interpretation of Plurilingual Legal Instruments: The Régime Linguistique in the Court of Justice of the European Communities. In: *Northwestern University Law Review, 62, 5. 1967.*

Szentgáli-Tóth Boldizsár – Gera Anna: *Az 1868-as nemzetiségi törvény és a politikai nemzet koncepciójának utólagos értékelése*. Letöltés helye: www.real.mtak.hu; letöltés ideje: 2022.04.18.

Trócsányi László – Badó Attila (szerk.): *Nemzeti alkotmányok az Európai Unióban*. Budapest: KJK KERSZÖV. 2005.

Függelék

Gesetz-Sammlung

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Budapest, 1904.

Pester Buchdruckerei-Aktiengesellschaft.

SBIERKA

krajinských zákonov

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Vydaná uhor. kr. ministerstvom vňutra.

Budapešť, 1884.
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Tiskom Pešťanskej knihtlačiarskej akciovej spoločnosti.

COLECTIUNEA LEGILORU

din anulu 1868.

PUBLICATA

PRIN MINISTERIULU UNG. REG. DE JUSTITIA.

PEST'A, 1869.
S'A TIPARITU IN TIPOGRAFI'A LUI ALESANDRU KOCSI.

ЗБИРКА

ЗЕМАЉСКИХ ЗАКОНА

ГОДИНЕ 1868.

ИЗДАЈЕ

У. КР. МИНИСТАРСТВО ПРАВОСУДИЈА.

У Будиму,

из тискарнице угарско-краљевског свеучилишта.

1869.

Sobranye

СОБРАНІЕ

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Zakonov

ЗАКОНОВЪ

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1868. ГОДА.

Izdayet

ИЗДАЕТЪ

Ugor. Kor. Ministerstvo Pravosudija

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V Budinje

Въ Будинѣ 1868

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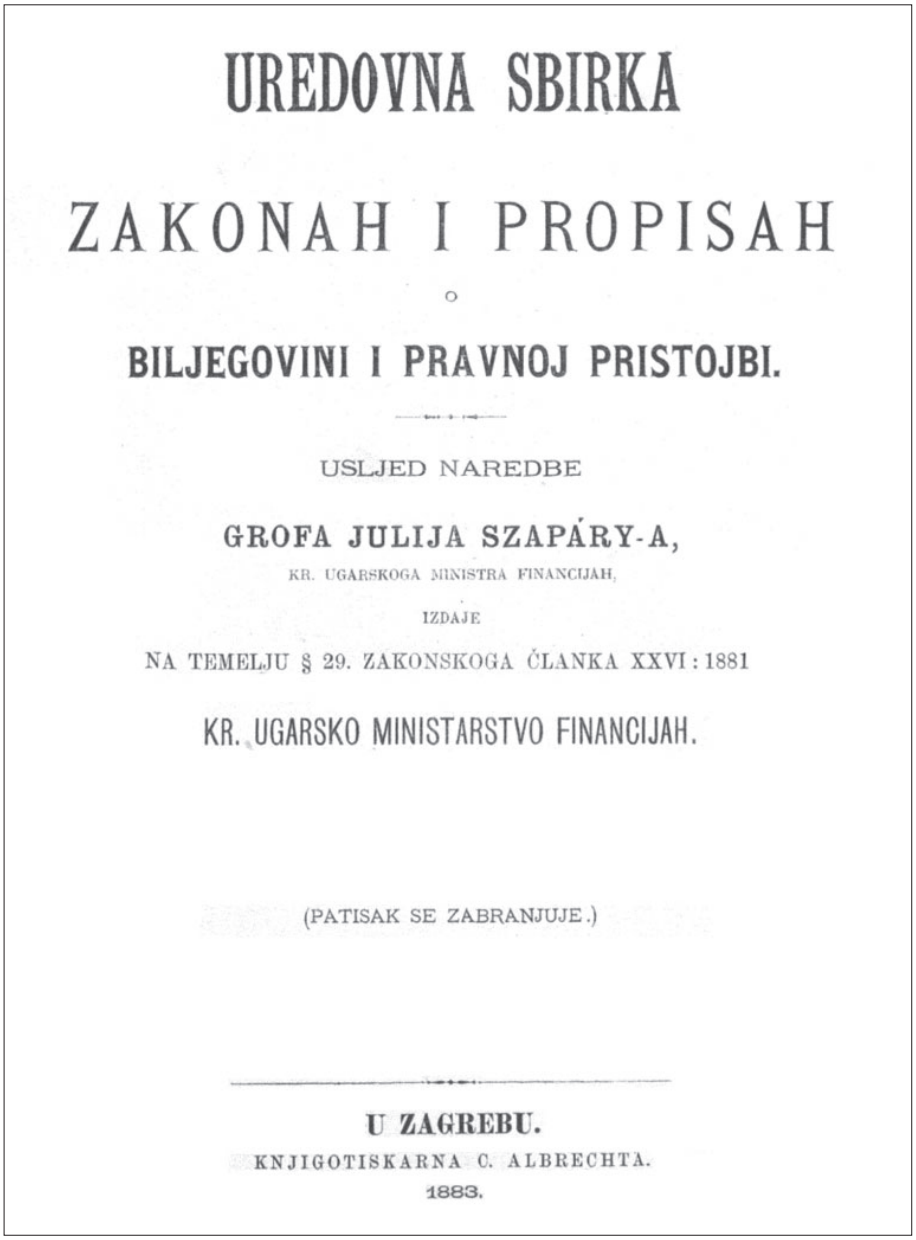
(Orosz)



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Chapter II

Minority Protection in Europe

Joanie Willett[*]

MINORITY CULTURES, AFFECTIVE ASSEMBLAGES, AND INWARD MIGRATION

1 Introduction

Amongst the many issues that minority cultures and nations experience, this paper will focus on maintaining cultural distinctiveness when the region experiences high levels of inward migration. In these circumstances, there can be fears that the minority culture might become diminished, threatening the rights of the local minority and their capacity to protect their status. Practically, this is imagined quantitatively, whereby the "risks" associated with potentially becoming "outnumbered" by "other" people impact the ability of the minority to exist. It also risks sliding into a rhetorical repertoire of becoming "swamped" by "invaders" who cause some form of harm to the minority, conjuring an emotive language that reinforces divisions between the people that inhabit a geographical space. This paper will explore this question in relation to Cornwall, a Celtic nation in the South-West of the UK. It will use ethnographic interview data and the concept of affective assemblages, to consider how the minority culture of Cornwall has been impacted by inward migration from other parts of Britain. The paper will show that there are spaces of assimilation of newcomers into Cornishness, but there are also challenges. However, we will also see that although instinctively, it might be imagined that the best way to protect minority culture is to police the borders between minority and in-migrant culture, an inclusive approach is a more effective way forward. The paper claims that this is an ongoing process which requires continual assertiveness and a confidence in the sense of self that minorities have. Having minority rights enshrined in law through the Framework Convention for the Protection of National

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Minorities is a key factor in legitimising local culture. The paper opens with an overview of Cornwall and its unique culture and heritage before setting out the methodologies employed in the research. Following a presentation of the qualitative data, the paper will offer some discussion and conclusions about ensuring that minority rights are protected moving forward.

2 Cornwall, Culture, and Minority Status

Cornwall is a peninsula in the far Southwest of the United Kingdom. Unusually for peripheral, rural areas (which can often see population shrinkage), it had a growing population of 575.500 in 2020[1] up from 53.,000 in 2009.[2] This is part of a long-standing trend derived from the desirability of Cornwall as a visitor destination,[3] whereby inward migrants are encouraged by the kind of coastal, rural lifestyle which they imagine that they will be able to experience in the region.[4] The nearest major city, Plymouth, lies just over its border in neighbouring Devon, but otherwise, it is 78 miles long, 38 miles wide at the Devon/ Cornwall border, tapering to a point at Lands End. With the exception of a 4 mile stretch of land between the Atlantic Sea on its North coast and the source of the river Tamar which joins the English Channel on its southern coast, Cornwall is almost entirely bounded by water. This goes some way to explaining a little about the special nature of Cornish culture, history, and heritage.

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[1] Nomis Labour Market Statistics: https://tinyurl.com/2p8uksbf, accessed: 4 April 2022.

[2] Willett, Joanie: *Why is Cornwall So Poor? Narrative, Perception, and Identity.* (2010) Unpublished PhD thesis
https://ore.exeter.ac.uk/repository/handle/10036/104835, accessed: 4 April 2022.

[3] Perry, Ron: Economic Change and Opposition Economics. In: Philip, Payton (ed.): *The Making of Modern Cornwall, Cornwall since the War.* Redruth: Institute of Cornish Studies, 1993.

[4] Bosworth, Gary – Willett, Joanie: Embeddedness or Escapism? Rural Perceptions and Economic Development in Cornwall and Northumberland. In: *Sociologia Ruralis. 51 (2011)*, 195–214.

As a named population with a shared ancestry, set of traditions, culture, heritage, and myth of descent, organised around a defined territory, Cornwall meets the definition of an ethnicity as set out by Anthony Smith.[5] It also meets the criterion as a nation, having mobilised a "mass public culture, a common economy, and common legal rights and duties for all members."[6] In 1951 the first Cornish political party, Mebyon Kernow, was begun,[7] and this party currently has 5 Councillors (out of 87) on Cornwall Council, the local government body. Whilst this might not necessarily be imagined as a *mass* political movement, it is instructive that it has mobilised major campaigns for political decentralisation to Cornwall,[8] and often sets the political agenda. Willett and Tredinnick-Rowe[9] show how key cultural-political campaigns have become mainstreamed from formerly marginal, outsider-type narratives, to become as now, generally accepted policy pledges across the main political parties operating in Cornwall.

The theme of Hechter's[10] concept of internal colonialism runs through contemporary understandings of Cornish history with regards to its neighbouring nation of England over the centuries. According to the historian Mark Stoyle,[11] Cornwall's geography and watery boundaries provided protection from the Saxons of England, who were never able to conquer the inhabitants, but who instead

[5] Smith, Anthony: Nations in History. In: Guibernau, Montserrat – Hutchinson, John (eds.): *Understanding Nationalism*. Cambridge: Polity. 2001, 34.

[6] *Ibid*, 19.

[7] Deacon, Bernard – Cole, Dick – Tregidga, Garry: *Mebyon Kernow and Cornish Nationalism*. Cardiff: Welsh Academic Press. 2003.

[8] Willett, Joanie – Giovannini, Arianna: The Uneven Path of UK Devolution: Top-Down vs Bottom-Up Regionalism in Cornwall and the North-East Compared. In: *Political Studies. 62 (2014)*, 343–360.; Deacon – Cole and Tregidga, 2011.

[9] Willett, Joanie – Tredinnick-Rowe, John: The Fragmentation of the Nation State? Regional Development, Distinctiveness, and the Growth of Nationalism in Cornish Politics. In: *Nations and Nationalism. 22 (2016),* 768–785.

[10] Hechter, Michael: *Internal Colonialism; The Celtic Fringe in British National Development, 1536–1966.* London: Routledge. 1999.

[11] Stoyle, Mark: *West Britons.* Exeter: Exeter University Press. 2002.

exerted a process of Anglicanisation. Kent and Angharrack[12] describe this in colonial terms, whereby the ideological takeover of the Cornish relied on locals adopting the idea that they were inferior in order to ensure compliance. Stoyle argues that by the mid-14th century, Cornwall's separate ethnicity was beginning to fade away through these processes, and in the mid-1500's the primary seat of learning in Cornwall, using the Cornish language, was destroyed. However Stoyle also argues that resistance to these processes were occurring in many different forms from the rebellions of 1497 and 1549 (which were quelled brutally, leading to the death of thousands of the population), to adopting the royalist cause in the English civil war of 1642 – 1641. In later times, this sense of difference congregated around religion[13] and politics.[14] However, the maintenance of this sense of difference also brings with it the constructed inferiorities of the internal colonialism concept. Therefore, the region and the people within it are still (misre) presented as backward, overly traditional, with a tendency to be childlike,[15] which, in common with many rural areas, contributes to what might be imagined as a "hollowing out" of local capacity, as bright young people feel that they have no option but to leave for opportunities elsewhere.[16]

All of this presents a story of decline and loss. However, the survival of Cornish culture over the centuries, despite massive difficulties, is also an important success story, of which the Cornish language is a

[12] Kent, Aland: 'Art Thou Of Cornish Crew?' Shakespeare, Henry V and Cornish Identity. In: Philip, Payton (ed.): *Cornish Studies Four.* Exeter: Exeter University Press. 1996.; Angarrack, John: *Breaking the Chains. Propaganda, Censorship, Deception And The Manipulation Of Public Opinion In Cornwall*. Camborne: Cornish Stannary Publications. 1999.

[13] Milden, Kayleigh: *Remembered Places and Forgotten Histories: The Complexities of Cultural Memory of Politics and Religion within Cornish Methodism*. Truro: Institute of Cornish Studies. 2006.

[14] Tregidga, Garry: *The Liberal Party in South-West Britain Since 1918: Political Decline, Dormancy and Rebirth*. Exeter: University of Exeter Press. 2000.

[15] Willett, Joanie: The Production of Place: Perception, Reality, and the Politics of Becoming. In: *Political Studies 64 (2016, 2),* 436–451.

[16] Williams, Malcolm: Why is Cornwall So Poor? Poverty and In-Migration Since the 1960's. In: *Contemporary British History 17 (2003, 3)*, 55–70.

good example. Reputedly, the last monoglot Cornish speaker, Dolly Pentreath, died in 1777, however, in practice, it survived in spoken form in many different arenas of life. [17] Nevertheless, it fell out of common usage, and its revival began in earnest in the 1870's, with Henry Jenner's find of a fragment of Cornish verse.[18] Currently, it is estimated that between 2-3000 persons can speak the language, with many others having a few words – helped by the inclusion of Cornish on road signs, in business marketing, and by the Local Government. It is one of a tiny handful of languages to be revived and as such attracts attention from scholars worldwide, and is supported by a range of cultural organisations, alongside Gorsedh Kernow, which exists to "maintain the national Celtic spirit of Cornwall".[19] Additionally, the UK-wide popular singer Gwenno releases songs in Cornish, and it has been used in UK-Wide advertisements for Cornish products. On the one hand, this might open up the charge of what Hobsbawm[20] calls an invented tradition. However, it has resonated sufficiently amongst the local population to become incorporated into familiar daily life.

Cornish culture and heritage have been shown to have a pragmatic usage, and the interaction between the cultural and the political has served to support local politics, whilst also helping local culture to grow in confidence and assertiveness. A key moment was during the 1990s when it became clear that Cornwall's deep levels of poverty compared to the rest of Britain and the European Union meant that it was not able to qualify for much-needed Objective 1 (now called Cohesion) Structural Funding. However, it was realised that being able to make the claim of cultural difference to its neighbours provided the opportunity to complete the steps required in order to be able to

[17] Mackinnon, Kenneth: Cornish at its Millennium: An Independent Study of the Language Undertaken in 2000. In: Philip, Payton. (ed.): *Cornish Studies Ten*. Exeter: Exeter University Press 2002.

