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# Title

## Linguistic rights for the protection of cultural identity in International Law

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# Table of contents

# Abstract

L'identità di ciascuna persona, così come quella di ciascun popolo, è costituita dalla cultura e dalla lingua. Per questo motivo, il diritto di possedere un'identità culturale, ovvero di sentirsi parte di una specifica comunità culturale e quello di avere accesso alla vita culturale che tale comunità offre, fanno parte di quella categoria di diritti umani che va sotto la denominazione di diritti culturali.

Dal canto suo, essendo la lingua una delle principali manifestazioni della cultura, espressione del patrimonio e dell'identità culturale di un popolo, i diritti linguistici possono essere considerati una categoria racchiusa nella categoria dei sopradetti diritti culturali.

Ci si trova dunque di fronte ad una rappresentazione a tre cerchi concentrici dove il cerchio più esterno coincide con i diritti umani, il secondo cerchio corrisponde ai diritti culturali, all'interno del quale si trova il cerchio più piccolo dei diritti linguistici.

Dato che nella maggior parte dei casi i lavori di ricerca riguardanti la cultura e la lingua considerano questi due elementi da un punto di vista puramente antropologico, ovvero come due aspetti caratterizzanti ciascun essere umano, il presente lavoro si pone l'obiettivo di andare oltre l'ambito dell'antropologia per comprendere piuttosto come la cultura e la lingua si relazionano con il diritto. Più precisamente, la tesi vuole offrire una panoramica della modalità in cui la cultura e la lingua vengono interpretate dalla giurisprudenza e, in particolare, dal quadro giuridico internazionale.

La ricerca evidenzia che tanto i diritti culturali quanto quelli linguistici sono stati per molto tempo trascurati dalla dottrina, se paragonati ai diritti umani, come dimostra il fatto che le due Dichiarazioni ad essi relative sono state elaborate in tempi piuttosto recenti e che l'opinione pubblica stessa non conosce abbastanza tali diritti.

La tesi presenta la struttura seguente: il primo capitolo riguarda i diritti culturali, il secondo si focalizza sui diritti linguistici e il terzo illustra i diritti linguistici dei gruppi minoritari. Infatti, dato che i diritti linguistici vengono negati perlopiù a tali gruppi, questi diritti coincidono quasi sempre con i diritti delle minoranze.

Il primo capitolo si apre con l'inquadramento dei diritti culturali all'interno del sistema giuridico internazionale dei diritti umani. Da ciò emerge la difficoltà che è stata riscontrata tanto nello sviluppo come nell'applicazione di tali diritti, difficoltà che viene principalmente attribuita al fatto che essi riflettono la complessità che caratterizza il concetto stesso di cultura. Si esamina che il diritto internazionale iniziò a prendere in considerazione i diritti culturali solo quando il concetto di cultura divenne oggetto di un ampliamento, ovvero, quando esso smise di rappresentare esclusivamente l'arte e la letteratura e di identificarsi puramente con le discipline accademiche,

iniziando a comprendere anche i vari aspetti che caratterizzano la vita culturale delle persone come la religione, l'istruzione e la lingua. Inoltre, si può constatare che l'indeterminatezza e la marginalità dei diritti culturali sono da attribuire alla scarsa chiarezza che circonda il concetto di cultura.

La complessità di tali diritti deriva anche dal fatto che essi sovrappongono altre categorie di diritti, così come dal fatto che i diritti culturali si legano inevitabilmente all'identità di ogni individuo, dalla quale non possono essere separati. Il quadro d'insieme si complica se si considera che tali diritti possono avere una dimensione individuale così come una dimensione collettiva. Tutto ciò fa capire la ragione per cui la definizione di quei diritti che si sarebbero poi dovuti ascrivere alla categoria di diritti culturali è stato il frutto di un lavoro particolarmente complesso. Si evidenzia come la difficoltà nella loro caratterizzazione risalga già al periodo dell'elaborazione della *Dichiarazione Universale dei diritti umani* del 1948, che peraltro fa riferimento ad essi in solo due dei suoi articoli, riguardanti rispettivamente il diritto all'istruzione e il diritto alla partecipazione alla vita culturale ma che, tuttavia, non ne fornisce una definizione vera e propria.

Successivamente, si offre una descrizione dei principali strumenti legali internazionali che sono stati elaborati nell'ambito dei diritti culturali, evidenziando la collocazione di questi rispetto ai più noti diritti civili e politici. In particolare, si rileva che, data la sua importanza nella promozione della cultura, *l'Organizzazione delle Nazioni Unite per l'educazione, la scienza e la cultura (UNESCO)*, ha elaborato numerosi documenti sul tema in questione. Essi riguardano soprattutto la cooperazione in materia culturale e la partecipazione alla vita culturale e risalgono agli anni sessanta e settanta del secolo scorso. Anche il *Patto Internazionale sui Diritti Economici, Sociali e Culturali* della fine degli anni sessanta presenta solo due articoli riguardanti i diritti culturali, senza però fornirne alcuna definizione, come già considerato per la *Dichiarazione Universale*.

Poiché lo strumento più specifico in materia di diritti culturali risale all'inizio del ventunesimo secolo, è dunque significativo notare che dovettero passare molti anni dall'elaborazione della *Dichiarazione Universale* prima di ottenere una chiara idea di cosa dovesse intendersi con tali diritti. I lavori per raggiungere tale scopo iniziarono negli anni novanta del ventesimo secolo ad opera di esperti che andarono a costituire il cosiddetto Gruppo di Friburgo e fu grazie a loro se nel 2007 fu finalmente possibile godere di una definizione di diritti culturali o, per meglio dire, della prima vera definizione di tali diritti. Questa è infatti contenuta nella Dichiarazione che prende il suo nome da quello del gruppo stesso, la *Dichiarazione di Friburgo*, che, pur non avendo un carattere vincolante, presenta numerose disposizioni riguardanti la protezione dei diritti in questione.

Un importante aspetto del documento è costituito dalla sua concezione più antropologica che materialistica di cultura, a testimonianza dell'avvenuto ampliamento di tale concetto. Inoltre, anche la *Dichiarazione* ribadisce il nesso che i diritti culturali hanno con l'identità individuale.

A proposito di ciò, dato che i conflitti e la violenza sono principalmente causati dai tentativi di ottenere il riconoscimento dell'identità di ogni singolo individuo, si può dedurre l'importante ruolo ricoperto dall'educazione ai diritti culturali, proprio per evitare eventuali contrasti e per contribuire alla difesa dell'identità. Dalla *Dichiarazione* emerge anche il legame che i diritti culturali hanno con i diritti linguistici, nel momento in cui anche la libera scelta da parte dell'individuo della lingua che preferisce utilizzare costituisce una parte della sua identità. Inoltre, è opportuno ricordare che il diritto di ciascuno di identificarsi con una determinata comunità culturale, che comprende la scelta della lingua con la quale esprimersi nella vita pubblica e privata, così come della cultura con cui identificarsi, costituisce uno dei diritti culturali più importanti.

Parte del primo capitolo è dedicata al diritto alla partecipazione alla vita culturale e al diritto all'identità culturale, che costituiscono i principali diritti nella formazione dell'identità stessa.

Siccome il diritto di utilizzare la propria lingua materna si inserisce nell'ambito del diritto di partecipare alla vita culturale, si fa già riferimento a quello che costituirà il tema principale del terzo capitolo, ovvero, il diritto degli individui appartenenti ai gruppi minoritari di accedere alla propria cultura e alla propria lingua. Si evidenzia poi come siano sia strumenti elaborati dall' UNESCO, sia strumenti di ambito regionale, quelli riguardanti il diritto alla partecipazione culturale così come il diritto all'identità culturale. Per quanto riguarda il diritto di partecipare alla vita culturale di una comunità, si rileva che questo è composto da due elementi di base, l'uguaglianza e il divieto di discriminazione. Per quanto riguarda invece il diritto all'identità culturale, si ricorda che esso, a partire da una dimensione ristretta, fu sottoposto ad un successivo ampliamento.

Oltretutto, quest'ultimo diritto ha sia una portata individuale che una portata collettiva e comprende lo stesso diritto di scegliere la lingua da utilizzare.

Dall'incertezza che caratterizza il contenuto e la portata dei diritti culturali, è facile dedurre che anche la definizione degli obblighi che gli Stati hanno nei confronti di tali diritti così come delle possibili violazioni che essi possono compiere in merito a questi, siano di difficile individuazione. Ad ogni modo, una breve presentazione ne viene fornita.

L'ultima questione che viene affrontata nel primo capitolo riguarda il ragionamento sulla metodologia da adottare nei confronti dei diritti culturali ed esso si articola attorno a due possibilità; l'impiego del metodo universalista oppure di quello relativista. Ci interroga se, nell'ambito dei diritti culturali, sia meglio preferire un modello universale di diritti fondamentali o invece un modello che tenga conto delle differenze esistenti tra le varie culture e dal ragionamento emerge che

i diritti umani sono da considerarsi diritti fondamentali ma devono essere analizzati tenendo in considerazione il legame che li unisce alla storia e alla cultura.

Quindi, l'universalità può essere raggiunta solo se culture diverse vengono messe in relazione tra loro e se si ammette che la cultura è sì espressione di differenza, ma riconosce al tempo stesso l'esistenza di diritti essenziali uguali per tutti.

Il primo capitolo mette in luce il fatto che, sebbene grazie alla *Dichiarazione di Friburgo* si sia giunti a definire i diritti culturali in modo più preciso, essi continuano a rappresentare la categoria di diritti più trascurata all'interno del quadro giuridico sui diritti umani. Perciò, essi necessitano di un maggiore approfondimento, devono cioè essere oggetto di una ricerca più dettagliata, specialmente se ci si pone l'obiettivo di fronteggiare nel miglior modo possibile le numerose sfide poste dalle società contemporanee, che sono caratterizzate da una sempre maggiore multietnicità e multiculturalità.

Il secondo capitolo della tesi, offrendo una presentazione dei diritti linguistici, si propone sia di spiegare la loro collocazione all'interno della categoria dei diritti culturali, sia di mettere in evidenza i punti che queste due categorie hanno in comune. Per quanto riguarda il primo aspetto, si chiarisce che la ragione per cui i diritti linguistici possono essere considerati una sotto-categoria dei diritti culturali deriva dal fatto che il diritto all'identità culturale comprende più diritti culturali al suo interno, tra cui figurano appunto quelli linguistici. Anche il diritto internazionale associa tali diritti ai diritti culturali e, più precisamente, ai diritti nel campo dell'educazione.

Per quanto riguarda invece il secondo aspetto, si fa notare che anche i diritti linguistici presentano un legame con l'identità individuale. Nel loro caso specifico, si osserva che l'identità di ogni individuo può dirsi rispettata solo se vi è rispetto anche per la lingua che ognuno decide di utilizzare, dato che quest'ultima è un elemento sostanziale dell'identità di ciascuno.

Il capitolo prosegue con una breve descrizione dello sviluppo che i diritti in questione hanno conosciuto nell'ambito europeo della storia, della politica e del diritto. Emerge così che essi iniziarono a essere presi in considerazione a partire dalla formazione degli Stati nazionali, i quali vedevano in cattiva luce i gruppi linguistici minoritari che potevano mettere a rischio la maggioranza linguistica. Tali diritti vennero riconosciuti come diritti ufficiali solo nel ventesimo secolo. Tuttavia, come già visto per i diritti culturali, anche successivamente alla loro identificazione, il carattere e la portata sono rimasti poco chiari.

È da considerarsi piuttosto significativo che il Primo Congresso Internazionale sui diritti linguistici si sia svolto solo nel 2015, a dimostrazione che essi costituiscono un tema di dibattito attuale.

Due principali ragioni possono essere attribuite all'interesse che tanto la dottrina così come gli enti internazionali dimostrano oggigiorno per i diritti linguistici: il tema dell'immigrazione e quello

della globalizzazione. Il primo, fa riferimento al costituirsi di nuove comunità linguistiche all'interno dei paesi europei, mentre il secondo alla tendenza di stabilire i medesimi modelli culturali ovunque, che è il motivo per cui il fenomeno della globalizzazione costituisce un'intimidazione alla diversità linguistica. Inoltre, numerose figure di rilievo internazionale in campo culturale hanno fornito il proprio supporto all'elaborazione di tali diritti. Una parte del dibattito riguarda anche il ragionamento attorno alla considerazione dei diritti linguistici come appartenenti alla famiglia dei diritti umani ed esso si sviluppa tenendo conto di tre aspetti diversi.

Si sottolinea anche come la tendenza nei confronti dei diritti linguistici e delle questioni più generali relative alla lingua dimostri perlopiù tolleranza e assenza di discriminazione, ma che non sono state ancora elaborate delle disposizioni precise riguardanti la salvaguardia di tali diritti.

Proseguendo con l'illustrazione dei punti che accomunano diritti culturali e diritti linguistici, il lavoro rileva che anche nel caso della seconda categoria esiste uno specifico strumento giuridico di recente elaborazione. Il documento in questione è la *Dichiarazione Universale dei Diritti Linguistici*, denominata anche *Dichiarazione di Barcellona*, che venne elaborata nel 1996 in occasione della Conferenza Mondiale sui Diritti Linguistici, tenutasi per l'appunto nella città spagnola nel giugno dello stesso anno e alla quale parteciparono gli esperti di diverse discipline così come i delegati rappresentanti le organizzazioni internazionali non governative di molti Stati.

La *Dichiarazione* sottolinea l'importanza rivestita da tali diritti a livello mondiale, così come la necessità di ampliarne la portata. L'idea riguardante l'elaborazione di uno strumento specifico su questi diritti, che presenta una certa complessità nella sua struttura essendo composto da varie parti, risale alla metà degli anni ottanta e va ascritta ad un famoso linguista brasiliano consapevole del fatto che gli strumenti internazionali già esistenti non ne fornivano una definizione chiara.

Viene poi offerta una panoramica delle principali categorie di diritti linguistici esplicitate dalla letteratura che fanno riferimento alla distinzione tra diritti individuali e diritti collettivi e tra diritti della lingua e diritti linguistici umani. Inoltre, possono essere fatte altre classificazioni di essi tenendo conto dei principi della territorialità e della personalità, così come della tendenza di questi verso una maggiore conservazione o, al contrario, di una maggiore assimilazione. Infine, ulteriori criteri da prendere in considerazione sono l'apertura o la chiusura, così come il loro essere diritti positivi o negativi.

Il terzo capitolo si concentra sui diritti linguistici dei gruppi minoritari, fornendo innanzitutto una descrizione dei diversi periodi storici che portarono alla loro affermazione nell'ambito del diritto internazionale. Questo si accompagna alla considerazione dell'importanza che il rispetto e l'osservanza di tali diritti hanno al fine di evitare possibili conflitti causati dalla discriminazione e dal pregiudizio razziali, e nel permettere agli individui appartenenti alle minoranze di preservare le

loro differenze sul piano linguistico, così come di poter accedere alla vita culturale della comunità con la quale si identificano.

Infatti, nel caso in cui tali diritti non venissero concessi a questi individui, ne deriverebbero delle tensioni che potrebbero giungere sino al punto da mettere a repentaglio l'esistenza della cultura e della lingua di quella stessa comunità, come dimostrazione del fatto che la lingua costituisce un elemento fondamentale della cultura.

La posizione del diritto internazionale è quella di proibire la discriminazione linguistica nei confronti dei membri appartenenti alle minoranze, il cui obiettivo è quello di far riconoscere la loro lingua materna agli Stati in cui essi risiedono. Rispetto a questo, segue l'esposizione dei diversi ambiti di utilizzo della lingua di tali individui, ovvero delle varie circostanze in cui queste persone rivendicano il diritto di usare la propria lingua. La prima di queste fa riferimento a contesti sia formali che informali, inoltre, tali individui richiedono di poter esprimersi nella loro lingua materna quando si relazionano con le autorità pubbliche, dinnanzi alla corte qualora dovessero essere sottoposti a un processo giudiziario, nella denominazione di luoghi geografici, nei mass media, ovvero di poter ascoltare programmi radiofonici e televisivi nella loro lingua, così come di poter essere liberi di pubblicare libri e giornali nella stessa lingua. Altra rivendicazione riguarda il diritto di mantenere l'ortografia dei propri nomi e cognomi nella loro lingua, e il diritto di utilizzarla nel corso di riti civili, primo tra tutti il matrimonio. L'ultimo ambito di utilizzo di una lingua minoritaria, anche se non per questo meno importante, è quello educativo, in cui gli individui rivendicano appunto di poter ricevere un'educazione anche nella propria lingua.

Come già visto per i diritti descritti precedentemente, anche i diritti linguistici delle minoranze sono stati oggetto di alcuni documenti sia vincolanti, che quindi impongono obblighi agli Stati, sia non vincolanti. Tra quelli non vincolanti, i principali sono la *Dichiarazione sui diritti delle persone appartenenti a minoranze nazionali o etniche, religiose e linguistiche* del 1992 e le *Raccomandazioni di Oslo sui diritti linguistici delle minoranze nazionali* del 1998. È opportuno menzionare anche la *Carta europea per le lingue regionali o minoritarie* del 1992 e la *Convenzione quadro per la protezione delle minoranze nazionali* del 1995.

Viene poi descritto brevemente il ruolo rivestito *dall'Organizzazione per la sicurezza e la cooperazione in Europa (OSCE)* nell'ambito della protezione dei diritti linguistici dei membri appartenenti alle comunità minoritarie, dato che essa costituisce uno degli enti più importanti in questo campo. In particolare, dato che l'interesse primario di tale organizzazione è costituito dalla prevenzione di eventuali conflitti attraverso la promozione della sicurezza e della pace, essa ha elaborato numerosi strumenti che soddisfano tale obiettivo e ha istituito la figura dell'Alto Commissario per le minoranze nazionali, il quale si occupa delle questioni relative ai diritti

linguistici qualora ritenga che le tensioni esistenti all'interno delle minoranze linguistiche possano condurre a conflitti che mettono a rischio la sicurezza e la pace dei relativi Stati.
Il suo compito principale consiste nell'individuazione delle ragioni etniche di tali tensioni e esso ha anche la facoltà di pubblicare raccomandazioni e linee guida, così come di farsi carico della conduzione di progetti sul tema delle minoranze linguistiche e dei loro diritti.

Per quanto riguarda gli Stati presi in esame nella presente ricerca, è possibile constatare che, laddove le lingue parlate dalle minoranze linguistiche hanno avuto il riconoscimento di lingue ufficiali, il loro uso nelle attività di governo è più probabile. La maggioranza dei Paesi dimostra di avere una propensione all'apertura e alla tolleranza, dato che prevede nei propri testi costituzionali la concessione dei relativi diritti linguistici agli individui appartenenti ai gruppi minoritari in gran parte degli ambiti della vita sociale. È importante sottolineare che, qualora il diritto di tali individui di utilizzare la propria lingua non venisse garantito, la sua violazione comporterebbe la violazione anche di altri diritti, primi tra tutti il diritto alla libertà di espressione, alla vita privata e familiare e al diritto di non discriminazione. Tuttavia, nonostante tali diritti siano garantiti sul piano costituzionale, i casi descritti in questo lavoro, selezionati tra quelli presentati dinnanzi alla *Corte Europea dei Diritti Umani* più di recente, dimostrano che questi diritti, esattamente come quelli culturali, sono stati oggetto di violazioni in numerose circostanze. Infatti, nella maggioranza dei casi analizzati, i ricorrenti sono individui appartenenti ad una minoranza linguistica che lamentano il fatto di non aver avuto riconosciuto il diritto di usare la propria lingua materna, nonostante questo fosse stato stabilito dalle Costituzioni dei loro relativi Paesi. I casi risalenti al 2004 e al 2008 fanno entrambi riferimento alla mancata osservanza dell'ortografia dei nomi e cognomi dei ricorrenti.
Nel primo, il ricorrente è una donna lettone, la quale, sposando un uomo tedesco ne riceve il cognome, come risulta nel certificato di matrimonio. Tuttavia, nel ricevere un nuovo passaporto da coniugata, come da lei stessa richiesto, percepisce una modifica nell'ortografia del cognome, che era stata adattata in conformità alla lingua lettone, operazione che ella avverte come una violazione del diritto al rispetto della vita familiare. Nel secondo, si assiste alla negazione di correggere l'ortografia di un nome così come era stato depositato nel registro delle nascite. Il ricorrente in questione è una donna turca della minoranza curda la quale non può ricevere alcuni servizi dato che la forma del suo nome di battesimo risultante nel registro nascite appare diversa da quella con la quale la persona si presenta per richiedere tali servizi. Il caso del 2011 riguarda il mancato rispetto del diritto dei detenuti di corrispondere nella loro lingua. I ricorrenti sono dieci persone di nazionalità turca di lingua materna curda ai quali viene negata la possibilità di far arrivare le proprie lettere ai rispettivi destinatari perché scritte nella lingua minoritaria anziché nella lingua nazionale turca.

Il caso risalente al 2007 dimostra la violazione del diritto di libertà di espressione, e in particolare, riferito al divieto di rappresentare un'opera teatrale in lingua curda da parte di attori appartenenti a tale minoranza e residenti in Turchia. Nel caso del 2009, ad un gruppo di studenti universitari turchi è negato il diritto di partecipare a delle lezioni di lingua curda e perciò esso fa riferimento alla violazione del diritto di educazione in una lingua minoritaria. Infine, nell'ultimo caso esaminato, risalente al 2010, i diritti linguistici si riferiscono all'uso della lingua delle minoranze nei loro rapporti con le autorità e, in particolare, nel contesto delle assemblee parlamentari regionali.
Al ricorrente del presente caso, cittadino della Polinesia francese e membro dell'assemblea di tale territorio, è negato il diritto di usare la lingua minoritaria taitiana affermando che la lingua francese deve invece essere utilizzata in quanto lingua ufficiale della Polinesia francese. La violazione di tale diritto comporta anche la violazione del diritto di libertà di espressione, di libertà di associazione e di riunione, così come del divieto di non discriminazione.

La parte finale della ricerca è dedicata alla riflessione sulle situazioni linguistiche presenti in Spagna e in America Latina. La giustificazione di tale scelta va legata nel primo caso alla forte presenza di minoranze linguistiche all'interno dello stato spagnolo; nel secondo, alla particolare importanza detenuta dalla preservazione della cultura e della lingua delle popolazioni indigene che costituiscono i gruppi minoritari all'interno di quegli Stati.

La Spagna è un paese caratterizzato da un'apertura nei confronti della tutela e del rispetto delle lingue parlate nelle diverse comunità autonome che la compongono e in ognuna delle quali vige una situazione di co-ufficialità della lingua castigliana rispettivamente con il catalano, il basco e il galiziano. Dunque, seppure queste sono lingue minoritarie, sono anche ufficiali così come il castigliano. In tutte le comunità autonome spagnole si possono riscontrare delle tendenze comuni sul piano linguistico. Infatti, vi è una simile concezione della lingua come simbolo dell'identità culturale, del rifiuto della discriminazione a livello linguistico, così come il diritto di usare le lingue minoritarie nella maggioranza degli ambiti della vita pubblica. Tuttavia, alcune differenze si possono riscontrare con riferimento al sistema educativo presente nelle diversità comunità perché, ad esempio, quello catalano è bilingue, nel senso che è possibile ricevere un'istruzione sia in catalano che in castigliano, mentre quello basco viene definito separatista in quanto è a discrezione dei genitori scegliere se i propri figli debbano ricevere un'istruzione in castigliano o in basco.
Il caso spagnolo dimostra quindi come il Paese sia solito assecondare le richieste provenienti dagli individui appartenenti alle proprie minoranze nei termini del diritto di utilizzare la loro lingua materna. Questa propensione positiva non ha però preservato il Paese dall'eventualità di interventi aggressivi da parte dei gruppi nazionalisti, che avvengono tutt'oggi.

Al contrario, la maggior parte dei Paesi latinoamericani è contraria alla diversità linguistica e culturale, infatti, le rispettive Costituzioni non fanno riferimento in nessuno dei loro articoli ai diritti linguistici degli individui che formano parte delle minoranze.

In questi Stati coesistono due modelli linguistici differenti derivanti dalla presenza della lingua nazionale insieme alla lingua indigena e si rileva che questi due sistemi possono rispettarsi reciprocamente solo se i diritti linguistici vengono applicati. Tuttavia, il Messico e il Brasile, gli Stati latinoamericani in cui risiede la maggioranza della popolazione, si distinguono da questa tendenza generale. Infatti, in Messico esistono disposizioni a favore della preservazione delle caratteristiche linguistiche ed etniche degli individui appartenenti alla comunità indigena amerindiana, i quali sono riconosciuti come cittadini uguali al resto della popolazione.

In Brasile, il cui testo costituzionale fa riferimento soprattutto ai diritti linguistici di tali individui nell'ambito dell'educazione, viene riconosciuto loro il diritto di ricevere un'istruzione in entrambe le lingue materna e nazionale.

# Introduction

In most cases, investigations dealing with culture and language limit themselves to the analysis of these two concepts from the anthropological point of view, that is, to the identification of these two aspects as the essential components of every human being.

The present research aims at going beyond the pure anthropological domain and examining culture and language in their relation with the legal sphere. More precisely, this work wants to provide an overview of the way in which culture and language are interpreted by jurisprudence, with a special focus on the international legal framework.

The personal interest for an in-depth study of such a connection arises from the awareness of the fact that both cultural and linguistic rights have not been the object of an observation as clear as that reserved to human rights by scholars and the same public opinion is not so well-informed about them.

The first chapter aims at defining the position which cultural rights have within the international legal framework dealing with human rights. A particular attention is given to the explanation of the main reasons for their rather marginal role and vagueness, which find their first cause in the uncertainty which surrounds the same concept of culture. Already in this chapter, it is possible to understand the link which exists between cultural and linguistic rights since one of the main cultural rights is the right of every individual to identify with a specific cultural community, which involves the personal choice of own one's culture and of the language to be used in both the private and public spheres of everyone's life. However, the difficulty of defining what kinds of rights can be considered to fall under the label of cultural rights is outlined, as well as the illustration of the fact that cultural rights have both an individual and a collective dimension.

The present chapter continues then with the presentation of the main international legal instruments concerning such rights, underlining their role in comparison with civil and political rights.