[18] Lowenna, Sharon: 'Jenner, Dunscombe Jewel and their Milieu. In: Philip, Payton (ed.): *Cornish Studies Twelve*. Exeter: Exeter University Press. 2004.

[19] Gorsedh Kernow https://gorsedhkernow.org.uk/, accessed: 31 March 2022.

[20] Hobsbawm, Eric., Ranger, Terence: *The Invention of Tradition*. Cambridge: Cambridge University Press. 1992.

claim the additional monies. From qualitative interviews with former campaigners, some actors were initially motivated by the rational, economic argument regarding drawing down additional funding for the region. According to one source, initial mention of Cornwall's language and Celtic heritage were added as an afterthought. However, when they realised that this was an angle that worked well at an EU level, the campaign shifted to centre around it. [21] This cross-party campaign ranged most of the 1990s, during which time symbolisms of Cornish culture and heritage became much more visible throughout Cornish civil society.[22] Indeed, there is a radical shift from the early 1990s when the local Council was perceived as trying to minimise Cornish distinctiveness, to the time of the Objective One Single Programming Document, providing a blueprint for funding spending, when Cornwall's distinctly Celtic cultural heritage and language was foregrounded. [23] This is a visibility which remains up to the present day.[24] It also may have been instrumental in the switch of Cornwall Council from being defiantly *against* any idea of Cornish identity and distinctiveness towards embracing it.

The final key moment to relate here in this brief overview, is about how now, there is an element of legal protection for Cornwall's minority status, through the 2014 inclusion in the Framework Convention for the Protection of National Minorities. As we can see from Cornwall Council's *Framework Convention for the Protection of National Minorities – Contribution to the Fifth Cycle UK State Report*,[25] it has enabled the Council to better push for resources for protecting and promoting Cornish culture and heritage, as well as measures available in order improve the statistical visibility of Cornish people. However, in

[21] Willett, Joanie: National Identity and Regional Development: Cornwall and the Campaign for Objective 1 Funding. In: *National Identities. 15 (2013, 3)*, 297–311.

[22] Deacon, Cole and Tregidga, 2003 *op. cit.,* 114.

[23] Willett 2010, *op. cit.,* 113.

[24] Willett and Rowe 2016, *op. cit.,* 773.

[25] Cornwall Council: Framework Convention for the Protection of National Minorities – Contribution to the Fifth Cycle to the UK State Report. 2021. Available at: https://tinyurl.com/4farx6xj, accessed: 22 June 2022.

practice, obtaining these resources has been difficult, and certainly, Cornish culture has not been provided with the level of support of other UK Celtic nations. For example, in their 2021 report the Committee of Experts (COMEX) of the European Charter for Regional or Minority Languages reported that central government funding was based on political decisions rather than automatically applied.[26] This meant that the £140,000 provided to Cornwall Council was withdrawn in 2020. COMEX recommended that responsibility for protecting the language be devolved from central government to Cornwall Council with ring-fenced allocated funding.

Eight years on, Minority Status has been led at a Council level by a Cornish National Minority Working Group,[27] focusing on compliance with the Framework Convention. Cornish heritage is managed and promoted by the Cornwall Heritage Trust,[28] and the Cornish Language Office coordinates community projects and increases the visibility of the Cornish language inside and outside of Cornwall.[29] This includes a Cornish language translation on signage and the "Go Cornish" campaign to promote language learning amongst younger people and primary schools in particular.[30] Apps such as IndyLan and Magi Ann Kernewek increase access to Cornish language learning to a wider audience, the "Together for Families Education Team" is working on a Cornish school curriculum, and a state-of-the-art new archival centre, Kresen Kernow, was opened in 2019. Other campaigns include a long-standing campaign for a Cornish "tick-box" on the UK census in order to compile concrete data about the lives of people who identify as Cornish. This was promoted in partnership with arts organisations

[26] Council of Europe: *European Charter for Regional or Minority Languages: Evaluation by the Committee of Experts of the Implementation of the Recommendations for Immediate Action Contained in the Committee of Experts Fifth Evaluation Report of the United Kingdom and Isle of Man*. Strasbourg. 2021.

[27] Cornwall Council, *Cornish National Minority*: https://tinyurl.com/3n43watp/, accessed: 28 April 2022.

[28] Cornwall Heritage Trust: https://www.cornwallheritagetrust.org/, accessed: 28 April 2022.

[29] Cornish Language Office: https://tinyurl.com/yre4msmb, accessed: 28 April 2022.

[30] Go Cornish: https://gocornish.org/, accessed: 28 April 2022.

such as Golden Tree, and included the "Cornish Embassy Bus" which toured the region and encouraged people to sign up to their Cornish passports. Currently, the Office for National Statistics has refused to do this, but at the time of the 2021 census, there was a widespread push to encourage persons who identify as Cornish to write this in the "other" category. In a recent press release marking eight years since inclusion in the Framework Convention, Cornwall Council[31] stated that over the next four years, they would work to:

- "See Cornwall secure a meaningful devolution settlement which will protect the unique characteristics of Cornish identity, and appropriately reflect Cornwall's position as a Celtic nation within the UK.
- Further support and develop Cornish education, language, culture, and heritage, including the rollout of a Cornish curriculum in schools across Cornwall
- Ensure the needs of the Cornish National Minority are taken into account in all public sector decision-making.
- Create a culture of open and honest two-way communication with colleagues, local communities, Cornish diaspora, partners, and government."

Taken together, this means that Cornish minority rights are becoming increasingly vocal, visible, and protected. However, in the introduction to this section the paper outlined the large scale of inward migration to the region. Indeed, between 1961 and 2000 the population of Cornwall grew by 50%, which has led to fears that Cornish identities, culture and heritage might be in the process of being watered down.[32] Notwithstanding the evidence that it appears instead to be increasing and deepening, this does open us to the question about the relationship

[31] Cornwall Council: *Blueprint to Further Promote Cornish Language and Culture as Minority Status Anniversary Approaches.* https://tinyurl.com/5n8e75wf, accessed: 08 April 2022.

[32] Perry, Ron: The Making of Modern Cornwall 1800–2000. In: Philip, Payton. (ed.): *Cornish Studies Ten*. Exeter: Exeter University Press. 2002.

between inward migrants and the existing population, how the two groups interrelate, and what this means for minority rights in Cornwall

3 Research Methods

The fieldwork for this study was conducted in late 2019, early 2020, using ethnographic research methods and a grounded theory approach in order to allow the data to follow as closely as possible the subjective understandings of the participants,[33] and the meanings that they attached to their lives.[34] It began with the question of "what is Cornwall like to live in", beginning with interviews with 25 general members of the public, representing individuals from a range of different backgrounds, sourced through recommendations and snowball sampling.[35] Later, this was supplemented with five policy-makers working at some level of strategic development in public or third sector organisations in order to explore some of the issues raised to a greater depth and find out approaches to tackling them. Where possible, research was conducted using embodied techniques, over the course of a practical activity such as painting, walking, or sports pursuits. This was to help to connect participants with the materiality of the region and their lives in order to generate richer, more meaningful conversations.[36]

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[33] Charmaz, Kathy: Constructing Grounded Theory: A practical guide through Qualitative Analysis. Delhi: Sage Publications. 2006.; Strauss, Anselm – Corbin, Juliet: *Basics of Qualitative Research: Grounded Theory Procedures and Techniques*. London: Sage, 2008, 3rd Edition.

[34] Goffman, Ervin: *The Presentation of the Self in Everyday Life*. Middlesex: Penguin Books, 1959.; Blumer, Herbert: *Symbolic Interactionism; Perspective and Method*. California: University of California Press. 1969.

[35] Flick, Uwe: *An Introduction to Qualitative Research* London: Sage. 2006, 3rd Edition.

[36] West, Jodie – Saunders, Clare – Willett, Joanie**:** A Bottom Up Approach to Slowing Fashion: Tailored Solutions for Consumers. In: *Journal of Cleaner Production 296. 2021.*; Spatz, Ben: Embodied Research: A Methodology. In: *Liminalities: A Journal of Performance Studies. Vol. 13 (2017, 2)*; Thanem, Torkild – Knights, David: *Embodied Research Methods*. London: Sage. 2019.

Interviews were fully recorded and transcribed and coded with respect to emerging themes around how respondents described and positioned themselves within the assemblages within which they were situated. Assemblages are drawn from a Deleuzian analysis[37] and represent the thoughts, ideas, objects, practices, meanings, organisations and institutions that are collected together around a particular thing.[38] Assemblages are multiple and overlapping, rather than singular, so for example, a larger assemblage around a minority culture will be comprised of smaller assemblages perhaps around language, language learning, and promotion; the gathering and preserving of historical material; gathering data about the contemporary minority population; and the formal and informal political activities which strive to enrich the lives of the minority population, and help them to flourish in the face of various challenges. As might be imaged, these various assemblages overlap at many different points. For example, archiving and contemporary data gathering may feed into political activities, or persons might feel impelled or fuelled to engage in minority politics on account of involvement with cultural activities.

This introduces us to the affective element of the assemblage. Assemblages are fluid, constantly growing, shrinking, combining or dispersing as they adapt to the contemporary encounters that they face. Ideas, knowledges, truths, and meanings readily flow between assemblages, occur or can be precipitated on the basis of the impacts that things have on other things. Sometimes these impacts might be physical, such as a policy change which affects minority rights. At other times the affective impact might be emotional, whereby particular feelings become aroused by particular objects, practices, or institutions, which enable other forms of movement within and amongst the assembled phenomena.[39]

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[37] Deleuze, Gilles – Felix, Guattari: *A Thousand Plateaus*. London: Continuum. 2004.

[38] See also Delanda, Manuel: A New Philosophy of Society: Assemblage Theory and Social Complexity. London: Continuum. 2011.

[39] Ahmed, Sara: *The Cultural Politics of Emotion*. Edinburgh: Edinburgh University Press. 2004.; Bennett, Jane: *Vibrant Matter: A Political Ecology of Things*. Durham: Duke

For the purposes of this study, assemblages provide a useful exploratory framework in order to examine the ways that constellations of meanings collect or pool in certain places and the emotional affects that help to facilitate this. This helps us to see how collected phenomena around the minority culture – in this case Cornwall, responds to what might be perceived as the encroachment of the threatening majority, into its territorial space. The fluidity of the assemblage helps us to consider the flows of information between minorities and majorities, the things that direct these flows, and the other assemblages which they are affectively attached to.

4 Cornishness

There are many places to begin this story, but we are going to start on a community walk, led by a local historian Matt, a former teacher who now works full time in politics. Matt explained that the differences between settlements in Cornwall, and those in England, related to the ways that they were physically organised. Cornish communities originated in a pattern around farms, whereas in England, they tended to be more feudal with land owned by a "lord of the manor". He says:

> "it was very much about small tenant farmers mostly, cause everything was owned by the Duchy of Cornwall, in many ways still is. People just farming, and then cottages for their labourers, and then gradually, fishing villages grew up."

Matt went on to describe how the types of communities influenced their politics, so farmers tended to be more traditional, whereas fishing communities were much more socially liberal and independent of spirit. He also told the group about the intimate relationship between the names that were given to various parts of the neighbourhood,

University Press. 2010.; Connolly, William: *Neuropolitics: Thinking, Culture, Speed*. Minneapolis: University of Minnesota Press. 2002.

and their history brought through to the present through the Cornish language.

> "Trevor means large farm. The Gruda was the gallows ground, and the Merther ground was where people were martyred. Cornish and Welsh was originally the same language. As was Breton. But the Anglo Saxons divided it."

Perhaps understandably, in a community painting exercise following this walk, participants were keen to include many traditional symbols of Cornishness alongside contemporary practices, including Celtic crosses, the Cornish flag and tartan, the traditional food of the pasty, and the sport of gig racing which is itself steeped in history and heritage.

Taken together, the casual observer might imagine this to be a community assemblage threaded through with a vibrant and confident Cornishness, a place where the minority culture could survive and thrive. However, by looking deeper, this is a much more complex story. Local resident Helen articulates the challenges. She says that

> "'it's interesting to look at the demographic of even this room, how many are Cornish, and how many are not. And that has changed our village enormously – not saying it's for the good or for the bad. But it has changed it. So there's very few Cornish people that are around now".

Helen points to the fact that, in common with many Cornish coastal communities, housing use and the local population is much more fluid than the sedentary impression provided in the earlier snapshot. Instead of an imagined stability which has enabled the concentration and amplification of minority culture, the attractiveness of the locality has meant that many people move there from wealthier parts of the UK. Alternatively, much of the housing stock is no longer used for primary residences, but are second homes or holiday lets for visitors.

Helen's matter of factness about the way that she articulated her point, hides an affective constellation which amplifies an emotive repertoire with a range from frustration to anger. This is exemplified in John, a manual worker in his early thirties who perceives assemblages around inward migration as a competition for scarce resources. This sets up a discourse of winners and losers, where people such as himself are "pushed" or "forced" out of their communities, intangibly ejected, because local wages are insufficient to support a life in the places in which they live their lives. He says

> "I would like to see the likes of me, and the likes of my friends, that are actually Cornish, that want to stay in Cornwall, but it seems to me are actually being pushed out- they have to go up-country or abroad just to try and earn money, and try and live, have a better life."

This is an assembled collection of responses that notices the boundaries between "locals" and "newcomers", keeping their assemblages separate through a narrative that is kept alive by (an understandable) bitterness and resentment. It also echoes the surprise interjection behind Mandy's response to the question about how she would describe Cornwall to someone who didn't know it. Mandy was a health professional in her 40's, and was happy in the kind of life that she was living, so on the surface was not experiencing herself the structural exclusions that Tom was. However, her immediate response was "*I wouldn't tell them anyway because I don't want them to come here*." She qualifies this with another story about scarce resources, this time in terms of healthcare.

> "A classic example is when I had [child's name] there was no bed for me at the hospital because it was bank holiday weekend, and there was an influx of people who was on holiday giving birth and I had to give birth in a ward where there was no bed. That's not even with Coronavirus, no. So I understand the seriousness

> of it, and that was just because there were just extra five beds full and that meant they were absolutely saturated and had no room".

Whilst John's "other" or enemy object was the inward migrant, Mandy's target is the visitor, the inward migrant for a few weeks of the year, but who dominate the summer landscape. In both these examples the incomer is assembled around a set of meanings that position them as the "invader" and the local as the victim. The local then becomes unable to access basic services in a set of structural exclusions which are made visible through creating fixed boundaries between local and incomer assemblages. These boundaries then become quite fixed and rigid. Amy is a community activist in her 40's, and she has lived in Cornwall since she was brought here by her parents as a young child. The experiences that she has had growing up and as she has moved through the various phases of her adulthood, have shaped her as a person and moulded her into who she is today. You could say that she is *of* Cornwall. That she is Cornish. However, she doesn't feel qualified to describe herself in this way. Despite the fact that the issues of poverty and exclusion experienced by the Cornish minority mirror her own experience and those of the communities she works with, the fight and the energy she has she reserves for her own survival and campaigning for campaigning, and with other issues. One might even say that as a result of her real or imagined feeling that people like her are excluded from Cornish assemblages, she has spent her time amplifying languages, discourses, narratives and institutions that are different and perhaps even oppositional to those of the Cornish minority.

Whilst the incomer other is readily demonised, it can also be easy to forget the dislocation that can be experienced on moving to an entirely new region. Sophie discusses how strange it was for her husband, to have spent most of his life living in a place that he grew up in and knew really well, to be somewhere where he knew nobody. For herself,

she really struggled to get to know other people and find people to spend time with. She says

> "the other people I've now met through this job at […] when new people come in from upcountry or from other places, there's quite a lot of us who are all emmets, if you like, and actually, we all know how it feels for that first year, few years, and everybody makes a really conscious effort to make whoever's moving in… to make that time go quicker. To settle in quicker and to make friends, and I think it's funny that there are probably […] I've probably got more friends down here that are from somewhere else, than Cornish friends."

There are many important threads to unpick here. Firstly, we know from earlier in Sophie's interview about the loneliness that she experienced on moving. We also find that she has a commonality of experience with other inward migrants, that resonates with her and means that she ends up being drawn towards more discreet assemblages around inward migrants, rather than Cornish people, who may already have established networks that might be harder to access anyway. She also introduces us to a word that is *designed* to repel non-Cornish people and reaffirm their continual otherness. "Emmet" is a highly derogatory term used by some to describe incomers. It is said to mean "ant" in Cornish, but this is untrue and the root of the word actually comes from English. It refers to imagery around "swarms" of outsiders, invading Cornwall like pests, and understandably, reinforces the boundaries between Cornish and inward migrants that Amy finds so difficult to cross. At the Epicurean root of the concept of affect, as individuals, we are attracted to positive affects, and repelled by negative ones. For Cornish minorities, this risks becoming a self-fulfilling prophecy whereby being repellent literally diminishes Cornish assemblages, whilst at the same time the threatening (imagined) "invaders" get stronger.

But it would be wrong to imagine that these kinds of policing the boundaries around Cornish assemblages are routine practice. Some additional words from Mandy points us back to where we began. She says

> "something that I noticed within Cornwall, there's anywhere there's the harbours where they have the gig clubs and they support the fishermen and the people who work on the sea become part of the communities, and they are strong traditional parts of the communities, […] maybe over the last 10 years, a lot of the elder generation within those clubs were very concerned that they were losing traditions and the next generation weren't taking up, even from the singing and some of the sea shanties, and the coming together. Yeah, it was interesting that they were worried that their sons or their daughters weren't taking up those traditions, so there's been a real push and I think, in turn, when you have those things at the centre of the community, where people come together to take part in sports or they're drinking together or doing whatever they're going to do, that there becomes a network, I think that people fit into."

Mandy describes how many local traditions have become reinvigorated in coastal communities in particular and that this has not only helped to maintain them but helped to make them feel become "cool" and attractive. She later talks about how it is not only "Cornish"' people who become involved in these activities, but that through traditional coastal activities such as rowing and singing, connecting bridges have been forged between Cornish and inward migrant assemblages. Indeed, inward migrants have been able to become Cornish if they so wish and in turn, help to keep minority culture alive and dynamic.

The community introduced in the opening of this paper is a good case in point. It became clear over the course of the conversations, that the rowing club was the central force holding the assemblage together.

It wasn't just a cultural assemblage, or a sports assemblage, but became the place where many different assemblages collided and intersected, including politics, faith, and business. In so doing, it became the central node in a network that included the whole community and meant that even though the community assemblage experienced some serious threats with regards to factors like second homes and inward migration from wealthier (and therefore more price elastic) areas, it was still able to not only survive, but also flourish.

5 Discussion and Conclusion

So, what does this mean for minority rights? Firstly, and most obviously, the use of adaptive assemblages helps us to observe the layered and textured intersections between different identity positions, the ideas, attitudes and values that individuals hold, and how this merges into the various collective groups in and around Cornwall. It also helps us to see the flows and physical and emotional affective linkages between and amongst different assemblages.

From this position, we are able to witness the discursive tensions surrounding inward migrants, who can become imagined as part of an affective constellation whereby they represent many of the intense difficulties that people find around access to housing, essential services, and the landscape. This places inward migrants in a perpetrator role, to Cornish people's victim status. In turn, this slides into a discursive repertoire that recalls the many injustices that have happened to Cornish people, from the ancient colonisation of Cornwall resulting in threats to the culture, loss of language, and institutions. The next step from these injustices is to create a flow of meaning between this sense of loss, with the poverty that many people in Cornwall experience. The extent to which the correlation between the Cornish loss, and poverty is causally connected, or whether it actually is just a correlation, is not of concern here. The point is that meanings are fluid and reliant on

emotional attachments rather than on particular objective truths.[40] The flow between these different meanings collects and pools between them, so they are *imagined* as causally linked, and this has an impact on how receptive (or not) minorities can be when welcoming incomers into their culture. On the other hand, being ostracised from local, minority culture causes newcomers pain or discomfort. Connolly talks about how the experience of pain causes the person to retract themselves and retreat. [41] As we have seen in the material presented above, this can lead to newcomers seeking out instead people like themselves, with similar experiences of uprooting and moving somewhere different. Consequently, this boundary policing can actually amplify the separateness and differences between a newcomer and Cornish assemblages, risking exacerbating real or perceived inequalities.

What we also find, however, is that in attempting to protect minority assemblages from being "watered down" brings its own set of risks with regards to the sustainability of minority culture. What we see through the case of Cornwall is that *not* being inclusive, whilst coming from a place of trying to defend a threatened culture, risks the converse effect of shrinking minority cultural assemblages. Assemblages are not fixed for all time but are constantly evolving and adapting. This means that they are constantly changing, growing, shrinking, absorbing, or divesting.[42] This is about more than literally not teaching newcomers about Cornish cultures, practices, and ways of life and so growing the physical numbers of people that are involved in these important activities which help to keep minority cultural assemblages living and breathing. To an extent, the cultural emphasis derived from inclusion in the Framework Convention for the Protection of National Minorities helps this as it has provided a sustained emphasis on Cornish culture and heritage, through language promotion, enhanced archives, and the "tick box" campaign for the UK Census. This contributes to efforts to help minority identification to be perceived as something that younger people want

[40] See Ahmed 2004 *op. cit.,* 13.

[41] Connolly 2002 *op. cit.,* 24.5.

[42] Deleuze and Guattari 2004 *op. cit.,* 4.; Bennett 2010 *op. cit.,* 120.; Delanda 2011 *op. cit.,* 2.

to be a part of, and think of as "cool", rather than for the preservation and maintenance of minority culture to be the space reserved for older people. In the featured community, we see how in finding ways to include and absorb these potentially threatening assemblages, literally bringing newcomers into the Cornish fold through teaching culture and heritage in an attractive setting, it has strengthened the capacity of the community to weather the challenges that it faces to its ability to provide necessary services in the locality. A final benefit is in how it reduces the spaces for assemblages around "otherness" and difference, breaking down the barriers between different groupings and helping to maintain more cohesive communities, which in turn are better able to flourish. This is not to say that the featured community didn't have any of the issues that we saw in other parts of Cornwall. It's just that its inclusive approach enabled these problems to be discussed in a frank and open way.

However, doing this requires confidence and assertiveness, having the strength to be able to go out into the world and expect to be treated well. It would be counterfactual to claim that this process is happening now in a different way to previous decades. However, it is an interesting correlation between the broad traction of the political campaigns for minority rights in the 1990's which made it not only "ok", but also "good" to be Cornish; recognition under the Framework Convention for the Protection of National Minorities; and the steady growth in the use of Cornish cultural symbolisms throughout the region.[43] Sustained promotion has made the Cornish language much more visible, celebrations of the national day (March 5th, St Piran's Day) are widespread throughout the region, and awareness about Cornish heritage is growing. Being welcoming and inclusive is much easier to do if an individual, community or culture does not expect the hurt of their invite being rejected or ridiculed. Recalling above that the pain of being sostracised can lead to newcomers to retreat and create and nurture their own (rival) assemblages, perhaps in opposition to the minority. Equally, the ripples of pain and discomfort is a real

[43] See Willett and Rowe 2016. *op. cit.,* 773; Deacon, Cole and Tregidga 2003 *op. cit.,* 114.

problem for host cultures when they feel that newcomers carry a set of assumptions (such as the 'backwardness' often ascribed to rural peoples[44]) towards them which are uncomplimentary at best, or cruel at worst. As Willett shows,[45] the ways that Cornwall and Cornish people have been discursively constructed by (some) others, includes an affective constellation around "backwardness", "slowness", being not progressive, childlike, and overly traditional. This can mean that the instinct to protect the minority assemblage might have a thread that is about fears of being watered down, but these fears might be merely the articulated version of a feeling that more accurately thinks "these people are going to be nasty to me. I don't want to hurt myself by getting too close to them". This is where official recognition is of special importance. It is a way of reminding the culture that if another grouping were to view it in negative, harmful ways, that is not the fault of the problem of minority cultural assemblages. Instead, it reminds the culture that they have a value that they should be proud of and can share with others.

[44] Willett 2016. *op. cit.*, 437.

[45] *Ibid*.

Bibliography

Books

Ahmed, Sara: *The Cultural Politics of Emotion*. Edinburgh: Edinburgh University Press. 2004.

Angarrack, John: Breaking the Chains. Propaganda, Censorship, Deception And The Manipulation Of Public Opinion In Cornwall. Camborne: Cornish Stannary Publications. 1999.

Bennett, Jane: *Vibrant Matter*: *A Political Ecology of Things*. Durham: Duke University Press. 2010.

Blumer, Herbert: *Symbolic Interactionism; Perspective and Method*. California: University of California Press. 1969.

Charmaz, Kathy: Constructing Grounded Theory: A practical guide through Qualitative Analysis. Delhi: Sage Publications. 2006.

Connolly, William: *Neuropolitics: Thinking, Culture, Speed*. Minneapolis: University of Minnesota Press. 2002.

Deacon, Bernard - Cole, Dick - Tregidga, Garry: *Mebyon Kernow and Cornish Nationalism*. Cardiff: Welsh Academic Press. 2003.

Deleuze, Gilles – Felix, Guattari: *A Thousand Plateaus*. London: Continuum. 2004

Flick, Uwe: *An Introduction to Qualitative Research*. London: Sage. 2006, 3rd Edition.

Goffman, Ervin: *The Presentation of the Self in Everyday Life*. Middlesex: Penguin Books, 1959.

Hechter, Michael: Internal Colonialism; The Celtic Fringe in British National Development, 1536-1966. London: Routledge. 1999.

Hobsbawm, Eric - Ranger, Terence: *The Invention of Tradition*. Cambridge: Cambridge University Press. 1992.

Delanda, Manuel: A New Philosophy of Society: Assemblage Theory and Social Complexity. London: Continuum. 2011.

Milden, Kayleigh: Remembered Places and Forgotten Histories: The Complexities of Cultural Memory of Politics and Religion within Cornish Methodism. Truro: Institute of Cornish Studies. 2006.

Stoyle, Mark: *West Britons*. Exeter: Exeter University Press. 2002.

Strauss, Anselm – Corbin, Juliet: Basics of Qualitative Research: Grounded Theory Procedures and Techniques. London: Sage, 2008, 3rd Edition.

Thanem, Torkild - Knights, David: *Embodied Research Methods*. London: Sage. 2019.

Tregidga, Garry: The Liberal Party in South-West Britain Since 1918: Political Decline, Dormancy and Rebirth. Exeter: University of Exeter Press. 2000.

Chapters in edited books

Kent, Aland: 'Art Thou Of Cornish Crew?' Shakespeare, Henry V and Cornish Identity. In: Philip, Payton (ed.): *Cornish Studies Four.* Exeter: Exeter University Press. 1996.

Lowenna, Sharon: 'Jenner, Dunscombe Jewel and their Milieu. In: Philip, Payton (ed.): *Cornish Studies Twelve*. Exeter: Exeter University Press. 2004.

Mackinnon, Kenneth: Cornish at its Millennium: An Independent Study of the Language Undertaken in 2000. In: Philip, Payton. (ed.): *Cornish Studies Ten*. Exeter: Exeter University Press 2002.

Perry, Ron: Economic Change and Opposition Economics. In: Philip, Payton. (ed.): *The Making of Modern Cornwall, Cornwall since the War.* Redruth: Institute of Cornish Studies, 1993.

Perry, Ron: The Making of Modern Cornwall 1800–2000. In: Philip, Payton. (ed.): *Cornish Studies Ten*. Exeter: Exeter University Press. 2002.

Smith, Anthony: Nations in History. In: Guibernau, Montserrat – Hutchinson, John (eds.): *Understanding Nationalism.* Cambridge: Polity. 2001.

Journal articles

Bosworth, Gary - Willett, Joanie: Embeddedness or Escapism? Rural Perceptions and Economic Development in Cornwall and Northumberland. In: *Sociologia Ruralis. 51 (2011)*, 195–214.

Spatz, Ben: Embodied Research: A Methodology. In: *Liminalities: A Journal of Performance Studies. Vol. 13 (2017, 2).*

West, Jodie - Saunders, Clare - Willett, Joanie**:** A Bottom Up Approach to Slowing Fashion: Tailored Solutions for Consumers. In: *Journal of Cleaner Production 296. 2021.*

Willett, Joanie - Giovannini, Arianna: The Uneven Path of UK Devolution: Top-Down vs Bottom-Up Regionalism in Cornwall and the North-East Compared. In: *Political Studies. 62 (2014)*, 343–360.

Willett, Joanie – Tredinnick-Rowe, John: The Fragmentation of the Nation State? Regional Development, Distinctiveness, and the Growth of Nationalism in Cornish Politics. In: *Nations and Nationalism. 22 (2016),* 768–785.

Willett, Joanie: The Production of Place: Perception, Reality, and the Politics of Becoming. In: *Political Studies. 64 (2016, 2),* 436–451.

Willett, Joanie: National Identity and Regional Development: Cornwall and the Campaign for Objective 1 Funding. In: *National Identities. 15 (2013, 3)*, 297–311.

Williams, Malcolm: Why is Cornwall So Poor? Poverty and In-Migration Since the 1960's. In: *Contemporary British History 17 (2003, 3),* 55–70.