Given the relevant position that *UNESCO* organization has in the cultural promotion, a special focus is given to the range of documents it drafted on this subject. The analysis proceeds with a close look at the legal instruments dealing with cultural rights at the regional level, that is, those specific for a particular continental area. A list follows showing what types of rights respect the definition of cultural rights under International Law, accompanied by the reasoning about the fact that it was since the elaboration of the *Universal Declaration of Human Rights* that such rights had been difficult to categorize, also due to their existence in both a narrow and a broad dimension.

As the examination of these international documents highlights that all of them provide just a general reference to the rights in question, it proceeds with a brief explanation of the *Declaration* which provides a clearer definition of cultural rights for the first time, that it, the *Fribourg Declaration*, which was adopted in a quite recent period, and that, despite being not-legally binding, offers a number of provisions aiming at the defence of these rights. It also makes an enumeration of the rights that it considers meeting the definition of 'cultural' representing in this way a step forward in the clarification of such complex group of rights. Since struggles for the recognition of everyone's identity constitute one of the fundamental cause for conflict and aggression, the present chapter also highlights the importance that an education to cultural rights has in order to avoid such a violence towards the safeguard of cultural identity. It is precisely in the path for the formation of everyone's identity that a particular attention is given to the right to participate in cultural life, and to the consequent right to cultural identity. Within the scope of the right to take part in cultural life, the same right to use one's own native language is included and a first reference is therefore made to the rights of the members belonging to minority groups to have access to their own culture and language. A list of the instruments dealing with these specific cultural rights, the right to participate in cultural life and the right to cultural identity is offered, and it comprehends *UNESCO* as well as other documents on the regional ground. An important underlined aspect of the right to take part in the cultural life of a community is that equality and prohibition of discrimination are two fundamental principles of it, and as far as the right to cultural identity is concerned, the fact that it was the object of a development from a first narrower dimension to a following wider dimension. Finally, the right to cultural identity is both individual and collective and it involves the right to express themselves in a language of choice as well. Since the imprecision of cultural rights, also the definition of the possible violations of these rights by States as well as the obligations different Countries have to observe in respect of them is arduous to achieve. However, a brief enumeration of obligations is presented as well as that of the potential violations of such rights.

The first chapter ends with a reference to the argument about the choice of adopting a universalist or a relativist method to deal with cultural rights. The core of the problem is given by the reasoning which revolves around the preference for a universal scheme of basic rights or for a scheme which takes into account the diversities existing between cultures. With respect to this, it was reached the final recognition that human rights reflect universality but their evaluation must be conducted in connection with the contexts of history and culture. The achievement of universality needs comparison between different cultures and attention for both equality of basic rights and dissimilarities on the ground of culture.

The second chapter focuses on linguistic rights explaining the reason why they make part of the category of cultural rights. In particular, it is underlined that given the intricacy of the right to cultural identity, due to the incorporation of other cultural rights within it, such as religious, linguistic and land rights, linguistic rights can be therefore defined a sub-branch of cultural rights. Already in the present chapter it is outlined a fundamental concept that will constitute the main concern of the third and last chapter of the research, that is, the consideration that since majority groups speakers of a dominant language naturally enjoy linguistic rights, those people who are prevented from the enjoyment of linguistic rights are normally the individuals belonging to minority communities, which explains why linguistic rights mostly coincide with the rights of minorities.

As far as International Law is concerned, it provides a definition of linguistic rights which are considered to be part of the category of cultural and educational rights. A brief overview of the development of linguistic rights in the context of European history is offered, highlighting that both the fields of politics and jurisprudence recognized them as official rights not until the 20$^{th}$ century. This means that they represent a rather new type of rights, as proved by the fact that the first international congress of linguistic rights took place in 2015. An important part of the second chapter revolves around the discussion on whether linguistic rights are or not included within the category of basic human rights and the debate is focused on three perspectives. As already seen for cultural rights, it is also valid for linguistic rights the assumption of their unclear subject and extent. Moreover, it is illustrated that no precise measures exist on the protection of such rights, and that an overall trend of tolerance and of ban of discrimination can be ascertained instead.

Another parallelism with cultural rights can be defined and it refers to the fact that also for linguistic rights, as already seen for cultural rights, a specific legal instrument deals with them, the *Universal Declaration of Linguistic Rights* or *Barcelona Declaration* which was also adopted in recent times. It is then briefly explained what are the main categories of linguistic rights, that is, what is meant by individual or collective rights and why a distinction has to be made between language and linguistic human rights. They can also be identified in terms of the concepts of territoriality and personality and on the basis of their being more prone to maintenance or integration. Other two parameters to categorize linguistic rights are also their being overt or covert as well as positive or negative rights.

Finally, the last chapter deals with the linguistic rights of people belonging to minority groups.

It opens with an historical overview of the different phases which saw their gradual appearance within the international legal framework. It is basically reiterated that in order to avoid prejudice and discrimination based on race, the implementation of the linguistic rights of minority communities is necessary.

In fact, this allows the participation of these individuals to the life of their social and cultural groups and contributes to the maintenance of their difference at the language level.

Since minority groups concentrate their efforts in the recognition of their mother tongue by the national States, any kind of linguistic discrimination towards these people is prohibited under the International Law system. A reference is also made to the different domains in which minority languages are used, or better, to the domains in which the individuals belonging to minority communities want to exercise the right to use their own mother tongue. They are official and non-official matters, the relationship they have with their authorities, tribunals, toponymy, media, education, name and surnames, and civil rituals like marriages. A presentation of the main legal instruments on the linguistic rights of minorities is provided as well as an explanation of the role that the *OSCE,* as one of the most relevant bodies of the linguistic rights of linguistic minority groups, has in the safeguard of such rights. It is underlined the fact that, since it primarily aims at the promotion of security and peace to prevent conflict, it elaborated some specific instruments and established the *High Commissioner on National Minorities* in order to comply with its purpose.

Then, a list of Cases of the *European Court of Human Rights* is presented in order to show a concrete evidence of the different situations where the members of linguistic minorities can be denied the right to use their own language. They respectively refer to the right to use their forenames and surnames in accordance with the spelling of their native language, the right of prisoners to correspond in their language, the right to freedom of expression and the right to receive an education in their mother tongue as well as the use of their language in their interaction with public authorities. Finally, the last part of the research concerns the illustration of linguistic rights in both the cases of Spain and Latin America. In the first case, linguistic rights deserve a particular attention given the fact that Spain is a Country with a high presence of different linguistic groups;

in the second case, because of the importance that the preservation of the diversity of the Amerindian peoples has on the basis of their culture and language. A particular focus on the linguistic situation of Mexico and Brazil is adopted since they are the most populated Countries in Latin America and so their language policies deserve to be analysed.

# Chapter one

# Cultural rights in International Law

## 1. History of cultural rights in human rights literature

'…[A]ny attempt to talk about cultural issues in terms of rights may be slippery and difficult[(1)]'.

'Cultural rights protect those essential aspects of personal dignity that are based on membership in a cultural community, much as political and economic rights protect those aspects that rest on membership in political and economic communities[(2)]'.

'In a world where, as we know, economic globalization, massive migrations, poverty and its ensuing conflicts, expressions of cultural, ethnic and religious polarization and the rise of the information society bring civilizations into ever increasing contact with each other, cultural rights need to become part of our efforts to eliminate discrimination and intolerance, to build peace and economic and social development. We often speak of our desire to build understanding, cooperation and appreciation among people both within our diverse societies and across borders. We say that we want to foster truly pluricultural democratic states. […][(3)]'.

[(1)]Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.65.
[(2)]J. DONNELLY, *Universal Human Rights in Theory and Practice,* Cornell University Press, London, 1989, p.156 and J. DONNELLY, *Human Rights, Individual Rights and Collective Rights,* in: Berting, J. Et al. (eds.), *Human Rights in a Pluralist World,* Meckler Westport/London, 1990, pp.56, in Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.100.
[(3)]M. ROBINSON in E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond*, Leiden-Boston, Martinus Nijhoff Publishers, 2007, cit., p. xvi.

‘Cultural rights, often a key resource of those who are most vulnerable, must be integrated into the rest of our human rights work. One of the roads to ethnical globalization leads through cultural rights[(4)]’.

‘Cultural rights are an occult category because, as very general rights, they question all categories of human rights, as well as the link between human rights, rights of peoples and rights of minorities; these rights can therefore only be accepted by compromise, they suppose a reinterpretation of the indivisibility in its totality[(5)]’.

‘[…]the substance and possibly even the idea of such rights remain problematic. There is no general agreement on what they constitute or who – individuals, groups or perhaps individuals as members of particular groups – are to be their beneficiaries[(6)]’.

Cultural rights are defined ‘the Cinderella’ of human rights[(7)] because they have received very little attention historically. This category of rights has been subjected to an inadequate consideration by the doctrine, which has defined cultural rights as the ‘poor relative of fundamental rights’[(8)].
First of all, this can be ascribed to their vague content and scope[(9)]. Since in the case of cultural rights, content and scope are related to the concept of culture, being it neither definite nor explicit, but a fluid and variable notion,[(10)] made it difficult to contextualize these specific rights[(11)].
The concept of culture has developed over the years. At the beginning, it just referred to the exclusive field of literature and arts, then, it started to incorporate religion, education, and language as well.

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[(4)]M. ROBINSON in E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond*, Leiden-Boston, Martinus Nijhoff Publishers, 2007, cit., p. xvi.
[(5)]P. MEYER-BISCH, *Les Droits Culturels Forment-ils une Catégorie Spécifique de Droits de l’Homme? Quelques difficultés logiques,* in P. MEYER-BISCH (ed.), *Les Droits Culturels, une catégorie sous-développée de droits de l’homme, Actes du VIIIe Colloque interdisciplinaire sur les droits de l’homme,* Editions Universitaires Fribourg Suisse, 1993, pp.17-43, in Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.71.
[(6)]F. FRANCIONI, M. SCHEININ, (edited by), *Cultural Human Rights,* International Studies in Human Rights, vol. 95, Leiden-Boston, Martinus Nijhoff Publishers, 2008, cit., p.169.
[(7)]Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.65.
[(8)]G. FAMIGLIETTI, *Diritti culturali e diritto della cultura. La voce ‘cultura’ dal campo delle tutele a quello della tutela*, Torino, G. Giappichelli editore, 2010, cit., p.45.
[(9)]*v. supra, note 7,* p.65.
[(10)]*v. supra, note 4,* p.5.
[(11)]*v. supra, note 7*, p.69.

Cultural rights have followed a comparable treatment[(12)] because at the beginning they were considered unnecessary[(13)]. When the concept of culture was extended and so it ended to define just the high and noble things illustrated in academies and universities, and it started to take into consideration the aspects of life of the communities as well as the communication components and the examples of behaviour dealing with people identity, the notion of cultural rights emerged in international law[(14)]. Cultural rights have to be applied and interpreted in the field of culture[(15)]. According to Stavenhagen, in fact, it is on what we intend for culture that the subject of cultural rights depends. If it is intended the whole heritage of mankind, the right of everybody to have these cultural resources available and the right to advance on the cultural ground would be the corresponding cultural right[(16)]. If culture is conceived as the creation of science and art, the right of people to express freely their creativity and to enjoy these artistic expressions in the typical places of culture[(17)] would be the related cultural right. Finally, if culture is intended the totality of creations and of material and spiritual manifestations of a social group, which comprehends an entirety of customs, values and symbols that makes it different from another group[(18)], the corresponding cultural right would be the right to cultural identity or the right of a group to strengthen and preserve its own culture [(19)]. The author argues that, as in the majority of cases only people in groups can benefit from cultural rights, their collective notion has to be embraced[(20)].

On her side, Prott considers culture in two different dimensions which can depend either on the intellectual field or on anthropology. In the first definition, literature, art and music are included; in the second, culture refers to the sum of both mental and material activities as well as of knowledge of a group[(21)].

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[(12)]Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.69.

[(13)]F. FRANCIONI, M. SCHEININ, (edited by), *Cultural Human Rights,* International Studies in Human Rights, vol. 95, Leiden-Boston, Martinus Nijhoff Publishers, 2008, p.318.

[(14)]G. FAMIGLIETTI, *Diritti culturali e diritto della cultura. La voce 'cultura' dal campo delle tutele a quello della tutela*, Torino, G. Giappichelli editore, 2010, p.45.

[(15)]E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond*, Leiden-Boston, Martinus Nijhoff Publishers, 2007, p.18.

[(16)]*v. supra, note 12,* p.74.

[(17)] *v. supra, note 16*.

[(18)]*v. supra, note 16.*

[(19)]*v. supra, note 16.*

[(20)]R. STAVENHAGEN, *Cultural rights: a Social Science Perspective,* in A. EIDE, C. KRAUSE and A. ROSAS (eds.), *Economic, Social and Cultural Rights – A Textbook,* Second Revised Edition, Martinus Nijhoff Publishers, Dordrecht, 2001, pp.89-92 and R. STAVENHAGEN, *Cultural Rights: a Social Science Perspective,* in H.NIEC (ed.), *Cultural Rights and Wrongs, A Collection of Essays in Commemoration of the 50th Anniversary of the Universal Declaration of Human Rights,* UNESCO Publishing, Paris, 1998*,* p.94, in Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.74.

[(21)]L.V. PROTT, *Cultural Rights as Peoples' Rights in International Law,* in J. CRAWFORD (ed.), *The Rights of Peoples*, Clarendon Press Oxford, 1988, p.94, in Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.74.

Finally, from Prott's viewpoint, overall cultural rights, rights which refer to the safeguard of a certain culture, and rights dealing with cultural assets which are important at the global level as included in the cultural heritage of humankind should be separated[(22)], where the right to participate in cultural life and the right to education are examples of overall cultural rights.

Inequality is the angle analysed by Wilhelm in order to take into consideration cultural rights, who maintains that they have been applied on the basis of two different kinds of inequality, that between individuals and that between different communities on the grounds of religion, language and race[(23)]. In the first case, the possibility to attend cultural institutions, schools, or to benefit from cultural goods is not provided on equal terms to all and, in the second, communities are subjected to a different treatment when expressing their cultural identity[(24)]. The right to participate in the cultural life of a community and the right to education derive from the first kind of inequality; the rights of indigenous people and minorities from the second[(25)].

For Meyer-Bisch, cultural rights can be classified into three categories. The first and the second are not new for the international documents dealing with human rights, whereas the third has not yet received a clear definition because is more recent[(26)]. These categories show the passage of cultural rights from the enjoyment of culture in an inactive way to the safeguard of the cultural identity of the different groups, which was reached through a more dynamic participation in and creation of culture and they are[(27)]:

1. 'The right to cultural participation, including the right to participate freely in cultural life (especially freedom of conscience and religion), the right to benefit from scientific and technical progress and the enjoyment of the arts, and the right to intellectual property.
2. The right to education, including the right to elementary and functional education and the right to orientation and professional formation.

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[(22)] *v. supra, note 21*, pp.74-75.

[(23)] Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.75.

[(24)] *v. supra, note 23.*

[(25)] M. WILHELM, *L'Entendue des Droits a l'Identité a la Lumière des Droits Autochtones,* in P. MEYER-BISCH (ed.), *Les Droits Culturels, une catégorie sous-développée de droits de l'homme, Actes du VIIIe Colloque interdisciplinaire sur les droits de l'homme*, Editions Universitaires Fribourg Suisse*,* 1993, pp.224-225, in Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.75.

[(26)] *v. supra, note 23*.

[(27)] P. MEYER-BISCH, *Les Droits Culturels Forment-ils une Catégorie Spécifique de Droits de l'Homme? Quelques difficultés logiques,* in: P. MEYER-BISCH (ed.), *Les Droits Culturels, une catégorie sous-développée de droits de l'homme, Actes du VIIIe Colloque interdisciplinaire sur les droits de l'homme*, Editions Universitaires Fribourg Suisse*,* 1993, cit., p.35, in Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.75.

3. The right to cultural identification, including the right to choose a culture and especially a language, the right to cultural heritage, and the right to access to communication and expression facilities (the right to communicate)'[(28)].

Meyer-Bisch considers cultural rights an overall category of human rights concerning the defence of a specific culture. In this perspective, cultural rights consist of other human rights which relate to the safeguard of cultural elements and they have not to be intended simply as those rights that make a specific reference to culture[(29)].

The neglect of cultural rights in literature can be also explained from a political point of view, that is, the fact that the cultural life of communities has been supervised by few States, since the majority of regimes did not think to have any obligation towards cultural rights. Those States that controlled culture, did consider it as a part of the more general social life[(30)].

Another reason for their underdevelopment concerns the safeguard of national cohesion against social tension, which can create whether cultural rights are reinforced[(31)]. In fact, territorial integrity can be undermined by group rights which are brought to mind by cultural rights[(32)].

*UNESCO* organized the first international Conference on cultural rights in 1968, where the advancement of the notion of such rights was underlined as well as the identification of these rights and the ways through which they could be better implemented[(33)]. Also the right to culture, which had not been considered in the *Universal Declaration of Human Rights*, [(34)] was taken into consideration at the same conference[(35)].

By defining the term 'culture', as '…the totality of ways by which men create designs for living…Culture is everything which enables man to be operative and active in his world, and to use all forms of expression more and more freely to establish communication among men'[(36)], the concept of cultural rights was explained and it was highlighted that the importance of cultural rights

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[(28)]P. MEYER-BISCH, *Les Droits Culturels Forment-ils une Catégorie Spécifique de Droits de l'Homme? Quelques difficultés logiques,* in: P. MEYER-BISCH (ed.), *Les Droits Culturels, une catégorie sous-développée de droits de l'homme, Actes du VIIIe Colloque interdisciplinaire sur les droits de l'homme*, Editions Universitaires Fribourg Suisse*,* 1993, cit., p.35, in Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.75.

[(29)]Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.76.

[(30)]*v. supra, note 29*, p.68.

[(31)]F. FRANCIONI, M. SCHEININ, (edited by), *Cultural Human Rights*, International Studies in Human Rights, vol. 95, Leiden-Boston, Martinus Nijhoff Publishers, 2008, p.318.

[(32)]E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond,* Leiden-Boston, Martinus Nijhoff Publishers, 2007, p.5.

[(33)]*v. supra, note 29,* p.69.

[(34)]New York, the 9th of December 1948, it has 193 State Parties, in R. LUZZATTO, F. POCAR, *Codice di diritto internazionale pubblico*, sesta ed., Torino, G. Giappichelli Editore, 2013, p.159.

[(35)]*v. supra, note 33.*

[(36)]v. supra, *note 29*, cit., p.69.

lies in the fact that culture allows individuals to preserve life[37]. As a consequence, cultural rights dealt with the right to life and the right to peace[38]. Communication and education were also important elements to encourage the individual development. Cultural elements such as heritage, religion, language or land were not considered in the final Statement of the Conference[39].

Anyway, the central problem of the category of cultural rights lies in understanding whether they are nearer to economic and social rights or to civil and political rights[40]. The category of cultural rights is connected to other categories of rights and it connects the rights of the individuals and the rights of peoples and communities. As it is stated, in fact, 'cultural rights refer to the totality of behaviours and usages linked to cultural, ethnic, and religious belonging, that is, to those aspects defining the identity of a person in relation to a community'[41]. Cultural rights also relate to the cultural aspects typical of other human rights and so they have not to be considered just as a category of rights in their own[42]. As Meyer-Bisch argues, cultural rights have a transversal nature[43] for two reasons. Firstly, because they cross economic, social, civil and political rights[44]; to make an example, religious freedom as well as freedom of expression and communication are considered civil rights, the right to cultural participation is included into social and economic rights, and the right to education is an example of a mixed right[45]. Secondly, because they have both an individual and a collective dimension, in the sense that both single persons and groups can take advantage of them[46] and because the subjects of these rights are individuals as well as members of communities[47]. From Meyer-Bisch point of view, cultural rights have an intermediate character between individual rights and people rights and he underlines that they are very important for communities[48].

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[37] Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.69.

[38] *v. supra, note 37,* cit., p.69.

[39] *v. supra, note 37,* p.69.

[40] *v. supra, note 37*, p.70.

[41] G. FAMIGLIETTI, *Diritti culturali e diritto della cultura. La voce 'cultura' dal campo delle tutele a quello della tutela*, Torino, G. Giappichelli editore, 2010, cit., p.48.

[42] *v. supra, note 39,* pp.70-71.

[43] *v. supra, note 39*, p.71.

[44] *v. supra, note 43.*

[45] *v. supra, note 43.*

[46] *v. supra, note 43.*

[47] *v. supra, note 43.*

[48] P. MEYER-BISCH, *Les Droits Culturels Forment-ils une Catégorie Spécifique de Droits de l'Homme? Quelques difficultés logiques,* in: P. MEYER-BISCH (ed.), *Les Droits Culturels, une catégorie sous-développée de droits de l'homme, Actes du VIIIe Colloque interdisciplinaire sur les droits de l'homme*, Editions Universitaires Fribourg Suisse, 1993, pp.17-43, in Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.72.

According to Marie, since these rights can be both individual and collective, they place themselves between the rights of individuals and the rights of groups[(49)]. Also from Eide perspective, cultural rights can have both an individual as well as a collective dimension. In addition, in the cultural field the interests of individuals and those of communities may not coincide[(50)].

Cultural rights and collective rights are not the same thing, even if they are usually used as synonyms[(51)] because collective rights can also be without a cultural basis. Those which are defined 'negative cultural rights' correspond to violations of the rights of freedom and equality and are characterized by the absence of State intervention, while 'positive cultural rights' limit people autonomy and imply State intervention[(52)].

Prott underlines the importance of collective cultural rights such as, for example, the right to the safeguard of cultural identity[(53)]. For her, two dimensions of collective cultural rights exist.

The first are those rights which deal with the distinctiveness of a people and its cultural identity, such as the right to reinforce and protect a culture, the right to observe cultural identity, and the right not to be subjected to a foreign cultural imposition[(54)]. The second, refer to the right to cultural heritage and to the right to access to the global cultural heritage[(55)].

It is difficult to understand what kind of rights can be considered to be part of cultural rights because they mean more than one single thing. They can concern culture or aspects dealing with culture such as the rights to education, religion and expression, the right to artistic and intellectual freedom and the right to strengthen, maintain, and participate in a culture[(56)].

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[(49)]J-B. MARIE, *Les Droits Culturels: Interface entre les Droits de l'Individu et les droits des Communautés,* in: P. MEYER-BISCH, (ed)., *Les Droits Culturels, une catégorie sous-développée de droits de l'homme, Actes du VIIIe Colloque interdisciplinaire sur les droits de l'homme*, Editions Universitaires Fribourg Suisse*,* 1993, pp.203-207, 213, in Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.72.

[(50)]A. EIDE, *Cultural Rights as Individual Human Rights,* in: A. EIDE, C. KRAUSE and A. ROSAS (eds.), *Economic, Social and Cultural Rights – A Textbook,* Second Revised Edition, Martinus Nijhoff Publishers, Dordrecht, 2001, pp.300-301, in Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.72.

[(51)]A. FACCHI, *I diritti nell'Europa multiculturale. Pluralismo normativo e immigrazione*, Bari-Roma, Editori Laterza, 2001, cit., p.24.

[(52)]*v. supra, note 51,* p.31.

[(53)]L.V. PROTT, *Cultural Rights as Peoples' Rights in International Law,* in J. CRAWFORD (ed.), The rights of Peoples, Clarendon Press Oxford, 1988, pp.95-97, in Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.72.

[(54)]*v. supra, note 53.*

[(55)]*v. supra, note 53.*

[(56)]L.V. PROTT, *Understanding One Another on Cultural Rights,* in H. NIEC (ed.), *Cultural Rights and Wrongs, A Collection of Essays in Commemoration of the 50th Anniversary of the Universal Declaration of Human Rights, UNESCO Publishing, Paris, 1998,* cit., p.165, *i*n Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.73.

Cultural rights are also a problematic category of rights to define because of their exclusive nature, in the sense that they depend on the distinctiveness of the heritage that ties a community to a common memory upon which we can find the building of the sentiment of belonging and identity.
On the contrary, civil, political, economic and social rights are based on the concept of a common humanity among all individuals[(57)].

Between the different reasons for the neglect of cultural rights there is also the fact that many human rights experts, by talking about such rights, feared the emergence of cultural relativism against the already established and weak notion of universalism. This motive explains why scholars preferred to avoid dealing with this matter and to leave the implementation of cultural rights to the governments within the context of international law treaties, and to international organizations the promotion and monitoring of cultural rights[(58)]. It is also left to the United Nations, which are the international reference for multi-ethnicity and multiculturalism, the task of leading the respect for cultural rights as human rights at the global level. This is because cultural rights constitute a fundamental part in the promotion of diversity, pluralism and tolerance, and, as a consequence, if minorities have their cultural rights respected, also their identity and autonomy will be recognized and the reasons for possible conflicts removed[(59)]. Indigenous groups such as the Kurds of Turkey, the Russians of the Baltic Republics, the Amerindian of Ecuador and the Basque of Spain have strongly struggled to achieve these objectives[(60)].

[(57)]F. FRANCIONI, M. SCHEININ, (edited by), *Cultural Human Rights,* International Studies in Human Rights, vol. 95, Leiden-Boston, Martinus Nijhoff Publishers, 2008, p.3.
[(58)]E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond*, Leiden-Boston, Martinus Nijhoff Publishers, 2007, p.4.
[(59)]*v. supra, note 58,* p.7.
[(60)]*v. supra, note 58*, p.8.

2. International conventions and bodies defining cultural rights

The bodies of the United Nations, especially those concerning human rights, have remained nearly silent on cultural rights, apart from *UNESCO*, which protects and promotes culture in its programme[(61)]. In its view, cultural rights are the rights of those people who produce and spread culture, the rights of the individuals to access to cultural life, and the right to cultural identity[(62)]. For this reason, many soft law documents on cultural rights and culture can be ascribed to *UNESCO* alone[(63)]. Some important examples which can be mentioned are *the 1966 Declaration of the principles of international cultural cooperation*[(64)], which in Article 1(2) states that 'every people has the right and the duty to develop its culture[(65)]', and *the 1976 Recommendation on participation by the people at large in cultural life*[(66)], which shows an interest in cultural rights concerning language, education, folklore and cultural diversity. As far as this last element is concerned, *UNESCO* drafted the *2001 Universal Declaration on Cultural Diversity*[(67)], which in Article 4 considers that diversity on the ground of culture is protected by human rights[(68)] and declares that 'no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope'[(69)]. More focused on cultural rights is Article 5, which considers them an enabling environment to cultural diversity[(70)] and states: 'Cultural rights are an integral part of human rights, which are universal, indivisible and independent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the *Universal Declaration of Human Rights* and in Articles 13 and 15 of the *International Covenant on Economic, Social and Cultural Rights*'[(71)].