Online References

Cornish Language Office. 2022. https://www.cornwall.gov.uk/parks-leisure-and-culture/the-cornish-language/cornish-language/cornish-language-office/, accessed: 28 April 2022.

Cornwall Council: *Framework Convention for the Protection of National Minorities – Contribution to the Fifth Cycle to the UK State Report*. 2021. Available at: https://www.cornwall.gov.uk/media/iycjmbpt/fc-5th-cycle-submission-from-cornwall_final.pdf, accessed: 22 June 2022.

Cornwall Council. *Blueprint to Further Promote Cornish Language and Culture as Minority Status Anniversary Approaches.* https://www.cornwall.gov.uk/council-news/environment-culture-and-planning/blueprint-to-further-promote-cornish-language-and-culture-as-minority-status-anniversary-approaches/, accessed: 08. April 2022.

Cornwall Council, *Cornish National Minority*. https://www.cornwall.gov.uk/people-and-communities/equality-and-diversity/cornish-national-minority/, accessed: 28 April. 2022.

Cornwall Heritage Trust. 2022. https://www.cornwallheritagetrust.org/, accessed: 28 April 2022.

Council of Europe: European Charter for Regional or Minority Languages: Evaluation by the Committee of Experts of the Implementation of the Recommendations for Immediate Action Contained in the Committee of Experts Fifth Evaluation Report of the United Kingdom and Isle of Man. Strassbourg. 2021.

Go Cornish. https://gocornish.org/, accessed: 28 April 2022.

Gorsedh Kernow https://gorsedhkernow.org.uk/, accessed: 31 March 2022.

Nomis Labour Market Statistics:
https://www.nomisweb.co.uk/reports/lmp/lep/1925185540/printable.aspx, accessed: 4 April 2022

Willett, Joanie. *Why is Cornwall So Poor? Narrative, Perception, and Identity.* Unpublished PhD thesis:
https://ore.exeter.ac.uk/repository/handle/10036/104835, accessed: 4 April 2022.

Chapter III

Topical Issues

Krisztián Manzinger[*]

POST-BREXIT GIBRALTAR – CAN IT REMAIN PROSPEROUS AND BRITISH AT THE SAME TIME?

1 Introduction

"*The day the Spanish flag flies over Gibraltar had come much closer*", said Spanish foreign minister José Manuel García-Margallo on 24 June 2016.[1] He made this declaration just after the result of the Brexit vote became public. He saw two options for Gibraltar: being British outside of the EU or being "*hispanobritánicos*" within the EU.[2] Even though some 96 per cent of Gibraltar's population voted against Brexit, the town left the EU together with the other parts of the UK on 1 February 2020. While the Northern Ireland Protocol is well known, the preliminary agreement on Gibraltar is not.

This paper aims to present the Gibraltar dispute with a special emphasis on the situation changed by Brexit. Therefore, we will not intend to explore all the events of the past 300 years. Also, we do not want to elaborate deeply on legal issues because the present territory of Gibraltar can be split into two: the Rock and the harbour, ceded by Spain to Britain under the Treaty of Utrecht, and the isthmus and the bay, for which the legal status is debated between Spain and Britain.[3] We will focus on presenting the development of Gibraltarian identity

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[1] Margallo: La bandera española está ahora mucho más cerca del Peñón de Gibraltar. *ABC España* 24 June 2016 [online]. Available at: www.abc.es accessed: 09 February 2022.

[2] González, Miguel: Margallo, sobre Gibraltar: "Pondré la bandera y mucho antes de lo que Picardo cree". *El País*, 6 October 2016 [online]. Available at: www.elpais.com accessed: 09 February 2022.

[3] On the legal aspects see Lincoln, Simon J.: The Legal Status of Gibraltar: Whose Rock Is It Anyway? In: *Fordham International Law Journal 18(1)*. 1994, 285–331.

and the economic situation since both have contributed profoundly to the present situation. We will argue that a *sui generis* solution is needed, which can be achieved only through negotiation and understanding.

2 The Question of Sovereignty

Gibraltar's present name derives from the Arabic "Mount of Tariq" (جبل طارق); Tariq was an 8th-century Moorish military leader who managed to cross the Strait of Gibraltar in 711 with his troops, marking the beginning of the 700-year-long Moorish occupation of the Iberian Peninsula. Before that, Gibraltar was known as Mont Calpe. Spain took the Moorish town twice during the Reconquista: first in 1309, and second in 1462, after it was lost again to the Moors in 1333. After the Spanish conquest, Gibraltar's strategic importance declined, yet it was used as a base for the Spanish capture of Melilla in 1497, for instance.

On 4 August 1704, during the Spanish Succession War, the town was taken by Britain. The defenders were allowed to leave. Out of a population of 6.000, only 200 remained.[4] The others moved to the north and founded San Roque in 1706. Being again in a foreign power's hands, Gibraltar became important strategically. By holding Gibraltar, Britain gained the ability to prevent the ships of Spain and France, then enemies of Britain, from crossing the Strait of Gibraltar. This is why, after the war, Britain maintained control over the *Rock,* as per Art. X of the Treaty of Utrecht of 1713.[5]

At least until the 1780s, Britain showed some interest in trading away the outpost. In 1720, a possible exchange of Gibraltar for Florida or Santo Domingo arose.[6] During the 1740s, especially at the drafting of the

[4] Plank, Geoffrey: Making Gibraltar British in the Eighteenth Century. In: *History 98(3).* 2013, 346–347.

[5] Under Articles XI, Britain also got the possession of Minorca, which was ceded back to Spain in the Treaty of Amiens in 1802, and now forms part of the Balearic Islands in Spain.

[6] The current Dominican Republic was known as Santo Domingo in English until the early 20th century.

Treaty of Aix-La-Chapelle (Aachen) in 1748, the restoration of Spanish sovereignty over Gibraltar was discussed again. However, a crucial change came with the Great Siege of 1779-1783, when Spain tried to take advantage of Britain being occupied in the American Revolutionary War. By that time, the British had realised that Gibraltar's advantage lay not only in its military and commercial strategic position but also in the fact that it had no 'restive' Spanish population, unlike Spanish colonies Spain could have offered in exchange.[7] After the lifting of the siege in 1783, significant changes came: the reconstruction eradicated the Muslim and Spanish architectural heritage of the town, making it truly British in feel and look,[8] and Catholic or Jewish landowners were allowed to sell land only to "his Majesty's natural born Protestant subjects".

In 1870, before the Scramble for Africa started, Spanish Prime Minister Juan Prim suggested that Britain should cede Gibraltar and offered Ceuta in return. He referred to the Ionian Islands, ceded by Britain to Greece in 1863, as an analogous case. Yet, those islands had no specific strategic importance to London, which held them as Protector, not Possessor. The Spanish offer was rejected since Gibraltar was of strategic importance in reaching India, especially after the Suez Canal was opened in 1869, and the fortification of Ceuta would have cost a vast amount of money. Britain also argued that, unlike in the Ionian Islands, the population of Gibraltar did not consider British rule as a foreign occupation.[9]

At the beginning of WWII, the danger of an attack seemed to be imminent. Therefore, the town was evacuated in early 1940. The civil population was taken to Casablanca in French Morocco, but after the fall of France in June 1940, they were first moved back to Gibraltar, then to London, British Jamaica and Portugal Madeira. The threat of a military intervention was real: Hitler, who was in need of a foothold in Morocco while preparing an attack on the Soviet Union the following spring, offered Gibraltar in return for Spain's entry into the war.

[7] Plank 2013 *op. cit*., 359.

[8] *Ibid*, 363, 366–368.

[9] Clark, Chester W.: Marshal Prim and the Question of the Cession of Gibraltar to Spain in 1870. In: *The Hispanic American Historical Review 19(3)*. 1939, 318–323.

Yet, Madrid declined the offer.[10] In early April 1944, half a year after the surrender of Italy, the repatriation of the Gibraltarians started. However, the process came to an end only in 1951.

After WWII, unlike in many other British colonies, there was no demand for decolonisation in Gibraltar.[11] It was Spain that sought the support of the international community and tried to leverage the decolonisation with regard to Gibraltar—while trying to keep its colonies simultaneously. In September 1963, Spain brought the question of Gibraltar to the UN. By then, at the 1946 request of the UK, Gibraltar had already been on the list of the non-self-governing territories. After a Spanish request, the UN General Assembly (UNGA) called for the decolonisation of Gibraltar in line with Resolution 1514 (XV)[12] adopted in 1960.[13]

Nevertheless, the position of the Gibraltarians was firmly anti-Spanish. As early as 1963, Gibraltarian Prime Minister Joshua Hassan declined the possibility of Spain interfering in the town's affairs in the UN. He also declared that the drafting of a constitution was ongoing in Gibraltar allowing for self-governance while keeping tight ties to Britain. It was adopted in 1964, replacing the first one from 1950. For the first time, this basic law created institutions for the people of Gibraltar to conduct their domestic and municipal affairs without affecting Gibraltar's international status or its constitutional relationship with

[10] Goda, Norman J. W.: „The Riddle of the Rock: A Reassessment of German motives for the Capture of Gibraltar in the Second World War". In: *Journal of Contemporary History 28(2).* 1993, 297–314. Eventually, US troops landed in French Morocco in November 1942.

[11] Lambert, David: 'As solid as the Rock'? Place, belonging and the local appropriation of imperial discourse in Gibraltar. In: *Transactions of the Institute of British Geographers, New Series 30(2).* 2005, 210.

[12] UNGA Resolution 1514 (XV) Declaration on the Granting of Independence to Colonial Countries and Peoples.

[13] It should be noted that at the same time the UN also called upon Spain to end the colonisation of Ifni and Spanish Sahara. The former was ceded by Spain to Morocco through an agreement in 1969, while the latter was given independence in 1975, yet Morocco soon conquered most of its territory and has been administring that since then.

Britain.[14] The international community, however, did not see the question resolved, and on 16 October 1964, the UN Special Committee on Decolonization urged Britain and Spain again to negotiate, taking into consideration the standpoint of the Gibraltarians. The next day the Spanish authorities took restrictive actions at the Gibraltarian border, to pressure the British side but no agreement was reached.

On 16 December 1965, the UNGA called upon Spain and the UK again to hold bilateral talks on Gibraltar in its Resolution of 2070(XX). The first round of negotiations ever on the status of Gibraltar was held in May 1966, where Spain requested the subsequent return of the town and offered an agreement allowing the UK to keep a Royal Navy base in Gibraltar.[15] Madrid also offered a "personal statute" for Gibraltarians, protecting their social and cultural interests, including their British nationality.[16] Britain, on the other hand, suggested to Spain that they refer the dispute to the International Court of Justice. Madrid turned down this proposal. On 20 December 1966, the UNGA in its resolution of 2231(XXI) called upon the parties again to hold talks on the decolonisation of Gibraltar with taking into account the interests of the people of the territory. Soon after that, in May 1967, the Spanish authorities closed the airspace to pressure Britain.

On 10 September 1967, Britain organised a referendum in Gibraltar at which 99.6% of the voters rejected the Spanish proposal of 1966 with a turnout of 96.5%.[17] Despite this, Spain's position was strengthened within the international community because, in Resolution 2353(XXII) of 19 December 1967, the UNGA criticised the holding of the referendum

[14] Fawcett, J. E. S.: Gibraltar: The Legal Issues. In: *International Affairs 43(2)*. 1967, 249–250.

[15] It would have been a similar solution to the one reached in the Zurich Agreement of 1959, in which Britain allowed Cyprus to become independent but kept military bases on the island.

[16] Yáñez-Barnuevo, Juan Antonio: Nuevas Perspectivas para España y el Reino Unido en relación con Gibraltar: Reflexiones sobre cómo aprovechar bien la oportunidad que ofrece el Brexit. In: Martínez, Magdalena M. Martin – Martín y Pérez de Nanclares, José: *El Brexit y Gibraltar: Un reto con oportunidades conjuntas*. Madrid: Colección Escuela Diplomática, Vol. 23, 2017, 99–100.

[17] September 10 has been celebrated since 1993 as Gibraltar National Day.

and declared that any colonial situation which partially or completely destroys the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the UN and with paragraph 6 of UNGA Resolution 1514(XV). In Gibraltar, however, a new constitution was adopted in 1969, highlighting for the first time in its preamble that "*Her Majesty's Government will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes*." Bilateral Spanish-British relations became frozen after this, and on 8 June 1969, Spain closed the land border.

In 1977, after the fall of the Franco regime, Spanish–British bilateral talks started in Strasbourg, where Gibraltarians were part of the British delegation. The talks resulted in the Lisbon Agreement[18] of 1980, in which they agreed to strengthen bilateral relations, and Spain committed itself to lifting the border closure. In the agreement, Spain reaffirmed its position on the re-establishment of the territorial integrity of Spain. At the same time, the British maintained their commitment to honour the freely and democratically expressed wishes of the people of Gibraltar as set out in the preamble to the Gibraltar Constitution. The agreement was followed by a new one in 1984,[19] eventually resulting in the opening of the land border in February 1985, yet without resolving the problem of the use of the airspace.

The British–Spanish talks continued until 1997. In December 1997, the Matutes proposals were expressed by the Spanish Foreign Ministry, suggesting temporary joint sovereignty over Gibraltar for an unspecified period before sovereignty would be transferred to Spain.[20] However, the British government reiterated its commitment to the 1969 Constitution of Gibraltar that no decision would be made against the

[18] The Lisbon Agreement of 10 April 1980. Available at: https://www.gibnet.com/texts/lisbon.htm accessed: 22 April 2022.

[19] The Brussels Agreement of 27 November 1984. Available at: https://www.gibnet.com/texts/brussels.htm accessed: 22 April 2022.

[20] Joint sovereignty has always been a temporary method for Spain to restore its territorial integrity by recovering Gibraltar. Sans, Cristina Izquierdo: Gibraltar, ¿El fin de una controversia? In: *Revista Española de Derecho Internacional 54(2)*. 2002, 627.

will of the people of Gibraltar. Also, around half of the Gibraltarian population petitioned the British government to reject the proposal.

Bilateral talks started again in 2001, resulting in an undisclosed written agreement on joint sovereignty. According to the memoirs of the British negotiator,[21] Spain accepted that the UK would permanently hold joint sovereignty over Gibraltar, also comprising the land (and waters) of the isthmus not ceded in the Treaty of Utrecht and that Britain could keep the military base.[22] The question of the joint British-Spanish sovereignty was put on an unrecognised referendum by the Gibraltar government on 7 November 2002 and was rejected by 99% of the voters with a turnout of 87.9%. Although Britain has not recognised the referendum either, since the mid-2000s the UK has stuck to the position of not taking or advancing in any direction on sovereignty without prior Gibraltarian agreement.