*UNESCO* is responsible for the draft of many agreements dealing with cultural rights and cultural cooperation which bind States[(72)]. Between those which deserve to be mentioned there are the *Florence Agreement on educational, scientific and cultural materials of 1950*[(73)], the *1961*

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[(61)] E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond,* Leiden-Boston, Martinus Nijhoff Publishers, 2007, p.1.
[(62)] *v. supra, note 61*, p.1.
[(63)] F. FRANCIONI, M. SCHEININ, (edited by), *Cultural Human Rights,* International Studies in Human Rights, vol. 95, Leiden-Boston, Martinus Nijhoff Publishers, 2008, p.2.
[(64)] Paris, the 4th of November 1966, available at the website http://www.unesco.org, last accessed 09/02/2016.
[(65)] *v. supra, note 63*, cit., p.172.
[(66)] Nairobi, the 26th of November 1976, available at the website http://www.unesco.org, last accessed 09/02/2016.
[(67)] Paris, the 2nd of November 2001, its State Parties are all *UNESCO* State Parties, available at the website http://www.unesco.org, last accessed 09/02/2016.
[(68)] *v. supra, note 61*, p.22.
[(69)] *v. supra, note 61*, cit., p.22.
[(70)] Art. 5 of the *Universal Declaration on Cultural Diversity*, *v. supra, note 67.*
[(71)] *v. supra, note 70*.
[(72)] *v. supra, note 63*, p.2.
[(73)] Florence, the 17th of June 1950, it entered into force on the 21st of May 1952, it has 102 State Parties, available at the website http://www.unesco.org, last accessed 09/02/2016.

*Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations*[(74)], and the *1996 Lisbon Convention on the recognition of higher education* titles[(75)]. Besides, it is also appropriate to quote the main *UNESCO* Conventions on cultural property, which were developed towards the safeguard of cultural heritage, such as the *2003 Convention on the safeguarding of intangible heritage*[(76)] and the *2005 Convention on the protection and promotion of the diversity of cultural expressions*[(77)]. The latter, was drafted on the wish of an international society focused on tolerance, peace and mutual respect after the terrible events which took place in New York in 2001[(78)] and it enabled cultural rights to advance in their political exposure as well as in their economic development, since it ascribed a specific role to cultural goods and services[(79)].

States have to take into consideration cultural rights because they are part of human rights listed in international conventions, especially in the *Universal Declaration of Human Rights* and *the International Covenant on Economic, Social and Cultural Rights*[(80)]. However, even if this last document includes the adjective 'cultural' in its title, in practice, the literature on human rights does not actually dedicate to cultural rights[(81)] and there are only two articles of the *Covenant* which explicitly refer to cultural rights, that is, Article 13 on the right to education and Article 15 on the rights of artists to cultural participation (lett. *a*) and the right to benefit from scientific progress (lett. *b*)[(82)]. The same thing is also true for the *Universal Declaration*, which deals with these rights only in Article 26 on the right to education, and in Article 27 on the right to participate in cultural life, in scientific progress and on 'the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author[(83)]'.

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[(74)]Rome, the 26th of October 1961, it entered into force on the 18th of May 1964, it has 92 State Parties, available at the website http://treaties.un.org, last accessed 09/02/2016.

[(75)]Lisbon, the 11th of April 1997, it entered into force on the 1st of February 1999, it has 53 State Parties, available at the website http://treaties.un.org, last accessed 09/02/2016.

[(76)]Paris, the 17th of October 2003, it entered into force on the 20th of April 2006, it has 163 State Parties, available at the website http://treaties.un.org, last accessed 09/02/2016.

[(77)]Paris, the 20th of October 2005, it entered into force on the 18th of March 2007, it has 191 State Parties, available at the website http://treaties.un.org, last accessed 09/02/2016.

[(78)]G. FAMIGLIETTI, *Diritti culturali e diritto della cultura. La voce 'cultura' dal campo delle tutele a quello della tutela*, Torino, G. Giappichelli editore, 2010, p.174.

[(79)]L. BONET, E. NÉGRIER, (a cura di), *La fine delle culture nazionali? Le politiche culturali di fronte alla sfida della diversità*, Roma, Armando Editore, 2010, p.93.

[(80)]New York, the 16th of December 1966, entered into force on the 3rd of January 1976, it has 176 State parties, available at the website http://treaties.un.org, last accessed 09/02/2016.

[(81)]E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond,* Leiden-Boston, Martinus Nijhoff Publishers, 2007, p.1.

[(82)]F. FRANCIONI, M. SCHEININ, (edited by), *Cultural Human Rights,* International Studies in Human Rights, vol. 95, Leiden-Boston, Martinus Nijhoff Publishers, 2008, cit., p.1.

[(83)]*v. supra, note 82*; M. FERRI, *L'evoluzione del diritto di partecipare alla vita culturale e del concetto di diritti culturali nel diritto internazionale*, in Osservatorio diritti umani, Napoli, Editoriale Scientifica S.r.l., La Comunità Internazionale fasc. 2/2014, http://www.sioi.org/media/Rivista/3ferri.pdf, cit., p.211.

Both the *Declaration* and the *International Covenant* do not contain any article providing a general definition of cultural rights[(84)]. In the preliminary Guidelines of the *Universal Declaration*, cultural rights were defined as those rights that «ont trait essentiellement à l'éducation et à la vie culturelle»[(85)], and a reference to cultural rights can be found in Article 27 of the *International Covenant on Civil and Political Rights*[(86)] which concerns the right of ethnic, religious and linguistic minorities to have their own cultural life[(87)]. Since at the time of the drafting of the *Universal Declaration* and of the *International Covenant on Civil and Political Rights* cultural rights were considered 'second generation' rights, they were relegated to a subjected level if compared to civil and political rights. This was because their implementation required a State performance, and, as a consequence, it was thought to be out of a jurisdictional supervision[(88)]. Then, it was when the *International Covenant on Economic, Social and Cultural Rights* was adopted, that cultural rights started to be considered part of 'a third generation of rights', which, compared to the previous, had a collective dimension[(89)]. As a consequence, peoples and no single individuals can benefit from these rights and this explains why these rights are also named collective rights or group rights[(90)]. In these terms, the groups which can benefit from them can be minorities, indigenous and native people, as well as 'special groups' in society such as women, children, disabled, migrants, refugees and the poor[(91)].

At the regional level, cultural rights are completely overlooked by the *European Convention on Human Rights*[(92)], as well as by the *American Convention on Human Rights*[(93)], which solved in part this neglect with later Protocols[(94)].

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[(84)]M. FERRI, *Dalla partecipazione all'identità. L'evoluzione della tutela internazionale dei diritti culturali*, Milano, Vita e Pensiero Casa editrice, 2015, p.8.

[(85)]M. BOSSUYT, *La distinction juridique entre les droits civils et politiques et les droits économique, sociaux et culturels,* Revue des droits de l'homme, 8, 1975, p.809, in M. FERRI, *Dalla partecipazione all'identità. L'evoluzione della tutela internazionale dei diritti culturali*, Milano, Vita e Pensiero Casa editrice, 2015, cit., p.8.

[(86)]New York, the 16th of December 1966, it entered into force on the 23rd of March 1976, it has 186 State Parties, available at the website *http://treaties.un.org*, last accessed 09/02/2016.

[(87)]M. FERRI, *L'evoluzione del diritto di partecipare alla vita culturale e del concetto di diritti culturali nel diritto internazionale*, in Osservatorio diritti umani, Napoli, Editoriale Scientifica S.r.l., La Comunità Internazionale fasc. 2/2014, *http://www.sioi.org/media/Rivista/3ferri.pdf*, cit., p.212.

[(88)]*v. supra, note 87*, p.212.

[(89)]J.GONZÁLEZ DÍEZ, C. VARGAS MONTOYA, Diritti umani e differenza culturale, *http://www.academia.edu/1907407/Diritti_umani_e_differenza_culturale_Human_Rights_and_Cultural_Difference_2010*, 2010, ch.3, cit., p.101.

[(90)]T. MAZZARESE, (a cura di), *Diritto, tradizioni, traduzioni. La tutela dei diritti nelle società multiculturali*, Torino, G. Giappichelli Editore, 2013, cit., p.11.

[(91)]*v. supra, note 90*, p.11.

[(92)]Rome, the 4th of November 1950, it entered into force on the 3rd September 1953, it has 47 State Parties, available at the website *http://www.coe.int/en/web/conventions*, last accessed 09/02/2016.

[(93)]San José, the 22nd of November 1969, it entered into force on the 18th July 1978, it has 24 State Parties, available at the website *http://treaties.un.org*, last accessed 09/02/2016.

[(94)]F. FRANCIONI, M. SCHEININ, (edited by), *Cultural Human Rights,* International Studies in Human Rights, vol. 95, Leiden-Boston, Martinus Nijhoff Publishers, 2008, p.1.

By monitoring the implementation of the *International Covenant on Economic, Social and Cultural Rights*, the *Committee on Economic, Social and Cultural Rights*[(95)] is the main body that should address to the rights in question[(96)]. In fact, in the last few years it showed a considerable diligence in its work, even if without having the heading function, as its mandate indicated[(97)]. Despite these instruments are several, cultural rights continue to be probably the most underestimated category of human rights[(98)]. One reason for this is that the dispositions which characterize the international law sources contain obligations of political nature which produce expectations rather than real rights[(99)].

An important reference to cultural rights can be found in Article 22 of the *1986 African Charter on Human and Peoples' Rights*[(100)], which states that 'All people shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind[(101)]'. The first resolution on cultural rights, with the title of '*Promotion of the enjoyment of the cultural rights of everyone and respect for different cultural identities*[(102)]' was adopted by consensus by the Commission on Human Rights in 2002 representing a possibility to save a major focus on these rights[(103)]. In fact, it reinforced the concept that cultural rights constitute a fundamental part within the family of human rights[(104)].

International law recognizes five human rights as cultural rights, that is, 'the right to education, the right to participate in cultural life, the right to enjoy the benefits of scientific progress and its applications, the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which the person is the author, and the freedom for scientific research and creative activity'[(105)]. It is starting from the history of the *Universal Declaration of Human Rights*[(106)] that the complexity of the debate on cultural rights emerges.

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[(95)]Established under *ECOSOC Resolution 1985/17 of* the 28th of May 1985, available at the website http://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx, last accessed 09/02/2016.

[(96)]E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond,* Leiden-Boston, Martinus Nijhoff Publishers, 2007, p.1.

[(97)]*v. supra, note 96*, p.2.

[(98)]D. MARIANI, *Friburgo patria dei diritti culturali*, http://www.swissinfo.ch/ita/friburgo-patria-dei-diritti-culturali/5879580, 09/05/2007, in SWI swissinfo.ch – a branch of the Swiss Broadcasting Corporation, last accessed 09/02/2016., cit., p.1.

[(99)]*v. supra, note 94,* p.3.

[(100)]Nairobi, the 27th of June 1981, it entered into force on the 21st of October 1986, it has 39 State Parties, available at the website http://treaties.un.org, last accessed 09/02/2016.

[(101)]M. CARCIONE, *Diritti culturali: alle radici dei diritti dell'uomo*, Università degli Studi del Piemonte Orientale A. Avogadro - Alessandria, Novara e Vercelli, http://www.provincia.asti.it/hosting/moncalvo/pbc/diritti_culturali.doc, cit., p.2.

[(102)]*v. supra, note 96*, cit., p.2.

[(103)]*v. supra, note 96*, p.2.

[(104)]Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.68.

[(105)]*v. supra, note 96*, cit., pp.2-3.

[(106)]New York, the 9th of December 1948, it has 193 State Parties, in R. LUZZATTO, F. POCAR, *Codice di diritto internazionale pubblico*, sesta ed., Torino, G. Giappichelli Editore, 2013, p.159.

A first draft of Article 27 was suggested by *UNESCO* and it was discussing about this Article that it came the proposal of including also the rights of the different groups and the rights of minorities in addition to the rights of the individual[(107)]. In the core of the debate, it must also be mentioned the disagreement which arose about the pertinence or not to include cultural genocide in the *Convention on the Prevention and Punishment of the Crime of Genocide*[(108)] apart from biological or physical one, as this convention was being drafted in the same period of the *Universal Declaration*[(109)].
The suggestion was that of considering, as part of the definition of genocide, also the intent to destroy, in whole or in part, cultural groups, along side 'national, ethnical, racial or religious groups[(110)]'. Therefore, Article 3 of the *Genocide Convention* was proposed in these terms:

> '[…] genocide also means any deliberate act committed with the intent to destroy the language, religion or culture of a national, racial or religious group on grounds of national or racial origin or religious belief such as: 1. Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group; 2. Destroying, or preventing the use of, libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the groups[(111)]'.

However, in the end, the idea of including cultural genocide was abandoned by stating that it would be the Third Committee in the *Universal Declaration of Human Rights* to address to the matter of cultural communities[(112)]. Article 27 of the *Universal Declaration* states:

> '1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefit.
>
> 2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author[(113)]'.

The article does not state whether diversity and pluralism have to be respected, suggesting that participation in cultural life just refers to one single culture of a single state[(114)].