Today, arguments on Gibraltar diverge: Spain insists that the British forces had executed the occupation of 1704 on behalf of a pretender to the Spanish throne, while Britain answers that Admiral Rooke, who took the fortress, occupied it in the name of Queen Anne of England.[23] Furthermore, London stresses that the *status quo* was confirmed in subsequent treaties.[24] Madrid also recalls that any event of a purported grant of independence by Britain to the people of Gibraltar would be an "alienation" giving rise to the option under Article X for Spain to recover its sovereignty over it.[25] Moreover, since Spain considers Gibraltar a small, colonial enclave in Spanish territory, and does not recognise the right of the people of Gibraltar to self-determination, it argues that decolonisation does not necessarily mean independence; it is "the interests of the people" that has to be taken into consideration.

[21] Hain, Peter: *Outside in*. London: Biteback Publishing. 2012, 274–285.

[22] Valle Gálvez, Alejandro del: Gibraltar, the Brexit, the Symbolic Sovereignty and the Dispute. A Principality in the Straits? In: *Cuadernos de Gibraltar – Gibraltar Reports*, Vol. 2. 2016–2017, 84-85.

[23] Saint Robert, Philippe de: Gibraltar, une usurpation hitorique. In: *Revue des Deux Monde*, September 2017, 162.

[24] Fawcett 1967 *op. cit*., 238–239.

[25] Cassese, Antonio: *Self-Determination of People: A Legal Reappraisal*. Cambridge; New York: Cambridge University Press. 1995, 209; Fawcett 1967, 247.

Nonetheless, the British side points out that while Spain denies the right of the Gibraltarians to hold a referendum on their future, it also argues in a hypocritical way that Morocco should allow the population of the former Spanish colony of Western Sahara to express their will about their future at a referendum.[26]

3 The development of the British legal status and Gibraltarian identity

Gibraltar was declared a Crown colony on 20 June 1830, as a recognition of the growth of the civil population and the transformation from a military outpost. Its status changed again with the British National Act of 1981, when all remaining colonies were reclassified as British Dependent Territories. This status was replaced by the British Overseas Territory Act of 2002, when Gibraltar, alongside thirteen other territories, was declared a British Overseas Territory. These territories are the remnants of the British Empire, and almost all of them are listed by the UN Special Committee on Decolonization as non-self-governing territories.

Shaping Gibraltarian identity has been a long process. It started immediately after the occupation of 1704 when Britain intended to attract foreigners to the almost uninhabited Gibraltar to make the town viable. The call was answered by Italian, Dutch, and British people, as well as Jews from North Africa, and by 1713 Spaniards formed only a minority.[27] In 1829, the population was made up of 16.000 civilians, among them 9.000 British, and 7.000 foreigners, almost half of the residents for over fifteen years. The town also hosted 3.500 soldiers

[26] Tannock, Charles: Gibraltar's Right to Self Determination Under Threat. December 2002. Available at: https://www.gibnet.com/texts/tannock.htm accessed: 22 April 2022.

[27] Plank 2013 *op. cit.*, 350–351.

and their families.[28] The civilian population rose to 18.500 in 1871 and to over 20.000 by 1901.[29] The population was joined by Hindus from the Sindh region of Pakistan and Moroccan Arab Muslims after 1969 to replace Spanish workers who were prevented from commuting to Gibraltar by the closed border. Today, the town has a population of around 34.000.

During the 18th century, the Gibraltarian British identity galvanised around being a successful "trading nation", distinguishing themselves from the Catholic and Muslim nations around them; and this feeling even got a boost during the Great Siege of 1779-1783.[30] By the 1930s, the descendants of the settlers of various ethnic backgrounds had started to consider themselves Gibraltarians and also managed to gain some measure of autonomy from their colonial ruler. The mass evacuation of 1940 and the firm will of the Gibraltarians to return also contributed to the strengthening of a solid local identity.

Since WWII, Gibraltarian identity has been shaped by some concrete factors: loyalty to Britain, obtaining self-government, and opposition to Spanish claims.[31] Tourism and financial services as emerging sectors after the decrease of the importance of the Royal Navy in the economic life of Gibraltar in the 1980s have also enriched the Gibraltarian identity. Further stimuli were Britain's interest in allowing for a wider legal status for the territory in the era of decolonisation, and the stationing of HMS Tireless, a broken nuclear submarine at Gibraltar harbour during 2000-2001. This latter raged the population against Britain, which, according to the local views, did not consider Gibraltarians' opinion.[32]

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[28] Constantine, Stephen: The Pirate, the Governor and the Secretary of State: Aliens, Police and Surveillance in Early Nineteenth-Century Gibraltar. In: *The English Historical Review 123(504).* 2008, 1169, 1186–1187

[29] *Ibid*, 1190.

[30] Plank 2013 *op. cit*., 369.

[31] On Gibraltarian identity see Alvarez, David: Nation-making in Gibraltar: From Fortress Colony to Finance Centre. In: *Canadian Review of Studies in Nationalism 29(1–2).* 2001, 9–25, and Lambert 2005 *op. cit*., 206–220.

[32] Bowcott, Owen – Black, Ian: Nuclear sub keeps Gibraltar in a rage. *The Guardian*, 27 January 2001 [online]. Available at: www.theguardian.com accessed: 09 February 2022.

This frustration and the bilateral British-Spanish talks of 2001-2002 resulted in the unrecognised sovereignty referendum of 2002.

Today Gibraltar has its own coat of arms and flag,[33] both granted by Isabella I of Castille in 1502, a hymn since 1994,[34] a national day since 1992, and even a dialect called yanito or llanito. It is basically Andalusian Spanish, heavily influenced by words from English and other languages, although the sole official language of Gibraltar is English. Gibraltarians enjoyed European Union citizenship since the signing of the Treaty on European Union (TEU) on 7 February 1992, and British citizenship instead of British Overseas Territories citizenship from 21 May 2002 onwards.[35]

The first city council was established in 1921, but it was not until 1945 that more than half of the members were elected by the population. Civic administration was transferred to the local government in 1964. The predecessor of the current *Gibraltar Parliament*, the *House of Assembly* was created by the constitution of 1969 and today all the 17 members are elected by the population. Today only defence and foreign relations are executed by Britain, everything else is controlled by the Gibraltarian authorities, yet the *de facto* head of state is the governor, the representative of the British ruler, appointed by the monarch on the advice of the British government.

With a consolidated Gibraltarian identity and a solid administrative system in function, decolonisation has come to a problem hard to resolve: the solution preferred by Madrid and supported by the UN, i.e. the restoration of the territorial integrity of Spain is out of the question for the Gibraltarians, whom Spain considers colonisers with no right to decide about the future of the Rock. The meaning of 'decolonisation'

[33] Gibraltar is the only British Overseas Territory whose flag does not feature the Union Jack in any form, although the latter is widely flown as a standalone flag.

[34] Yet the official national anthem is God Save the Queen.

[35] At that time, all British overseas citizens, including Gibraltar but with the exception of Sovereign Base Areas of Akrotiri and Dhekelia, became automatically British citizens. Types of British nationality [online]. Available at: www.gov.uk/types-of-british-nationality accessed: 09 February 2022.

has been debated by international lawyers.[36] Some argue that decolonisation shall move from the limited content it has today, i.e. independence, association with an independent state, or integration in an independent state, to an open-ended process reflecting on the will of the concerned peoples.[37] Yet, for the international community Gibraltar is only a territory awaiting decolonisation in a process supervised by the UN.[38]

Despite this, in 2004, Spain recognised for the first time that Gibraltarians might have a word in the talks opening, thus by this new approach the way to the Cordoba Agreement of 2006 was opened.[39] The agreement resolved the issues of the use of the Gibraltar Airport, the question of the pensions of Spaniards who had worked in Gibraltar, and also allowed for Gibraltar an International direct dialling (IDD) telephone code, and created the Trilateral Dialogue Forum through which Gibraltar was entitled to express its voice directly. This forum worked until late 2011 when incoming right-wing Spanish prime minister Mario Rajoy backed out of it. This withdrawal led to a deadlock lasting until 2016, the time of the Brexit vote.

4 Gibraltar in the EU – Before Brexit

When the UK joined the European Communities (EC, today EU), Gibraltar, although not being part of the UK, also joined the EC. Article 355.3 of the Treaty on the Functioning of the European Union (TFEU)

[36] According to Resolution 2625(XXV) of 1970 of the UNGA the implementation of the right of self-determination by a people could entail "*[t]he establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by [that] people*".

[37] Yusuf, Hakeem O. and Chowdhury, Tanzil: The U.N. Committee of 24's Dogmatic Philosophy of Recognition: Toward a Sui Generis Approach to Decolonization. In: *Indiana Journal of Global Legal Studies 26(2).* 2019, 437–460.

[38] Valle Gálvez 2016–2017 *op. cit*., 82.

[39] García, Inmaculada González: La nueva estrategía para Gibraltar: El foro Tripartito de diálogo y los acuerdos de 2006. In: *Revista Española de Derecho Internacional 58(2).* 2006, 821–842.

made it possible by stating that "*The provisions of the Treaties shall apply to the European territories for whose external relations a Member State is responsible*", since Gibraltar is an overseas territory for whose external relations the UK is responsible. The UK Accession Treaty of 1972 contained special regulations concerning Gibraltar hence during the British EU membership, the following EU policies were not applicable in Gibraltar: Customs Union; Common Commercial Policy; Rules on the free movement of goods; Common Agricultural Policy and the Common Fisheries Policy; obligation to levy VAT.[40] Also, the town was not part of the Schengen Area.

The porosity of the border has always been one of the most important questions for Gibraltar due to its reliance on the surrounding Spanish hinterland of *Campo de Gibraltar*. There are currently two borders: the land border and the airport. Both of them lie on the debated neutral ground taken by the British illegally according to Spanish accusations, but in effective British possession since the early 18th century.[41] To protect the disputed territory, in 1909, Britain raised a fence, *La Verja* in Spanish, which is still in place, however, at the end of 2020, the parties agreed to demolish it, as we will see later. The border was closed completely between 1969 and 1982, and the situation normalised only in 1985, after the Brussels Agreement. In that, the two governments committed themselves to establish the free movement of persons, vehicles and goods between Gibraltar and the neighbouring territory.[42] This coincided with the Spanish accession to the EC, and the return of the Spanish workforce helped the reshaping of Gibraltar's economy. The free movement of labour came into force on 1 January 1993.

However, the question of the air border is more complicated, mainly because there is no mutual interest. The airport was built in 1938 on the disputed neutral ground and gained importance during WWII.

[40] Valle Gálvez 2016–2017 *op. cit*., 76.

[41] Memorandum submitted by the Foreign and Commonwealth Office, March 1999 [online]. Available at: https://tinyurl.com/59rk4fn9 accessed: 09 February 2022.

[42] Supplementary Memorandum submitted by the Foreign and Commonwealth Office March 1999, point 1, [online]. Available at: https://tinyurl.com/2p8mzf8u accessed: 09 February 2022.

According to Britain, there is an Exchange of Notes of 20 July 1950 in which the Spanish government recognised that Gibraltar is "a military airfield",[43] however, Spain denies the existence of such a document. The use of Spanish air space was tolerated until 1967, when a complete closure came. On 2 December 1987, the parties agreed to share the control of personnel, but the agreement did not enter into force as the Gibraltarian government rejected it on the ground of a possible ceding of sovereignty.[44]

After signing the Schengen Agreement, and especially the Schengen Convention of 1990, Spain intended to bring the town within the Schengen Area of which Britain was not part. To ensure this, after 1991, Madrid suggested that border control at the airport and the harbour should be exercised by the UK and Spain jointly.[45] Yet, the issue of the airport was resolved only in 2006 by the Cordoba Agreement signed by the British Minister for European Affairs, the Gibraltarian Chief Minister and the Spanish Foreign Minister. The parties agreed to build a new terminal allowing passengers and cargo to reach Spain directly without stepping foot on UK territory. The text also stipulated that a tunnel should be constructed to avoid vehicular traffic routinely crossing the airport runway. The tunnel and the terminal connection to the north of the fence have not been built, and a deadlock occurred in 2012 when the Spanish government withdrew from the Agreement. After this withdrawal, the European airline regulations had to be suspended again.[46] The relationship became very tense, Gibraltar even shut down the Cervantes Institute in 2015.[47] It started to ease only at the end of 2015, shortly before the Brexit vote took place.

[43] Fawcett 1967 *op. cit.*, 246.

[44] Memorandum 1999, point 31.

[45] Boixareu, Angel: Las fronteras exteriores de la Unión Europea y la cuestió de Gibraltar. In. *Política Exterior 10(49).* 1996, 141–142. Finally, Spain had four external land border crossings, two to Morocco from Ceuta and Melilla, respectively, one to Andorra and one to Gibraltar at La Línea de la Concepción, meaning that Gibraltar did not take part in the Schengen Area.

[46] Answer to question No. E-002559/2014, 23 April 2014 [online]. Available at: https://tinyurl.com/3kfa2yy7 accessed: 09 February 2022.

[47] Valle Gálvez 2016–2017 *op. cit.*, 69–70.

The Spanish denial of Gibraltar's sovereignty also led to practical problems: the non-recognition of British passports and driving licences with Gibraltar inscription on the front,[48] complications in inter-institutional and legal cooperation even on the EU level connected to institutions set up by the 1969 Constitution, i.e. the Supreme Court and the Attorney-General.[49]

5 The economy of Gibraltar

The British immediately tried to attract population to ensure the provision of the garrison after the Spanish forces and the population left the fortress in 1704, relying first on African merchants.[50] After 1713, Britain concluded treaties with North African rulers to grant special trading privileges for merchants from Gibraltar and encouraged merchants from European territories to move to the town. They succeeded, and Gibraltar developed into an important commercial centre. Until the 1980s, the town's economy was highly dependent on MoD employment, similar to that of Melilla, a North African Spanish exclave bordering on Morocco,[51] but since then, financial services, maritime services, and tourism have become more important.[52] Britain intentionally turned Gibraltar into a financial services centre since accessible institutions, an educated workforce, a UK-style legal system, easy access to the EU market and regulation to UK standards were all provided.

Spain argued for a long time that smuggling and other illegal and unnatural means helped to sustain Gibraltar's economy proving "the unnatural character of the human assemblage that resides at Gibraltar"

[48] Memorandum 1999, points 52–57. Especially because many Spaniards obtained Gibraltar issued driving licences.

[49] Memorandum 1999, points 71–73.

[50] Plank 2013 *op. cit.*, 348.

[51] Manzinger Krisztián: Erődök, gyarmatok vagy multikulturális városok? In: *Külügyi Szemle* 18(2). 2019, 108.