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[(107)] E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond,* Leiden-Boston, Martinus Nijhoff Publishers, 2007, p.11.
[(108)] Paris, the 9th of December 1948, it entered into force on the 12th of January 1951, it has 157 State Parties, available at the website *http://treaties.un.org*, last accessed 09/02/2016.
[(109)] *v. supra, note 107.*
[(110)] *v. supra, note 107,* cit., p.14.
[(111)] *v. supra, note 110.*
[(112)] *v. supra, note 107,* p.15.
[(113)] *v. supra, note 107,* cit., p.11.
[(114)] *v. supra, note 107*, p.12.

Considered that during the first session of the Commission on Human Rights the Sub-Commission on Prevention of Discrimination and Protection of Minorities was established, it is easy to understand that the theme of minorities rights also emerged and it was clarified that as far as the concept of 'safeguard of minorities' was concerned, it indicated defence from discrimination as well as defence against assimilation, whereas the term 'minority' considered those groups of people residing within the boundaries of a Country having a different culture, religion or language from that of the majority of the population, and with the wish to preserve and promote their religious, cultural, and linguistic identity[(115)]. Anyway, the rights of groups did not take part of the *Universal Declaration of Human Rights* since ever because at the beginning, cultural rights included just the rights of the individual[(116)]. As long as cultural rights are not receiving respect, the probability of conflict and social dissatisfaction will be great, especially in the more democratic and more united world in which we live today[(117)].

The other main international instrument dealing with cultural rights is the *International Covenant on Economic, Social and Cultural Rights* in Article 15, whose history is less troubled than that of Article 27 of the *Universal Declaration*[(118)]. Article 15 states:

'1. The State Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author'.

'2. The steps to be taken by the State Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture'.

'3. The State Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity'.

'4. The State Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in scientific and cultural fields[(119)]'.

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[(115)] E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond,* Leiden-Boston, Martinus Nijhoff Publishers, 2007, cit., pp.12-13.

[(116)] *v. supra, note 115*, p.16.

[(117)] *v. supra, note 116*.

[(118)] *v. supra, note 116.*

After the *Universal Declaration of Human Rights*, a number of international conventions and declarations on human rights were drafted and they make a particular reference to the relationship between human rights and culture. These documents have received the ratifications of the majority of States[(120)]. If we were to make a list of them, it should include the *Convention on the Elimination of All Forms of Racial Discrimination*[(121)], which states in Article 7 that: 'The State Parties undertake to adopt immediate and effective measures, especially in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups...[(122)]' and the *Convention on the Elimination of All Forms of Discrimination Against Women*[(123)], which states in Article 5 that 'State Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women[(124)]'.

Also the *Convention on the Rights of the Child*[(125)] should be considered and it states in Article 24 that:

'State Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children[(126)]'.

A connection between culture and the rights of people can also be encountered in the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*[(127)] which states in Article 4 that:

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[(119)] E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond,* Leiden-Boston, Martinus Nijhoff Publishers, 2007, cit., p.16.
[(120)] *v. supra, note 119,* p.22.
[(121)] New York, the 7th of March 1966, it entered into force on the 4th January 1969, it has 193 State Parties, available at the website *http://treaties.un.org*, last accessed 09/02/2016.
[(122)] *v. supra, note 119*, cit., p.22.
[(123)] New York, the 18th of December 1979, it entered into force on the 3rd September 1981, it has 195 State Parties, available at the website *http://treaties.un.org*, last accessed 09/02/2016.
[(124)] *v. supra, note 119*, cit., p.23.
[(125)] New York, the 20 of November 1989, it entered into force on the 2nd September 1990, it has 200 State Parties, available at the website *http://treaties.un.org*, last accessed 09/02/2016.
[(126)] *v. supra, note 124.*
[(127)] adopted under the *resolution 47/135* of the 18th of December 1992 by the UN General Assembly, available at the website *http://www.ohchr.org/Documents/Publications/GuideMinoritiesDeclarationen.pdf*, last accessed 09/02/2016.

2. 'States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards[(128)'].

Finally, there are different provisions that join the concept of cultural rights but they have to be divided into the narrow and the broad dimensions[(129)]. Cultural rights that fit into the narrow dimension are those that concern culture in an explicit way, such as the right to participate in cultural life, as established in Article 27 of the *Universal Declaration*, and Article 15 of the *International Covenant on Economic, Social and Cultural Rights*[(130)]. Cultural rights that enter in the broad level refer both to the rights already cited and to other cultural rights of the civil, political, social and economic fields, such as 'the right to education, the right to freedom of expression, to freedom of association, and to freedom of religion'[(131)].

3. The *Fribourg Declaration of Cultural Rights*

Since both the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights* presented a materialistic concept of culture which did not consider the necessity of protecting the cultural identity of the single individuals, it was thought to delineate a wider definition of cultural rights based on an anthropological concept in the last few decades[(132)]. The new notion of cultural rights had to intend culture as the way of life of a person or a group[(133)], it overtook the previous materialistic concept[(134)], and it considered cultural rights as the rights addressed to the protection of the cultural identity of people, regardless their belonging or not to a minority or to an indigenous community [(135)]. In the context of the new definition, the one suggested by the experts of the Fribourg Group was very important.

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[(128)]E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond,* Leiden-Boston, Martinus Nijhoff Publishers, 2007, cit., p.23.
[(129)]Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.74.
[(130)]*v. supra, note 129*, cit., p.74.
[(131)]*v. supra, note 130.*
[(132)]M. FERRI, *L'evoluzione del diritto di partecipare alla vita culturale e del concetto di diritti culturali nel diritto internazionale*, in Osservatorio diritti umani, Napoli, Editoriale Scientifica S.r.l., La Comunità Internazionale fasc. 2/2014, *http://www.sioi.org/media/Rivista/3ferri.pdf*, pp.213-214.
[(133)]*v. supra, note 132,* cit., p.214.
[(134)]*v. supra, note 133*, p.214.
[(135)]M. FERRI, *Dalla partecipazione all'identità. L'evoluzione della tutela internazionale dei diritti culturali*, Milano, Vita e Pensiero Casa editrice, 2015*,* cit., p.62.

These scholars came from the *Institut interdisciplinaire d'éthique et des droits de l'homme (IIEDH)* of the Swiss University of Fribourg, with Professor Meyer-Bisch as the head of the institute[(136)], and their work, which started in the 1990s, gave rise to the *Fribourg Declaration of cultural rights*[(137)] which was adopted in May 2007, but, whose final Draft had been presented already in 1998[(138)].

In the Draft declaration, 'the term 'culture' applies to the values, beliefs, languages, arts and sciences, traditions, institutions and ways of life by means of which individuals or groups express the meanings which they give to their life and development[(139)]'. States never formally adopted the Draft but they considered it a relevant document to debate on cultural rights[(140)].

The *Fribourg Declaration of cultural rights* represents the first instrument which clearly defines the cultural rights provided by international norms, despite having not any legal validity and so, it deals with cultural rights in a specific way, as never done before[(141)]. It originated from the need to protect these rights[(142)] and it represents a new and reshaped version of a project which had originally been drafted for *UNESCO*[(143)]. It is made up of eight *Consideranda*, which concern the supporting reasons, and of twelve provisions. After the first two articles, which deal with defining the key concepts of the *Declaration*, six articles stating cultural rights can be found, as well as four other articles which examine their implementation[(144)]. It lists both the cultural rights to be assured to everybody as well as the obligations concerning private and public actors[(145)], that is, States and their institutions, non-governmental organizations and companies, in order to foster their identification and fulfilment at the local, national, regional and universal levels[(146)].

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[(136)] *v. supra, note 132*, cit., p.214.

[(137)] Fribourg, the 7th of May 2007, available at the website http://www.unifr.ch, last accessed 09/02/2016.

[(138)] Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.76.

[(139)] *Fribourg Declaration of cultural rights*, art.2(a), in Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., pp.76-77.

[(140)] *v. supra, note 138*, pp.78-79.

[(141)] M. FERRI, *L'evoluzione del diritto di partecipare alla vita culturale e del concetto di diritti culturali nel diritto internazionale*, in Osservatorio diritti umani, Napoli, Editoriale Scientifica S.r.l., La Comunità Internazionale fasc. 2/2014, http://www.sioi.org/media/Rivista/3ferri.pdf, p.214.

[(142)] M. AMARI, *Manifesto per la sostenibilità culturale: e se, un giorno, un ministro dell'economia venisse incriminato per violazione dei diritti culturali?,* Milano, Franco Angeli Editore - La società, 2012, cit., p.34.

[(143)] P. MEYER-BISCH, *Les droits culturels. Project de déclaration*, Paris/Fribourg Unesco, /Editions universitaires, 1998, in *I diritti culturali, Dichiarazione di Friburgo,* Cattedra UNESCO, Università degli Studi di Bergamo, Documenti di ricerca DR 01, 07/05/2007, http://www.unibg.it/dati/bacheca/1043/22896.pdf, cit., p.12.

[(144)] M. FERRI, *Dalla partecipazione all'identità. L'evoluzione della tutela internazionale dei diritti culturali*, Milano, Vita e Pensiero Casa editrice, 2015, cit., p.61.

[(145)] D. MARIANI, *Friburgo patria dei diritti culturali*, http://www.swissinfo.ch/ita/friburgo-patria-dei-diritti-culturali/5879580, *09/05/2007*, in SWI swissinfo.ch – a branch of the Swiss Broadcasting Corporation, cit., p.1.

[(146)] *I diritti culturali, Dichiarazione di Friburgo,* Cattedra UNESCO, Università degli Studi di Bergamo, Documenti di ricerca DR 01, 07/05/2007, http://www.unibg.it/dati/bacheca/1043/22896.pdf, cit., p.4.

Central to the broader notion of culture there is the idea that 'a person or a group expresses their humanity and the meanings that give to their life and development[147]', through culture itself, which shows the link that culture has with personal identity formation[148].

This means that culture has a fundamental role in the construction of one's own identity because it represents the horizon of meaning in which the subject draws references that allow him to give meaning and value to their actions and to their existence[149]. Following this line of thought, cultural rights can be intended as those rights which enable the individual to access to the references from which he can build and express his identity[150], and so, they are 'the rights to identity'[151].

For this reason, they are fundamental for other rights to be exercised and, as a consequence, they are the element which establishes the whole system of human rights[152]. This concept also relates to the idea that each human right contains a cultural element inside of it, which can be more or less prominent[153].

Cultural rights under the *Fribourg Declaration* are '(1) the right to identity, including the right to free cultural choices of one's language(s) or convictions and the right to cultural heritages[154],' which corresponds to Article 3, '(2) the right to make or not to make reference to one or more cultural communities', which is Article 4, '(3) the right to have access and to participate in cultural life, including the right to freedom of conscience and expression, the right to freedom to research and creativity, the right to communicate and the right to intellectual property[155]', that is Article 5, '(4) the right to education, including the right to basic and general education, to practical education and vocational guidance and training[156]', in Article 6, and finally, '(5) the right to participate in cultural policies and cultural cooperation[157]', which corresponds to Article 8[158]. Article 3(a), stating the right to choose one's own cultural identity and to observe respect for it, can be drawn as the true essence of all cultural rights and therefore it represents the rudiment of the entire

[147] Article 2 (a) of *Fribourg Declaration*.
[148] M. FERRI, *L'evoluzione del diritto di partecipare alla vita culturale e del concetto di diritti culturali nel diritto internazionale,* in Osservatorio diritti umani, Napoli, Editoriale Scientifica S.r.l., La Comunità Internazionale fasc. 2/2014, *http://www.sioi.org/media/Rivista/3ferri.pdf,* cit., p.215.
[149] *v. supra, note 148,* cit.,p.215.
[150] *v. supra, note 148,* cit.,p.216.
[151] *v. supra, note 148,* cit.,p.216.
[152] *v. supra, note 144*, cit., p.61.
[153] *v. supra, note 148,* cit.,p.217.
[154] Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.75.
[155] *v. supra, note 154.*
[156] *v. supra, note 154.*
[157] *v. supra, note 154*, cit., p.76.
[158] *v. supra, note 148,* cit., p.216.

*Declaration*[159]. In Article 11, paragraph (c) the *Declaration* provides the access to effective jurisdictional recourses to every person who claims, alone or with other people, a violation of cultural rights[160] and, as stated in paragraph (d), States have to 'reinforce the means available to the international cooperation necessary for its application, and, in particular, intensifying their interaction within the relevant international organizations[161]'. Finally, the last provision, Article 12, concerns the responsibility of international organizations towards cultural rights [162].

The *Declaration* gathers and explicates rights which are already recognized in many instruments but in a scattered way[163] because it is based on the concept that to make cultural rights coherent, clear and effective, they have to be grouped in the same instrument[164]. It was because of this grounds that the *Fribourg Declaration* influenced the interpretation of the concepts of culture and cultural rights that had been previously elaborated by the *Covenant on economic, social and cultural rights*[165]. It firstly aims at promoting cultural rights, even if they could seem less important than basic human rights to be violated. Violations of cultural rights create tensions and conflicts of identity and they are one of the main reasons for violence, war, and terrorism.

From the Fribourg scholars' point of view[166], hate can arise if a whole community receives a grave injury[167]. Therefore, education to cultural right is fundamental, especially in our times, when the identity of each person is challenged by cultural clashes and recurring migrations[168].