[52] Memorandum 1999.

and, for instance, used this as a pretext when closing the border in October 1964.[53] Drug and tobacco smuggling between Morocco and Spain peaked in the mid-1990s partly through Gibraltar forcing local authorities to step up and crack down on such activities.[54] Spain also complained that the obscure Gibraltarian legislation made the town the main repository of funds taken out of Spain to evade taxes.[55] Although fishing has never been a major industry in Gibraltar, the use of the bay by Spanish fishermen often resulted in bilateral conflict, particularly in 1998, when the foreign ministers of Spain and Britain had to arrange a solution.[56]

Reliance on the neighbouring Spanish territories has been important since the 18th century:

> "Most of the food supplies had to be fished from the sea or brought in daily from Spain, and likewise water, on the backs of donkeys, because the natural supply was limited to a few springs and wells plus that captured in cisterns from rainfall. Labour was also needed from outside […]. Entry to Gibraltar from Spain or by sea was therefore close to a necessity […]. There were stout walls and only three gates, but the frontier had to be porous. The challenge to the colonial authorities was to allow access without putting at risk the security and efficiency of the garrison, or trade prosperity."[57]

The entry to Gibraltar has been regulated since the 1720s,[58] but according to Spain, the dependency on foreign workforce proves the artificiality of Gibraltar's economy.[59] The closure of the border between 1969 and 1982 caused severe economic problems in the town.

[53] Fawcett 1967 *op. cit.*, 244.

[54] Memorandum 1999, points 68–70.

[55] Memorandum 1999, points 60–67.

[56] Memorandum 1999, points 35–42.

[57] Constantine 2008 *op. cit.*, 1170.

[58] *Ibid*, 1172.

[59] Fawcett 1967 *op. cit.*, 245.

During the decades both Gibraltar and Spain were members of the EU, reliance on each other strengthened: at the end of 2019, the number of daily commuters was nearly 14.000 including 2.500 Britons living in Spain.[60] Therefore, it is not a coincidence that 96% of the Gibraltarian voters opted for "Bremain" at the 2016 Brexit referendum. Their main fear was again in connection with the border: Brexit would have led to the complete closure of it if Article X of the Treaty of Utrecht was taken literally since it had been superseded by EU law on the free movement of goods and people.[61] The hard border did not threaten with Gibraltar ending up completely inoperable since two-thirds of the cross-border workers had their access via *La Verja* where they were allowed to cross the border just by showing an ID card. It was the limitation of development and the deprivation of the nearby Spanish population of customers with high spending power that threatened those living along the border.[62]

6 Gibraltar and Brexit

Just after the results became public, Scotland and Gibraltar held talks about remaining in the EU despite the decision by a slight majority that the UK would leave the EU.[63] However, it turned out quite soon that the political elite of London was "Brexiting" the whole of the UK from the EU. After the later Prime Minister Theresa May's declaration

[60] Gibraltar Wants to Join Schengen Post-Brexit – UK Says No. *Schengen Visa Info*, 20 January 2020 [online]. Available at: www.schengenvisainfo.com accessed: 09 February 2022.

[61] Valle Gálvez 2016–2017 *op. cit*., 74.

[62] González, Miguel – Cañas, Jesús A.: Spain, UK reach 'preliminary agreement' that will see an end to the border with Gibraltar,. *El País,* 31 December 2020 [online]. Available at: https://english.elpais.com/ accessed: 09 February 2022.

[63] Cañas, Jesús A.: Gibraltar negocia con Escocia cómo quedarse en la UE tras el 'Brexit'. *El País,* 27 June 2016 [online]. Available at: www.elpais.com accessed: 09 February 2022.

that "Brexit means Brexit" on 11 July 2016,[64] it also became obvious that there was no option for using of the Norwegian or Swiss model to keep the UK within the EU to some extent. Also, the reversed Greenland example was debated in vain as a possibility for Gibraltar, since in that case Denmark remained in the EC, while the autonomous part of Denmark, Greenland decided to leave it in 1978. The "microstate-style relationship with the EU"[65] also emerged as a possibility, but that was turned down immediately by Spain,[66] arguing that Gibraltar was a non-self-governing colony and not an autonomous region of a member state or a sovereign entity.[67]

Shortly after the vote, Spain made it clear – in opposition to the Spanish declaration of 2004 – that the question of Gibraltar was still a bilateral issue in line with the UN approach[68]. Spain's position seemed to be strong since the EU had declared that any future agreement between the EU and the UK would require a prior agreement with Spain, and also because the EU treaty modifying the TEU and TFEU had to be ratified by each State, including Spain. This resulted in Madrid's success in the recognising that the question of Gibraltar should be kept separate from the negotiation on the withdrawal of Britain, i.e. outside of the framework of TEU Art. 50, since the British-Spanish agreement must be previous to any agreement about the application of EU Law in Gibraltar.[69]

[64] No second EU referendum if Theresa May becomes PM, 11 July 2016 [online]. Available at: www.bbc.com accessed: 09 February 2022.

[65] Andorra, Liechtenstein, Monaco and Vatican City are not members of the EU, yet they have a special relationship with the community.

[66] Brexit: Gibraltar Contents Chapter 5: An uncertain future [online]. Available at: https://tinyurl.com/5n7jx8fb accessed: 09 February 2022.

[67] Martín y Pérez de Nanclares, José: Brexit y Gibraltar: la cosoberanía como posible solución de la controversia sobre Gibraltar: un acer-camiento jurídico en el contexto del Brexit. In: Martínez, Magdalena M. Martin – Martín y Pérez de Nanclares, José: *El Brexit y Gibraltar: Un reto con oportunidades conjuntas*. Madrid: Colección Escuela Diplomática, Vol. 23. 2017, 32–33.

[68] Margallo: La bandera española está ahora mucho más cerca del Peñón de Gibraltar. *ABC España* 24 June 2016 [online]. Available at: www.abc.es accessed: 09 February 2022.

[69] Valle Gálvez 2016–2017 *op. cit*., 80.

Madrid again proposed a transitional joint sovereignty model to solve the issue. The Spanish offer contained adding Spanish citizenship to the British and a Statute of Autonomy under Art. 144 of the Spanish Constitution, while Spain would assume responsibility for external relations instead of Britain after the UK's withdrawal from the EU; in return, Gibraltar would remain part of the EU, and the border and border controls would disappear.[70] The idea was welcomed neither in Britain nor in Gibraltar.

In October 2018, Gibraltarian chief minister Fabian Picardo openly stated that Gibraltar needed a differentiated withdrawal process from the EU.[71] In January 2020, he went further, proposing that Gibraltar should become part of the Schengen Area; however, the idea was rejected by Britain.[72] After the British withdrawal on 1 February 2020, a transition period took place during which EU law was applied to and in the UK in accordance with the withdrawal agreement. The transitional phase ended on 31 December 2020. During these eleven months, the Gibraltarian government constantly kept the population informed about the changes if there was a no-deal Brexit.[73]

Although after exhausting talks, the EU and UK negotiators concluded a Trade and Cooperation Agreement on 24 December 2020, Gibraltar was not included in the scope of this document. Only on 31 December 2020, the last day, did Britain and Spain reach a preliminary agreement, allowing for the fluidity of the border while safeguarding Gibraltar's sovereignty.[74] According to the deal, Gibraltar joined the Schengen Area for the first time, and the UK and Spain agreed to move

[70] *Ibid*, 83.

[71] Gibraltar needs a differentiated process of withdrawing from EU, says territory's chief minister. *Schengen Visa Info*, 24 October 2018 [online]. Available at: www.schengenvisainfo.com accessed: 09 February 2022.

[72] Gibraltar Wants to Join Schengen Post-Brexit – UK Says No. *Schengen Visa Info,* 20 January 2020 [online]. Available at: www.schengenvisainfo.com accessed: 09 February 2022.

[73] The documents can be accessed via: www.gibraltar.gov.gi/brexit accessed: 09 February 2022.

[74] UK–Gibraltar–Spain agreement: statement from the Foreign Secretary 31 December 2020 [online]. Available at: www.gov.uk accessed: 09 February 2022.

the border to Gibraltar's airport and port from *La Verja*. A four-year implementation period was set during which Gibraltar's authorities and Frontex, the European border agency, jointly manage border controls, yet Spain is responsible for making sure the Schengen rules are observed in Gibraltar. That means that the European agents have to account to the Spanish authorities on who is permitted to enter the area and the policy of conceding visas. Anyone travelling to Gibraltar from Spanish territory is not required to have a passport, but British citizens are, given that the United Kingdom is not part of the Schengen Area.[75]

Many, especially in Spain, saw this document as an essential step towards Gibraltar coming under Spanish sovereignty. Nevertheless, at a UK-Gibraltar Joint Ministerial Council on 29 March 2021, London made it clear that it would never enter into arrangements whereby the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed will, nor into a process of sovereignty negotiations with which Gibraltar was not content.[76] Therefore, it is not a surprise that a document published by the European Commission in July 2021 envisaging Spanish authorities, without mentioning Frontex, to carry out relevant EU rules at Gibraltar port, airport and waters to ensure the full protection of the Schengen area, caused indignation.[77] The proposal was declared unacceptable by Gibraltar's chief minister, while the UK foreign secretary evaluated the proposal as one undermining the UK's sovereignty over Gibraltar.[78]

[75] González, Miguel – Cañas, Jesús A.: Spain, UK reach 'preliminary agreement' that will see an end to the border with Gibraltar. *El País*, 31 December 2020 [online]. Available at: https://english.elpais.com/ accessed: 09 February 2022.

[76] Press release – A treaty between the UK and EU in respect of Gibraltar: joint ministerial statement, 29 March 2021 [online]. Available at: www.gov.uk accessed: 09 February 2022.

[77] Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, in respect of Gibraltar, 20 July 2021 [online]. Available at: https://tinyurl.com/356sfcf5 3., accessed: 09 February 2022.

[78] Miguel, Rafa de: UK threatens no-deal scenario for Gibraltar due to plans for Spain-run border controls. *El País*, 23 September 2021 [online]. Available at: https://english.elpais.com/ accessed: 09 February 2022.

The final document authorising the start of negotiations for an EU-UK agreement in respect of Gibraltar, adopted on 5 October 2021 by the European Council, used different wording and envisages the deployment of Frontex officials alongside the local officials at Gibraltar's airport and port.[79] This decision marked the beginning of the EU-UK talks on the future relationship of Gibraltar with the EU that had six rounds until late February 2022. The talks aim to create a treaty regulating the future of Gibraltar with the EU, concerning the movement of labour and goods, the environment, citizen's rights, continued recognition of documents. The state of play today is that the agreement will inevitably create a closer relationship with the EU than Gibraltar had ever had during the 48-year-long British EU membership.[80]

7 Conclusions

Since 711, Gibraltar was Moorish for 627 years, Spanish for 266 years and has been British for 318 years. There has been an ongoing legal dispute between Spain and Britain concerning sovereignty over the town, which is currently a British Overseas Territory enlisted by the UN as a non-self-governing territory, considered by Spain as an artificial and unjust British enclave hampering Spain's territorial integrity, and by Gibraltar and the UK as a self-governing entity entitled to decide its fate on its own. Although these perspectives seem to be far from each other, history has shown that results can be achieved when all interested parties are willing to negotiate in good faith and on the ground of mutual respect.

Brexit has led to a situation in which Gibraltarians have to balance on a narrow path: they want to keep the land border with EU member

[79] Bounds, Andy – Dombey, Daniel: EU moves to reduce Gibraltar border tensions with UK. *Financial Times*, 5 October 2021 [online]. Available at: www.ft.com accessed: 09 February 2022.

[80] Mardell, Mark: Is Brexit Driving Gibraltar Into Europe's Arms? *Foreign Policy*, 10 March 2021 [online]. Available at: www.foreignpolicy.com accessed: 09 February 2022.

Spain open while maintaining their strong relationship with the non-EU UK, which is not only responsible for the territory's foreign relations but also the main guard of the town's Britishness and an obstacle to the Spanish territorial claims. Despite Brexit and the entrance into the Schengen Area, Gibraltar has continued to be a British Overseas Territory: even today, only Gibraltarians and British citizens are entitled to live and work in the town without a residence permit. Gibraltar is interested in both economic development and keeping Spain out of the town while relying strongly on the Campo de Gibraltar. After Brexit, the riddle is how Gibraltar can remain British and enjoy the four freedoms of the EU at the same time? The agreement of 2020 opened the way for Spanish authorities to assume some power in Gibraltar for a period of four years, yet in the name of the EU 27.

None of the parties are in an easy situation. In the already complex issue of Brexit talks, the problem of Gibraltar adds to the Northern Ireland question, and to some extent, to the problem of the Channel Islands for the UK that wants to make the most advantageous deal possible with the EU. On the other hand, Spain has made an offer seen as generous from Madrid, however, unacceptable for Gibraltar on joint sovereignty in the case of Gibraltar returning to the country. Spain also balances on a narrow path when approaching Gibraltar since it has been struggling both internally with some of the autonomous communities eager to obtain joint sovereignty (meaning a wider legal status than they enjoy today under the Spanish constitution), and externally with the Spanish exclave towns of Ceuta and Melilla reclaimed by Morocco on a similar ground as Madrid reclaims Gibraltar.

Resolving the issue of Gibraltar will not be simple, therefore, but history has shown that mutual respect and persistence can result in sustainable solutions.

Bibliography

Books:

Cassese, Antonio: *Self-Determination of People: A Legal Reappraisal*. Cambridge; New York: Cambridge University Press. 1995.

Martínez, Magdalena M. Martin – Martín y Pérez de Nanclares, José: *El Brexit y Gibraltar: Un reto con oportunidades conjuntas*. Madrid: Colección Escuela Diplomática, Vol. 23. 2017.

Articles:

Alvarez, David: Nation-making in Gibraltar: From Fortress Colony to Finance Centre. In: *Canadian Review of Studies in Nationalism 29(1–2)*. 2001, 9–25.

Boixareu, Angel: Las fronteras exteriores de la Unión Europea y la cuestión de Gibraltar. In: *Política Exterior 10(49)*. 1996, 141–146.

Clark, Chester W.: Marshal Prim and the Question of the Cession of Gibraltar to Spain in 1870. In: *The Hispanic American Historical Review 19(3)*. 1939, 318–323.

Constantine, Stephen: The Pirate, the Governor and the Secretary of State: Aliens, Police and Surveillance in Early Nineteenth-Century Gibraltar, In: *The English Historical Review 123(504)*. 2008, 1166–1192.

Fawcett, J. E. S.: Gibraltar: The Legal Issues. In: *International Affairs 43(2)*. 1967, 236–251.

García, Inmaculada González: La nueva estrategía para Gibraltar: El foro Tripartito de diálogo y los acuerdos de 2006. In: *Revista Española de Derecho Internacional 58(2)*. 2006, 821–842.

Goda, Norman J. W.: „The Riddle of the Rock: A Reassessment of German motives for the Capture of Gibraltar in the Second World War". In: *Journal of Contemporary History 28(2)*. 1993, 297–314.

Lambert, David: 'As solid as the Rock'? Place, belonging and the local appropriation of imperial discourse in Gibraltar. In: *Transactions of the Institute of British Geographers, New Series 30(2)*. 2005, 206–220.

Lincoln, Simon J.: The Legal Status of Gibraltar: Whose Rock Is It Anyway? In: *Fordham International Law Journal 18(1)*. 1994, 285–331.

Manzinger Krisztián: Erődök, gyarmatok vagy multikulturális városok? In: *Külügyi Szemle 18(2)*. 2019, 96–122.

Plank, Geoffrey: Making Gibraltar British in the Eighteenth Century. In: *History 98(3)*. 2013, 346–369.

Saint Robert, Philippe de: Gibraltar, une usurpation historique, In: *Revue des Deux Monde*, September 2017, 161–166.

Sans, Cristina Izquierdo: Gibraltar, ¿El fin de una controversia? In: *Revista Española de Derecho Internacional 54(2).* 2002, 617–640.

Valle Gálvez, Alejandro del: Gibraltar, the Brexit, the Symbolic Sovereignty and the Dispute. A Principality in the Straits? In: *Cuadernos de Gibraltar – Gibraltar Reports*, Vol. 2. 2016–2017, 67–96.

Yusuf, Hakeem O. and Chowdhury, Tanzil: The UN Committee of 24's Dogmatic Philosophy of Recognition: Toward a Sui Generis Approach to Decolonization. In: *Indiana Journal of Global Legal Studies 26(2).* 2019, 437–460.

Online articles:

Bounds, Andy – Dombey, Daniel: EU moves to reduce Gibraltar border tensions with UK. *Financial Times*, 5 October 2021 [online]. Available at: www.ft.com, accessed: 09 February 2022.

Bowcott, Owen – Black, Ian: Nuclear sub keeps Gibraltar in a rage. *The Guardian*, 27 January 2001 [online]. Available at: www.theguardian.com, accessed: 09 February 2022.

Cañas, Jesús A.: Gibraltar negocia con Escocia cómo quedarse en la UE tras el 'Brexit'. *El País*, 27 June 2016 [online]. Available at: www.elpais.com, accessed: 09 February 2022.

Gibraltar EU relationship negotiation to continue next year – 936/2021, 16 December 2021 [online]. Available at: www.gibraltar.gov.gi, accessed: 09 February 2022.

Gibraltar needs a differentiated process of withdrawing from EU, says territory's chief minister. *Schengen Visa Info*, 24 October 2018 [online]. Available at: www.schengenvisainfo.com, accessed: 09 February 2022.

Gibraltar Wants to Join Schengen Post-Brexit – UK Says No. *Schengen Visa Info*, 20 January 2020 [online]. Available at: www.schengenvisainfo.com, accessed: 09 February 2022.

González, Miguel: Margallo, sobre Gibraltar: "Pondré la bandera y mucho antes de lo que Picardo cree". *El País*, 6 October 2016 [online]. Available at: www.elpais.com, accessed: 09 February 2022.

González, Miguel – Cañas, Jesús A.: Spain, UK reach 'preliminary agreement' that will see an end to the border with Gibraltar. *El País*, 31 December 2020 [online]. Available at: www.english.elpais.com, accessed: 09 February 2022. UK-Gibraltar-Spain agreement: statement from the Foreign Secretary 31 December 2020 [online]. Available at: www.gov.uk, accessed: 09 February 2022.

Mardell, Mark: Is Brexit Driving Gibraltar Into Europe's Arms? *Foreign Policy*, 10 March 2021 [online]. Available at: www.foreignpolicy.com, accessed: 09 February 2022. Miguel, Bernardo de - González, Miguel: La disputa entre Bruselas y Londres por el Brexit amenaza con resucitar una frontera más dura en Gibraltar. *El País*, 19 October 2021 [online]. Available at: www.elpais.com, accessed: 09 February 2022.

Margallo: La bandera española está ahora mucho más cerca del Peñón de Gibraltar. *ABC España* 24 June 2016 [online]. Available: www.abc.es accessed: 09 February 2022.

Miguel, Rafa de: UK threatens no-deal scenario for Gibraltar due to plans for Spain-run border controls. *El País*, 23 September 2021 [online]. Available at: www.english.elpais.com, accessed: 09 February 2022.

No second EU referendum if Theresa May becomes PM, 11 July 2016 [online]. Available at: www.bbc.com, accessed: 09 February 2022.

Press release – A treaty between the UK and EU in respect of Gibraltar: joint ministerial statement, 29 March 2021 [online]. Available at: www.gov.uk, accessed: 09 February 2022.

Chapter IV

Book Review

5. Erika Hocz: Barna Bodó – Jelenségek szélzúgásban

Erika Hocz[*]

BOOK REVIEW: BARNA BODÓ – JELENSÉGEK SZÉLZÚGÁSBAN[1]

> "Common sense. Experience. Logic. Reason. That is all (or everything) we have when we need/want to interpret policy developments in the absence of expertise. […] But politics is the area where common sense often fails. […] Then a crisis comes into being […] Then we start looking for the logic, the internal connections of events, the expediency."[2]

This quote from the book presents its central discipline, political science, which permeates throughout the collection consisting of thirteen chapters. This comes as no surprise, as Barna Bodó is not only an exceptional writer but his research is centred around political science.[3] The most defining subject of the book is Education research, which is indisputably intertwined with the author's life.

The style of the book attracts even those readers without expertise. As we read, we feel as if we would be discussing vital issues that influence and/or affect our daily lives with a cup of tea or coffee in our hands, constantly expanding our knowledge of both the past and the present. This impression emerges probably because Barna Bodó is a great lecturer and has a way with words. Although some parts of the book collection reflect his approach, Bodó still tries to convey the past events objectively.

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[1] Bodó Barna: *Jelenségek szélzúgásban.* Nagyvárad: Europrint. 2020.

[2] *Ibid.*, 8 ("*Józan ész. Tapasztalat. Logika. Ráció. Ennyi (minden) áll rendelkezésünkre, amikor a politika történéseit kellene/kívánjuk szaktudás hiányában értelmezni. […] Csakhogy éppen a politika az a terület, ahol a józan ész gyakran kudarcot vall […] Ekkor jön létre a válság […] Ekkor keressük a logikát, a történések belső összefüggéseit, a célszerűséget*"). Translation of the author.

[3] Retired Associate Professor, Honorary Professor, Sapientia EMTE, Cluj-Napoca.

The title itself is mysterious. Anyone who has not yet read the work has little chance of figuring out what the book will analyse and discuss. However, the small wooden cubes that appear on the cover may suggest our inertia and that we are sometimes exposed to a greater outside force. Once we open and read the book and look back at the title, we might understand what it could mean and what Barna Bodó wants to express to the readers: there are many phenomena in the world which may go unnoticed, yet they are out there trying to break out, to capture our attention. An excellent example of this is the Bolyai Initiative Committee,[4] which appears several times in the publication.

Some chapters of the book, which were mainly published as separate studies in different years, date back to the mid-2000s, but the work does not get stuck in time. The chapters do not appear in chronological order. For example, the eleventh chapter was published the latest in the *Magyar Kisebbség* [Hungarian Minority] in 2020.

The first chapter, entitled "Misconceptions in Politics," is an opening that provides a basis for the reader to inspect the following chapters in a specific manner. Bodó does not write about a single event in this chapter but points out the problems that affect political science: we do not consider political science as a separate science because science presupposes apoliticism, but this might be a methodological fallacy. The issue of political commitment is irrelevant to the political scientist, as one interprets while the other is an agent of the process itself.[5] The other challenge is that the laymen also use the concepts of politics, either correctly or incorrectly. One could call this the political science of "ordinary life".

The second chapter is about the already mentioned Bolyai Initiative Committee (BIC), further elaborated by the next chapter, which presents the events related to BIC in chronological order. Initially,

[4] The Bolyai Initiative Committee is an informal association of Hungarian university staff members, intellectuals and students aiming to reopen the Bolyai University of Cluj/Kolozsvár and to advance the achievement of a Hungarian-language higher education network in Transylvania. See more at:
https://www.bolyai.eu/bkb_en.php?m=3, accessed: 18. 05. 2022.

[5] Bodó 2020 *op. cit.,* 10–11.

the BIC was a loose grouping of about twenty members, initiated by young professors, but the subsequent events transformed it into a more serious political committee.[6] Some minority-related problems of the Babeş-Bolyai University (BBU) are presented, including the fact that the Hungarians in Romania are dissatisfied with the situation of higher education available for the minority, as they do not provide adequate possibilities for education in Hungarian. Then, in the next chapter, the book provides us with a chronology from October 2004 to December 2006.

In the fourth chapter, the author continues to address the same topic by briefly presenting the Tismăneanu report (hereinafter: the *Report*). The *Report* was presented to the Romanian Parliament on 18 December 2006 by a committee analysing the communist dictatorship in Romania while also addressing the issue of Hungarian higher education and the Bolyai University in particular. If we take a closer look at the numbers, there are only 18 pages that analyse the situation of the minority, a negligible amount compared to the more than six hundred- and fifty-pages long *Report*. The content of the *Report* is explained briefly in this chapter. The *Report* acknowledges the existence of the minority issue only to the extent of one reference. Still, it makes no mention of the discrimination against the minority itself, which would have been required by such a document, which would otherwise serve as a reference work at the international level. The history of Bolyai University is completely missing from the *Report*. It is only mentioned in two paragraphs when its creation and merging is presented. Bodó explains the "legal trick" they had used to achieve the university merger and questions the stance of the dominant Hungarian party of the country, the Democratic Alliance of Hungarians in Romania (DAHR), as their representatives refrained from speaking during the parliamentary presentation of the *Report*.[7]

The next chapter of the book explains more extensively the events of the new millennium. The first part of the chapter presents the principle

[6] *Ibid.*, 24–25.

[7] *Ibid.*, 50–51.

of multiculturalism and the practice in Romania / Cluj-Napoca, which appears as a fault line between the Romanian and Hungarian sides. This is followed by discussing the different epochs of the process, then the analysis of the actions of the BIC, followed by a concluding chapter gauging new possibilities for representing the unresolved issues of the university.[8]

At the beginning of the sixth chapter, we can read a historical overview of the regime change in Romania. In Romania, the former communist leaders retained their power based on nationalism, and they did not strive to build a democracy. This chapter turns its attention to the three factors of the common objectives of the Hungarians in Romania. Firstly, and most importantly, the need to restore the university as a Hungarian education institution. Secondly, the respect for minority traditions, and finally, the issue of the university as a critical element of cultural autonomy, became one of the objectives of the Hungarian community in Romania.[9]

A political analysis can also be found in this chapter, as the author explains that the case of the university rested primarily on the shoulders of the political representation. In many instances, they did not do everything in their power to reach an agreement, despite the milder Romanian political situation. However, they could have been more successful on several occasions.[10] Neither the later Bolyai Society, a non-governmental organisation, was able to bring about change. The law of National Education of 1994, which the Hungarians rejected in Transylvania, also appears in the chapter. Following the 1996 parliamentary election, the DAHR became a governing coalition member. An amendment to the law of National Education, considered unacceptable by the Hungarians, was on the agenda so that a state-subsidised Hungarian language university could be established. Nearly half a million signatures were collected to support DAHR's initiative in this regard. Still, the draft met with opposition from the Romanian

[8] *Ibid.*, 53.

[9] *Ibid.*, 81–83.

[10] *Ibid.*, 90.

intellectuals, as shown by the fact that 48 universities rejected the plan for the Hungarian university in an open letter. Under these circumstances, the ominous section 123 of the 1997/36 government decree amending the law of National Education was issued, which only allowed the establishment of Hungarian departments, not an independent university. In response, the DAHR threatened to leave the governing coalition, which ultimately did not materialise.

Following the parliamentary elections of 2000, the DAHR supported the governance of the Social Democrats from the outside based on protocols, i.e., agreements to support the governing party, which had to be renewed annually. Nevertheless, the issue of independent Hungarian faculties in the framework of the BBU did not become the subject of a political decision. In contrast, the Hungarian media in Romania could not properly thematise this issue, which according to the author, can be partly attributed to internal shortcomings of this media segment (Bodó argued that media actions to monitor the public life continuously have been insufficient).[11]

The topic of the seventh chapter is the choice of school, which shows not only the situation in Romania but also several regions inhabited by Hungarian minorities, including Vojvodina and predominantly Hungarian-speaking southern Slovakia. Compared to the style of presentation used in the previous chapters, the author presents the discussed topic much differently. It seems much more like a textbook-style presentation, the understanding of which is enhanced by the figures included in it.

To sum up, the decisions behind the school choice have several causes, but they also show similarities from a minority's perspective. Accordingly, we can distinguish between symbolic (transfer of language and culture) and rational motivations (the school's endowments). Reasons for choosing a school can be at the macro, meso and micro levels. The macro-level refers to the grounds for selecting a school concerning the education system as a whole. The most acute problem with this appears in relation to the legal framework: do laws in force

[11] *Ibid.*, 92–97.

offer freedom of choice at all? The settlements' ethnic ratio directly affects the language of instruction in the schools, so frequently, a school selection infers a language choice for many parents. Meso-level factors are more closely related to the external and internal life of the school. These include, for example, geographical proximity (which is relevant to transport) and accessibility, the condition of the school building, and the "quality" of the school. Then last but not least, micro-level factors are individual, family-level decisions. Parents with higher socio-economic affluence choose the future school for their children themselves, whereas, in the case of middle-class parents, this selection is a part of a kind of family strategy.[12]

The following two chapters (eighth and ninth) describe trends in school choice for children of minorities in Arad County. As Bodó finds it worth mentioning, by a more thorough analysis of a large region, we can make several deductions for some diasporas of Transylvania. Still, the conditional mode of conclusions is strongly advised in light of the data.[13] This analytical research is completed mainly for Arad County, but comparable data referring to other diaspora communities also appear in the research.

As can be concluded based on the book, the situation of Hungarian public education in Romania has played a central role in politics and public life during the last two decades, enabling Bodó to carry out an in-depth analysis of a large number of sources for his study.[14]

The eighth chapter was published as a consolidated dissertation in 2012 with a study by János Márton, which mainly presents the data of the 2000s, and the ninth chapter mostly analyses the data of 2011. These two chapters, which contain informative interviews, substantiate

[12] *Ibid.,* 126–133.

[13] Bodó also examines how democracy affects the minority. This highly personal question is formulated subjectively when examining data series referring to the Hungarian public education in Romania: *„can democracy as a social system in itself be a solution for public education in the minority's mother tongue?"* However, there is no single, unified answer to this. Where the minority lives in a higher density, the answer is yes, but the data series for lower densities are strongly decreasing, showing negative trends. *Source: Ibid.,* 140–141.