The *Fribourg Declaration* reiterates the universality of cultural rights[169] by stating that they are an expression and a need of human dignity in the same way as other human rights and it declares that until cultural rights are not fully achieved, it will be not possible to safeguard cultural diversity effectively[170]. As universal rights, they must be deemed to the person of each society regardless the level of political, social or economic development reached, the political or economic system

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[159]M. FERRI, *Dalla partecipazione all'identità. L'evoluzione della tutela internazionale dei diritti culturali*, Milano, Vita e Pensiero Casa editrice, 2015, pp.61-62.

[160]*I diritti culturali, Dichiarazione di Friburgo,* Cattedra UNESCO, Università degli Studi di Bergamo, Documenti di ricerca DR 01, 07/05/2007, *http://www.unibg.it/dati/bacheca/1043/22896.pdf*, cit., p.9.

[161]*v. supra, note 160.*

[162]*v. supra, note 160,* p.9.

[163]D. MARIANI, *Friburgo patria dei diritti culturali*, *http://www.swissinfo.ch/ita/friburgo-patria-dei-diritti-culturali/5879580*, *09/05/2007*, in SWI swissinfo.ch – a branch of the Swiss Broadcasting Corporation, cit., p.1.

[164]*v. supra, note 160,* pp. 3-4.

[165]M. FERRI, *Dalla partecipazione all'identità. L'evoluzione della tutela internazionale dei diritti culturali*, Milano, Vita e Pensiero Casa editrice, 2015, cit., p.51.

[166]*v. supra, note 163*, cit., p.2.

[167]*v. supra, note 163,* p.2.

[168]*v. supra, note 167.*

[169]M. AMARI, *Manifesto per la sostenibilità culturale: e se, un giorno, un ministro dell'economia venisse incriminato per violazione dei diritti culturali?*, Milano, Franco Angeli Editore - La società, 2012, p.35.

[170]*v. supra, note 160,* cit., p.3.

adopted, the greater or lesser availability of resources, the religious confessions or the practiced ideologies.

As a consequence, in relation to the specific legal nature of human rights, society has the obligation to enable individuals to exercise cultural rights as civil and political rights, preparing laws, institutions, and other tools[(171)].

To sum up, it was in order to avoid the use of cultural rights for the benefit of cultural relativism or as an excuse to incite peoples or communities the ones against the others, that the scholars of the Fribourg group saw the need to clarify cultural rights position within the human rights system and to better define their character as well as the consequences deriving from their violations[(172)].

## 4. The right to participate in cultural life and the right to cultural identity

Historically, the meaning of the right to participate in cultural life has received a very scant attention if compared to other cultural rights and despite having been stated in several international instruments concerning the law of human rights[(173)]. However, at a later stage, its interpretation has known an evolution in connection to the rebuilding of the same concept of culture and of the wider notion of cultural rights which international law had started to face[(174)].

Cultural participation is a fundamental basis for the construction of the identity and of the sense of belonging of the individual and, for this reason, it is 'a central pillar of human rights[(175)]'.

It is also important to recall that the right to participate in cultural life presents a wide subject which incorporates multiple elements such as the right to manage one's own lands and natural resources, to practice one's own religion, and to use one's own language[(176)].

The right to cultural participation is made up of three components: 'participation (a), access (b), and cultural life contribution (c)', as it was maintained by the *General Comment* 21 of the *Committee on Economic, Social and Cultural Rights*[(177)].

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[(171)] L. HENKIN, 'Diritti dell'uomo', in *Enciclopedia delle scienze sociali*, Roma, Treccani, in M. AMARI, *Manifesto per la sostenibilità culturale: e se, un giorno, un ministro dell'economia venisse incriminato per violazione dei diritti culturali?*, Milano, Franco Angeli Editore - La società, 2012, cit., p.35.

[(172)] *I diritti culturali, Dichiarazione di Friburgo,* Cattedra UNESCO, Università degli Studi di Bergamo, Documenti di ricerca DR 01, 07/05/2007, http://www.unibg.it/dati/bacheca/1043/22896.pdf, cit., p.3.

[(173)] J. ALMQVIST, *Human Rights, Culture, and the Rule of Law*, Hart publishing Oxford and Portland, Oregon, 2005, p.9.

[(174)] M. FERRI, *L'evoluzione del diritto di partecipare alla vita culturale e del concetto di diritti culturali nel diritto internazionale*, in Osservatorio diritti umani, Napoli, Editoriale Scientifica S.r.l., La Comunità Internazionale fasc. 2/2014, http://www.sioi.org/media/Rivista/3ferri.pdf, cit., p.213.

[(175)] *v. supra, note 174,* cit., p.222.

[(176)] *v. supra, note 174,* cit., p.223.

[(177)] UN Doc. E/C.12/GC/21, *General Comment* 21, 2009, par.7, in M. FERRI, *L'evoluzione del diritto di partecipare alla vita culturale e del concetto di diritti culturali nel diritto internazionale*, in *Osservatorio diritti umani*, Napoli, Editoriale Scientifica S.r.l., La Comunità Internazionale fasc. 2/2014, http://www.sioi.org/media/Rivista/3ferri.pdf, cit., p.228.

Each component refers to a multiplicity of rights[178] and derives directly from the right to cultural participation, being so a needed requirement for its fulfilment[179].

The *General Comment* 21 marks the end of the development of the right to cultural participation but it also marks the beginning of a new period for the safeguard of the right to cultural identity and of cultural rights in the wider notion[180]. As already examined before, Article 27 of the *Universal Declaration of Human Rights* and Article 15.1 (a) of the *International Covenant on Economic, Social and Cultural Rights*[181] sanction the right to participate in cultural life which is one of the few rights which clearly refer to culture in both these documents[182]. The first article includes the right to cultural participation in order to underline that every individual must benefit from it and that it is peer to the other rights contained in the same instrument[183]. The second article considers the necessity to intend the concept of culture in a broad sense, but it does not specify what it means. Furthermore, this article does not explain how the right to cultural participation and the rights to freedom of expression, information and development of personality link to each other[184].

It deserves to be noticed that in Article 27 of the *Universal Declaration*, which served as a reference for Article 15[185] of the *International Covenant on Economic, Social and Cultural Rights*, there is the presence of the adjective 'freely' talking about 'the right freely to participate in the cultural life of the community[186]', whereas in the second document this adjective is not present. In any case, Article 15 in the third paragraph makes reference to the freedom necessary for research in the scientific field and for creative activity which the State parties have to observe[187].

Besides, if in article 27 of the *Universal Declaration* there is the presence of the definitive article '*the*' in the sentence 'participate in the cultural life of *the* community', the same cannot be said for Article 15 of the *International Covenant on Economic, Social and Cultural Rights*[188].

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[178] UN Doc. E/C.12/GC/21, *General Comment* 21, 2009, par.15, in M. FERRI, *L'evoluzione del diritto di partecipare alla vita culturale e del concetto di diritti culturali nel diritto internazionale*, in *Osservatorio diritti umani*, Napoli, Editoriale Scientifica S.r.l., La Comunità Internazionale fasc. 2/2014, *http://www.sioi.org/media/Rivista/3ferri.pdf*, cit., p.228.

[179] M. FERRI, *L'evoluzione del diritto di partecipare alla vita culturale e del concetto di diritti culturali nel diritto internazionale*, in Osservatorio diritti umani, Napoli, Editoriale Scientifica S.r.l., La Comunità Internazionale fasc. 2/2014, *http://www.sioi.org/media/Rivista/3ferri.pdf*, cit., p.228.

[180] *v. supra, note 179*, cit., p.235.

[181] E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond*, Leiden-Boston, Martinus Nijhoff Publishers, 2007, cit., p.3.

[182] *v. supra, note 179,* p.235.

[183] F. FRANCIONI, M. SCHEININ, (edited by), *Cultural Human Rights*, International Studies in Human Rights, vol. 95, Leiden-Boston, Martinus Nijhoff Publishers, 2008, p.57.

[184] J. ALMQVIST, *Human Rights, Culture, and the Rule of Law*, Hart publishing Oxford and Portland, Oregon, 2005, cit., p.10.

[185] Y. M. DONDERS*, Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.160.

[186] Art.27 (1) of the *Universal Declaration of Human Rights.*

[187] *v. supra, note 181,* cit., p.130.

[188] *v. supra, note 187.*

This means that in the *Universal Declaration* each person is obliged to participate to the cultural life of the prescribed community, whereas in the *International Covenant on Economic, Social and Cultural Rights* each person is free to choose the cultural community to identify with[(189)].

It can also be noticed that human rights are related to each other because freedom in the manifestation of a culture links to the freedom of expression[(190)]. Freedom in the choice of a culture relates in turn to the freedom of expressing the way of being, by communicating with other people in society daily[(191)], which connects to the social participation of people. Therefore, the free choice of the culture of participation is a fundamental part of the freedom of expression, which enables an individual to take part in the relations with other human beings[(192)]. Anyway, in article 27 the question of cultural identity is not considered[(193)]. Both Article 27 and Article 15 have the same background[(194)]. Article 15 was elaborated to enable all the population to have access to culture because this was conceived as something just referring to a part of the society[(195)].

When Articles 27 and 15 were adopted, the concept of culture was limited to its material elements and, as a consequence, the interpretation of these Articles made just a little reference to the safeguard of the cultural identity of single individuals and groups[(196)]. Only when a wider notion of culture was elaborated, the interpretation of both these Articles acquired a more marked tie with the defence of cultural identity[(197)].

There are also other international documents dealing with the right to participate in cultural life which can be analysed. For example, the *International Covenant on Civil and Political Rights*[(198)], which states in Article 27 that 'persons belonging to ethnic, religious or linguistic minorities shall have the right to enjoy their own culture, to practice their own religion, or to use their own language guaranteed by their respective Countries[(199)]'.

The *International Convention on the Elimination of All Forms of Racial Discrimination*[(200)], defines the concept of racial discrimination as '[…]any distinction, exclusion, restriction or preference based on race, colour, descent or national…or ethnic origin which has the purpose or effect of

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[(189)]E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond*, Leiden-Boston, Martinus Nijhoff Publishers, 2007, p.130.
[(190)]*v. supra, note 189*, p.131.
[(191)]*v. supra, note 190.*
[(192)]*v. supra, note 190.*
[(193)]Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.160.
[(194)]*v. supra, note 193*.
[(195)]*v . supra, note 193.*
[(196)]*v. supra, note 193,* p.161.
[(197)]*v. supra, note 193,* p.161.
[(198)]*v. supra, note 189*, p.38.
[(199)]*v. supra, note 198*.
[(200)]New York, the 7th of March 1966, it entered into force on the 4th of January 1969, it has 192 State Parties, available on the website *http://treaties.un.org*, last accessed 09/02/2016.

nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life[(201)]' in Article 1, whereas in Article 5, it states that 'State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(e) economic, social and cultural rights, in particular:

…vi) the right to equal participation in cultural activities.

(f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks[(202)]'.

Article 13 of the *Convention on the Elimination of All Forms of Discrimination against Women*[(203)] concerns the introduction of measures by States to eliminate discrimination, in order to ensure, in particular, '…(c) the right to participate in recreational activities, sports and all aspects of cultural life[(204)]'. The right to participate in cultural life is also present in Article 30 of the *Convention on the Rights of the Child*[(205)], which states that 'a child belonging to a minority or who is indigenous […]shall not be denied the right, in community with other members of his or her group, to enjoy his or her culture, to profess and practice his or her religion, or to use his or her language[(206)]', as well as in the following Article, 31, which recognizes '[…]the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities of cultural ,artistic, recreational and leisure activity[(207)]'.

Also people belonging to minorities '[…]have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination[(208)]', as stated in Article 2 of the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*[(209)].

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[(201)] E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond*, Leiden-Boston, Martinus Nijhoff Publishers, 2007, cit., p.39.

[(202)] *v. supra, note 201.*

[(203)] New York, the 18th of December 1979, it entered into force on the 3rd September 1981, it has 195 State Parties, available at the website *http://treaties.un.org*, last accessed 09/02/2016.

[(204)] *v. supra, note 201,* cit., pp.39-40.

[(205)] New York, the 20 of November 1989, it entered into force on the 2nd September 1990, it has 200 State Parties, available at the website *http://treaties.un.org*, last accessed 09/02/2016.

[(206)] *v. supra, note 201*, cit., p.41.

[(207)] *v. supra, note 206.*

[(208)] *v. supra, note 206.*

[(209)] *v. supra, note 206.*

*UNESCO* has also given a contribution to the definition of the right to participate in cultural life with a special focus on international cultural cooperation in a range of documents[(210)].

The most important which deserve to be mentioned are the *1966 Declaration of the Principles of International Cultural Co-operation*, declaring that the dimensions of creative and intellectual activities dealing with culture, education, and science should be included in international cultural cooperation, which presents the terms and objectives of such cooperation as well[(211)] in Article 2, and, the *2001 Universal Declaration on Cultural Diversity*, which in Article 5 declares the right of freedom of expression for everybody, as well as the right to produce and spread their creations in the language of their choice [(212)].

As far as the instruments at regional level are concerned, the *African Charter on Human and Peoples' Rights*[(213)] and the *European Convention on Human Rights*[(214)] can be taken into consideration. According to the first, 'every individual may freely take part in the cultural life of his community[(215)]' in Article 17. This right is explicitly expressed in the *African Charter on the Rights and Welfare of the Child*[(216)] as the right of the African child to freely take part in cultural life[(217)].