[14] *Ibid.,* 136.

the argument that family background has a crucial role in choosing minority- or majority language schools. The author also concludes that the Hungarian minority increasingly substitutes Hungarian with the Romanian language resulting in the Hungarian language playing a gradually less important role in public education.[15]

In the ninth chapter, we may read interviews with four students from Elena Ghiba Birta High School, an elite school, and Aurel Vlaicu Primary School, as a public education institution. Although most of the interviewees are of Hungarian origin, they cannot and do not want to learn to read or write in Hungarian. But not only does this section include a conversation with the students, but we can also gain some insight into interviews with two parents and three teachers. The conclusion can be deduced from the interviews that the two schools represent different models. On the one hand, there was no intention in the elite-private school to help Hungarians learn the Hungarian language. On the other hand, the district's public school tries to involve the pedagogical community and parents in proactive school life, so Hungarians did not feel that their language and culture, which was different from the majority, was something to hide.[16]

The tenth chapter examines the situation of colleges located in the diaspora. Bodó sets out four tasks for the betterment of the Hungarian minority's situation: educational strategy, strategy for the diaspora, college strategy for the diaspora, and a strategy covering the support policy. The author then goes on to analyse these tasks. There was no educational strategy (as of 2013, since this chapter was published at that time), or at least the author is uncertain whether the part referring to education in the DAHR's election programme at that time could still be considered politically valid.[17] At the same time, the situation was a bit brighter in the case of the strategy covering the diaspora, as several of these were published, some of which were preceded by public debate.

[15] *Ibid.*, 202–203.

[16] *Ibid.*, 203.

[17] *Ibid.*, 207.

The section on colleges in the diaspora and the support policy strategy are detailed in separate parts. Bodó classifies the previously mentioned colleges in the diaspora into three categories: classical residential (operating next to a school, founded by the state / municipal); dormitory and diaspora centre (a complex institution, usually set up through a church initiative, to promote minority education better); finally, the dormitory network of the St. Francis Foundation was enlisted in a separate category, their primary purpose being the assistance of orphans and the indigent.[18]

The fundamental problem is that the demand for Hungarian education is declining in the diaspora; non-classical residential accommodation could be a solution to provide better conditions for students. In this context, Bodó concluded from conversations with the teachers that the parents are afraid of their child living in a student dormitory, while motivation to stick to the mother tongue is also lacking.[19]

Prior to the fourth task, educational (small) regions are further described as areas for cooperation between the local community. In his work entitled *Diaspora Strategy,* Bodó explains that the diaspora needs a local leader/elite – or even more – who can handle the challenges of life in a diaspora, perform complex tasks, and furthermore take on moral responsibility for the community. This has to be supported both professionally and personally. Indeed, this might be more difficult to put into practice than just outlining in theory.[20]

Then, at the end of the chapter, the fourth task is detailed: under the heading "grants and politics". Here the author reveals the problem that the distribution of subsidies from Hungary is politicised and monopolised, often aimed to strengthen clientelism rather than expediency and professional reasons. Regarding the control of the spending of these funds, it is also problematic that the distribution of public funds is delegated to private foundations. Among the questions

[18] *Ibid.,* 209–210.

[19] *Ibid.,* 211.

[20] *Ibid.,* 217.

of principle are, among other things, how and on what basis are the grants awarded, while a particular problem is obtaining the necessary certificates in order to apply, as it is both time and money consuming.[21]

In the eleventh chapter, among other things, the Catholic High School in Târgu Mureş appears as a central theme, in light of law and politics, to build upon the topic of public education. This chapter was also published in the *Kisebbségvédelem – Minority Protection* journal,[22] where a more detailed and up-to-date version can be read.

Bodó illustrates the essence of the problem, lying in the fact that although Romania is a state governed by the rule of law, the establishment of a Hungarian school in the country is not easy, as it does not pose a legal, social or economic question, but rather a political dilemma. This is at the root of the problem: politics is gradually taking over education rights.[23]

More can be read about the case of II. Ferenc Rákóczi Roman Catholic Theological High School in the Kisebbségvédelem journal. The Council of Europe's Framework Convention for the Protection of Minorities is also mentioned here. Romania's country report on its implementation makes no mention of the High School, despite the concerns expressed by the Advisory Committee of the Framework Convention on the matter. The government's reply to the Report of the Advisory Committee was that the school had been established unlawfully, which was a conclusion taken by the Mureş County Court, annulling the founding decision.[24]

Bodó also presents the rules for founding a school and has ordered all the measures related to the founding procedure chronologically. The chronology begins with the date of 2003 and ends on the 23rd of August 2019 (while in the journal we can follow the events until the 24th of February 2020). The remainder of the chapter examines the responsibilities of all the participants in the re-establishment

[21] *Ibid.*, 219–221.

[22] Bodó Barna: Jog és politika Romániában: a marosvásárhelyi katolikus líceum esete. In: *Kisebbségvédelem,* No. IV (2021), 129–175.

[23] Bodó 2020, 223–225.

[24] *Ibid.*, 136–137.

process: the town hall clerk; the mayor; the local council; the county inspectorate; the prefect's office; Unirea High School, and the parent community of Unirea High School; the Status Foundation; Dan Tanasă as a notorious claimant who brings Hungarian minority-related issues to domestic Courts, and other representatives of Romanian parties; and finally the responsible people of the central institutions.[25] The aim of the statements inciting to hate against foreigners (and Hungarians) permeating the whole process was to divert attention and create an anti-Hungarian mood.[26] Finally, Bodó recalls that Romania has also ratified the Convention on the Rights of the Child.[27] This reaffirms, inter alia, the obligation of States Parties to respect human rights and fundamental freedoms and respect the language and cultural values of parents through the child's education. The Convention further stipulates that one of the aims shall be "*the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin*".[28] The information presented in the book and the anti-Hungarian sentiment, which in many cases involves exclusion, reflect an image contrary to the Convention.[29]

In the twelfth chapter, the author also targets the diaspora,[30] including Hungarian kindergartens, in the light of the reason that Hungarians living in the minority often enrol their children in Hungarian-language kindergartens. Yet, the parents usually prefer choosing a school where the language of instruction is Romanian.

[25] *Ibid.,* 244–249.

[26] *Ibid.,* 250.

[27] United Nations Convention on the Rights of the Child. Done at New York, 20th of November 1989.

[28] Article 29 (d) of the Convention.

[29] See also Katalin Szamel: The right to education. In: Lamn Vanda (ed.): *Encyclopedia of Human Rights*. Budapest: HVG-ORAC Lap-és Könykiadó. 2018, 578–579.

[30] The situation of kindergartens in three towns and a village in Timiş County was examined. Bodó 2020 *im* 253.

This problem can also be linked to the constantly growing effect of assimilation.[31]

There are smaller settlements that Hungarians predominantly inhabit; nonetheless, it is necessary to establish bilingual kindergarten groups as a compromise, as Romanian families would like to have their children also learn Romanian in the kindergarten. However, the obstacle of imbalance in the use of languages can be found in these bilingual groups, an issue that deserves correction.[32]

The last chapter is entitled Identity Variations of Young People, part of the Hungarian Minority, which analyses the answers given to the questions related to identity in the survey called "Mozaik 2011", on the attitudes to the public life of Hungarian young people living outside of Hungary. Bodó defines national identity as follows: "*National identity in the ordinary sense means a sense of belonging to the nation […], a knowledge of it*."[33] Bodó examined the image formed upon their identity by the Hungarian minority living in different countries on the basis of certain words and statements, including the homeland, what it means to be Hungarian and questions related to the mother tongue and language use.[34] The answers are mixed, while in Bodó's opinion, misinterpretations can also be found, such as the view on citizenship: as stated by a Hungarian minority respondent living in Austria, only a Hungarian citizen can call himself Hungarian.[35] In this chapter, the problem of choosing a school was featured once again, yet here the main topic is the relation between the mother tongue and education, as the author presents the differences between living in a diaspora or compactly.[36]

A separate subtitle was accorded to couple choices and mixed marriages. Judging by the answers, although many people's views are

[31] *Ibid.*, 257–258.

[32] *Ibid.*, 260.

[33] *Ibid.*, 269.

[34] *Ibid.*, 275.

[35] *Ibid.*, 286.

[36] *Ibid.*, 300.

positive, those living in a cluster see little chance for mixed marriages,[37] given the fear of assimilation.

The relationship between the Hungarians and the local community has also become the subject of research. The workplace community has emerged as an example, where it is rare to find a positive, accepting environment. Many people think that if they open up to their Hungarian identity, they might face exclusion. One of the critical conditions for the improvement of these relations is reciprocity.[38]

Sports, the support associated with it, leisure time and entertainment also arise. Sport is not a national value in the case of young people. They rather tend to support the better team as opposed to the team linked with their ethnic group identity. In terms of leisure time, diaspora members are disadvantaged, as there are few venues for entertainment designed for Hungarian groups.[39]

The vision of the future and assimilation have also been expanded in a separate subsection and referenced during the topics discussed earlier. Many people would go abroad for work, considering that there are fewer and fewer job opportunities, especially in disadvantaged micro-regions, but Hungary is not the leading destination country.[40]

All in all, the thirteen chapters of the book illustrate the difficulties and offer an overview of the situation of the Hungarian minority, a reality ignored by many people. In terms of the subject matter, the book is really well-structured, leading the reader through the political situation and the issue of the university towards the case of Hungarian kindergartens, and shows how the choice between educational institutions can worsen the condition of the Hungarian language. To sum up, the last chapter provides a comprehensive picture of the identity variants of young Hungarian people living outside of Hungary, offering us a deeper understanding of the analyses we have read before.

[37] *Ibid.*, 303–304.

[38] *Ibid.*, 312–313.

[39] *Ibid.*, 320.

[40] *Ibid.*, 326.

Bodó put a significant amount of work into the book. Considering the still unresolved problems of the Hungarian minority, this collection of studies will serve as valuable source material for future research and further analyses.

RESUME

Balázs Szabolcs GERENCSÉR

Law and Policy-making as a Tool for the Peaceful Coexistence of Languages

This study examines four fields of language policy that can support the peaceful coexistence of different languages in a state. It starts with a special view of majority and minority language competition where some intervention is needed in case the vulnerable part of the society needs it. These top-down measures assume a flexible frame of policy and law-making, where the state is aware of the real needs of the groups in the society. Four essential pillars appear in this paper that can support the aims to achieve the peaceful coexistence of languages. Areas highlighted in the research are: human rights, democratic institutions, good governance and security.

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György ANDRÁSSY

A Dusting Gem: Act XLIV of 1868 on National Equality

Recently, with regard to Act XLIV of 1868, the prevailing view was that the Act was forward-looking since it provided wide-range language rights to both native Hungarian-speaking and non-Hungarian speaking nationals of the Kingdom of Hungary. Most authors approached the Act from a historical point of view, and while some raised theoretical issues as well, comprehensive and in-depth theoretical discussions

have not yet taken place. The study intends to contribute to such in-depth theoretical discussions.

The preamble to the Act practically ruled out the possibility of regulating non-official language use, and accordingly, the Act regulated (almost) exclusively the official use of languages spoken in the country. Therefore, the study argues that, like the Belgian constitution of 1831, the Hungarian Act also recognised the free use of languages in the spheres of non-official language use and that this tacit recognition was a great merit of the Act.

As for the official use of languages, the study underlines that although the Act made Hungarian the state language or official language, all the Acts adopted by the National Assembly had to be published, in authentic translation, in the language of all other nationalities, i.e. in Slovak, Romanian, Serbian, German, Ruthenian (and with some exception Croatian) and the said languages could also be used, mainly at the regional and local levels, before the courts and the administrative authorities. Furthermore, every citizen had the right to submit her/his application to the state authorities, including those of the central government, and in principle, everyone was entitled to receive primary and secondary education in her/his mother tongue. Consequently, this regulation suggested that not only the Hungarian should be considered the official language of the country; in fact, the Slovak, Romanian, Serbian, German, Ruthenian and Croatian should also be conceived, to a certain extent, as official languages of the Kingdom of Hungary.

According to the prevailing view, the Act was not implemented, or it was poorly implemented. However, the study draws attention to the fact that the Acts adopted by the National Assembly were published yearly in the Slovak, Romanian, Serbian, German, Ruthenian and (partly) Croatian languages, and therefore, the prevailing view should be revised. The appendix of the study provides cover pages of the publications of the Hungarian acts in the Slovak, Romanian, Serbian, German, Ruthenian and Croatian languages.

Joanie WILLETT

Minority Cultures, Affective Assemblages, and Inward Migration

This study asks the question of how minorities can protect their rights when faced with high levels of inward migration into their territories. Such a situation can elicit a sense of fear that the minority culture will be "watered down", destroying their cultural distinctiveness and risking becoming absorbed into the dominant, majority culture. This paper examines this question with regards to Cornwall in the South West of the UK. It draws on ethnographic and embodied fieldwork and uses the analytical framework of the affective assemblage to explore the entanglement between differing constellations of meaning and how emotional responses collect around and move between particular ideas, words and phrases. The research then goes on to explore the effects that this can have on the ways that minority cultures and regional newcomers experience each other and the ensuing impacts that this has on them. I argue that far from risking diminishing minority cultures, an inclusive approach towards newcomers can instead strengthen and enrich the minority, helping it to be able to adapt, grow, and maintain a cultural relevance.

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Krisztián MANZINGER

Post-Brexit Gibraltar – Can It Remain Prosperous and British at the Same Time?

The status of the town of Gibraltar, lost by Spain to Britain in 1704, has long been disputed. With the support of the international community, mainly the UN, Spain intends to restore its territorial integrity, while Britain advocates for the self-determination of the population of the town. Since the early 18th century, when the Spanish left Gibraltar,

a new community has emerged there, aspiring for self-determination under continued British rule but wishing to rely economically on neighbouring Spanish territories. Economic prosperity was ensured during the decades when both Spain and the UK were members of the EU. The Brexit vote, however, changed the situation dramatically. Gibraltar now is balancing on a narrow path to remain British and prosperous, while Spain has been trying to use every opportunity to strengthen its presence in the town. Gibraltarians have emphasised their rejection of a Spanish or a joint Spanish-British sovereignty over the town several times, yet Spain continues to push this agenda. In the midst of Brexit talks and the redefinition of the country's place under the sun, Britain is interested in keeping both its position at the Strait of Gibraltar, including the two military bases in the town and its promise to broker a solution acceptable for the Gibraltarians.

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Erika HOCZ

Barna Bodó – Jelenségek szélzúgásban (Book Review)

This book review summarises the findings of a compilation of studies written by political scientist, and honorary professor of Sapientia University in Kolozsvár, Barna Bodó. The most defining subject of the book is education research. Studies of the volume entitled "Jelenségek Szélzúgásban" revolve around issues of Hungarian language universities in Romania, minority protection pertaining to linguistic issues, as well the changing cultural and linguistic landscape of Transylvania.

Készült a Magyar Kormány
támogatásával

Miniszterelnökség
Nemzetpolitikai Államtitkárság

Bethlen Gábor
Alap