With respect to the second, several provisions deal with the free participation in cultural life, such as those on non-discrimination, freedom of thought, conscience and religion, and freedom of expression[(218)].

Since the concept of the right to participate in cultural rights is imprecise, it is difficult to define States' responsibilities with regard to cultural rights[(219)]. States were asked by the *Committee on Economic, Social and Cultural Rights* to illustrate the legislative measures which had been adopted in order to fulfil the right of each individual to participate in the cultural life of his or her choice as well as to express his or her culture, with respect to Article 15 of the *Covenant* [(220)], assuring that the participation in cultural life reveals on equal terms.

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[(210)] E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond*, Leiden-Boston, Martinus Nijhoff Publishers, 2007, p.43.

[(211)] *v. supra, note 210,* cit., p.43.

[(212)] *v. supra, note 210*, cit., p. 121.

[(213)] Nairobi, the 27th of June 1981, it entered into force on the 21st of October 1986, it has 39 State Parties, available at the website *http://treaties.un.org*, last accessed 09/02/2016.

[(214)] Rome, the 4th of November 1950, it entered into force on the 3rd September 1953, it has 47 State Parties, available at the website *http://www.coe.int/en/web/conventions*, last accessed 09/02/2016..

[(215)] *v. supra, note 210,* cit., p.44.

[(216)] Addis Abeba, the 11th of July 1990, it entered into force on the 29th of November 1999, it has 54 Sate Parties, available at the website *http://www.achpr.org/instruments/child/ratification/*, last accessed 09/02/2016.

[(217)] J. ALMQVIST, *Human Rights, Culture, and the Rule of Law*, Hart publishing Oxford and Portland, Oregon, 2005 , cit., p.9.

[(218)] *v. supra, note 210,* p.44.

[(219)] *v. supra, note 210,* p.87.

[(220)] *v. supra, note 210,* cit., p.130.

This matter especially applies to 'vulnerable people or groups rendered vulnerable[221]', such as 'children and youth, the elderly, women, migrant workers, people with disabilities, the poor, minorities and indigenous peoples[222]'. This because the *Committee* underlines that the non-discrimination concept provided in the *Covenant* in Articles 2.2 and 3, has to be observed both in theory and in practice[223]. As a consequence, it can be stated that equality and non-discrimination constitute the two principles of the right to participate in cultural life. They both do their best to put an end to the exclusion of several social groups and to advance towards their integration[224].

However, a distinction has to be made between them. The element of non-discrimination can be instantly applied through the obligations of States, whereas that of equality depends on the elasticity in States' behaviour provided in the *International Covenant on Economic, Social and Cultural Rights* in Article 2.1[225]. Within those societies where more than one ethnicity coexists, it is important to be free in the choice of the culture and cultural life in which to participate[226], but it is precisely in these societies that this freedom might face some difficulties of implementation[227].

Indigenous people or minorities normally live in States providing regimes of autonomy, in which these people are subjected to personal law in marriage matters, as well as in divorce, succession or adoption, commonly by a religious legislative body, and where religious or secular courts are responsible for the law implementation[228]. The right to participate in cultural life has a complex content which includes both the right to cultural identity and cultural rights[229]. 'A right to cultural identity can actually be considered one of the central cultural rights[230]'.

Although the *Universal Declaration on Human Rights* and the two *Covenants on Civil and Political Rights and Economic*, *Social and Cultural Rights* do not provide a right to cultural identity, they make reference to those cultural rights from which the issue of the protection of the cultural identity of both people and groups arise[231].

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[221] E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond*, Leiden-Boston, Martinus Nijhoff Publishers, 2007, cit., p.115.
[222] *v. supra, note 221.*
[223] *v. supra, note 221,* p.115.
[224] *v. supra, note 221*, p.116.
[225] *v. supra, note 221,* pp.115-116.
[226] *v. supra, note 221,* pp.129-130.
[227] *v. supra, note 221*, p.131.
[228] *v. supra, note 221*, p.131.
[229] M. FERRI, *L'evoluzione del diritto di partecipare alla vita culturale e del concetto di diritti culturali nel diritto internazionale*, in *Osservatorio diritti umani*, Napoli, Editoriale Scientifica S.r.l., La Comunità Internazionale fasc. 2/2014, http://www.sioi.org/media/Rivista/3ferri.pdf, cit. p.228.
[230] Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.103.
[231] *v. supra, note 230*, p.139.

Despite the right to cultural identity is a difficult concept to comprehend if intended as a right, it has become important[(232)] in the advancement of international law. On the one hand, it was due to the awareness of the fact that grave breaches of human rights had already occurred, that those scholars who already lined up in favour of the elaboration of a right to cultural identity reinforced their position[(233)]. For them, a right to cultural identity, being it individual or collective, was necessary for the promotion and protection of cultural identity as a basic aspect of the dignity of human beings[(234)]. Furthermore, it was thought that such a right might also contribute to the development of cultural rights. On the other hand, those scholars who opposed to a right to cultural identity argued that cultural identity was already protected by classic human rights and that, therefore, the focus of attention should aim at protecting and promoting traditional human rights[(235)]. Moreover, this right could give sustain to dubious cultural activities such as the subordination of women in forced marriages, female circumcision, bride price or lesser rights than men with respect to inheritance or land ownership[(236)].

According to Meyer-Bisch, cultural identity has two aspects '[…] «Identité de distinction et d'appartenance, droit au particulier et droit à l'universel»[(237)]'. The manifestation of many human rights matters is linked to the right to cultural identity, which, however, is not included within the classification of the human rights already known. This is due to the fact that human rights tend to be equal and universal, whereas the right to cultural identity focuses on diversity, tending to exclusion and particularization[(238)]. Moreover, the right to cultural identity has been accused of being against equality and non-discrimination, which are essential rudiments of human rights. This right, in fact, does not concentrate on equality, as human rights usually do, but on the diversity to which single individuals and communities appeal[(239)].

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[(232)]Y. M. DONDERS, *The Right to Cultural Identity in International Human Rights Law,* in Y.M. DONDERS et al. (eds.), *Law and Cultural Diversity,* 1999, pp.65-69, in F. FRANCIONI, M. SCHEININ, (edited by), *Cultural Human Rights*, International Studies in Human Rights, vol. 95, Leiden-Boston, Martinus Nijhoff Publishers, 2008, p. 173.

[(233)]F. FRANCIONI, M. SCHEININ, (edited by), *Cultural Human Rights*, International Studies in Human Rights, vol. 95, Leiden-Boston, Martinus Nijhoff Publishers, 2008, p.320.

[(234)]*v. supra, note 233.*

[(235)]*v. supra, note 233*, p.321.

[(236)]*v. supra, note 235*,cit., p.321.

[(237)]P. MEYER-BISCH, *Les Droits Culturels Forment-ils une Catégorie Spécifique de Droits de l'Homme ? Quelque difficultés logiques*, in : P. MEYER-BISCH (ed.), *Les Droits Culturels, une catégorie sous-développée de droits de l'homme*, Actes du VIIIe Colloque interdisciplinaire sur les droits de l'homme, Editions Universitaires Fribourg Suisse, 1993, pp.26-27, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.14.

[(238)]Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.14.

[(239)]*v. supra, note* 238, p.15.

In any case, it must also be observed that 'having equal rights is not the same as being treated equally[240]', because non-discrimination and equality also imply the notion of diversity and recognize the right to be different[241]. The reason that encouraged to develop a right to cultural identity was the individuality provided by conventional human rights articles, which contrasts with the common character of cultural identity[242]. Consequently, a right to cultural identity with a collective dimension has to be enhanced, despite the aversion of several authors[243].

At the beginning, the right to cultural identity was interpreted in a tight sense, meaning that '[…]every man has the right of access to knowledge, to the arts and literature of all peoples, to take part in scientific advancement and to enjoy its benefits, to make his contribution towards the enrichment of cultural life[244]', as similarly formulated in Article 15 of the *International Covenant on Economic, Social and Cultural Rights*. Only when this right acquired a wider dimension, also the interpretation of it became more complete, including 'a decent standard of living with regard to food, shelter, healthcare, and education for every individual[245]'.

As Boutros-Ghali maintains: 'a minimum of material well-being is necessary if the very notion of culture is to have the least significance[246]'. Meyer-Bisch sees the right to cultural identity as 'the third stage of a development of cultural rights from the passive enjoyment of culture, via the active participation in and creation of culture, to the protection of the cultural identity of communities[247]'.

Since cultural identity has a complete extent, the right to cultural identity can be seen an 'umbrella right'[248] that involves other rights, such as the right to freedom of expression or of religion. Moreover, since different matters can be part of this right, this 'umbrella right' is also the proof of the fact that cultural identity owns a dynamic nature[249]. Article 3 of the *Fribourg Declaration of Cultural Rights* defines the right to cultural identity by stating that '[…]everyone, alone or in community with others, has the right to free choice of, and respect for, his or her cultural identity and its various means of expression…[250]'.

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[240] Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002*,* cit., p.15.
[241] *v. supra, note 240*, p.15.
[242] *v. supra, note 240*, p.104.
[243] *v. supra, note 242.*
[244] B. BOUTROS-GHALI, *The Right to Culture and the Universal declaration of Human Rights*, in UNESCO, *Cultural Rights as Human Rights*, Paris, 1970, p.73, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., pp. 69-70.
[245] B. BOUTROS-GHALI, *The Right to Culture and the Universal declaration of Human Rights*, in UNESCO, *Cultural Rights as Human Rights*, Paris, 1970, cit., p.73, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.70.
[246] *v. supra, note 245.*
[247] *v. supra, note 240,* cit., p.76.
[248] *v. supra, note* 247.
[249] *v. supra, note 247*, p.76.
[250] *v. supra, note 247,* cit., p.77.

The right to cultural identity therefore incorporates the rights to respect for actual mentions, such as cultural heritage to make an example, and it does not restrict to the freedom of opinion, expression and conscience, which are subjective freedoms of the individual[(251)]. Article 3 has positive as well as negative obligations. The former are methods for the identification, the access, and the use of cultural heritage for the majority of people, whereas the latter refer to the prohibition of interfering with the choice of cultural identity and with the dignity of cultures[(252)].

Janusz Symonides, who took part in the Fribourg association, identifies the right to cultural identity as the right to the individual or collective free choice of the cultural identity, including language, religion, heritage and traditions; as well as the individual right to have one or more cultural identities and the free choice to identify or not with one or more cultural communities[(253)].

This reasoning finds a similarity to the notion of another scholar, Meyer-Bisch, who believes that the right to identify with a culture means 'the right to respect for, and the expression of, one's cultural values[(254)],' which entails these rights:

i. 'The right to exercise freely, in public and in private, cultural activities and especially to express oneself in the language of one's choice;
ii. The right to exercise the freedom indispensable for research and creation;
iii. The right to cultural heritage, not to be hindered to access to one's own culture and the knowledge of cultures together;
iv. The right to correct information;
v. The right to identify or not with cultural communities of one's choice and to maintain relations with them without consideration of boundaries[(255)]'.

It can be generally asserted that the right to cultural identity is both individual and collective. However, this idea is not shared by all the authors. In fact, it is only proper for communities and not

[(251)]Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.78.
[(252)]*v. supra, note 251.*
[(253)] J. SYMONIDES, *Cultural Rights,* in J. SYMONIDES, (ed.), *Human Rights: Concept and Standards*, UNESCO Publishing, Paris, 2000, cit., p.189, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, cit., p.78.
[(254)]P. MEYER-BISCH, *Les Droits Culturels Forment-ils une Catégorie Spécifique de Droits de l'Homme ? Quelque difficultés logiques*, in : P. MEYER-BISCH (ed.), *Les Droits Culturels, une catégorie sous-développée de droits de l'homme*, Actes du VIIIe Colloque interdisciplinaire sur les droits de l'homme, Editions Universitaires Fribourg Suisse, 1993, p.37, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.78.
[(255)]*v. supra, note 254.*

for individuals, according to Margalit and Halbertal[256], because single individuals 'have a right to their own culture[257]' and this right implies a wide notion of culture, of an entire lifestyle, which can only be found within communities[258]. Therefore, a paradox concerns this right, that is the fact that even if individuals have a right to cultural identity, the notion of culture as a lifestyle can only be ascribed to communities, which are better addressees of the right to cultural identity, following this way of thinking[259].

On the contrary, Donnelly is against the idea that a right to cultural identity must have a collective dimension, because he believes that group identities would not become subjects of international human rights protection. 'Only individual autonomy gives rise, and value, to the sorts of identities that must be respected by others. Any particular identity is entitled to protection only because it is an expression of the right and values of those who carry it[260]'.

Galenkamp, on her side, is uncertain about considering the right to cultural identity as a collective right and she justifies her position by stating that the collective right to cultural identity has uncertain topic and content and that the problems of minorities would probably not be resolved by collective rights, because these rights do not generate anything new than traditional human rights[261]. According to Donders, conceiving the right to cultural identity in a collective perspective is problematic and raises difficult questions[262]. The collective right to cultural identity presents some legal obstacles, even if it might be socially understandable and, in addition, issues such as determining the person's role within the community or whether this right is abused remain troubled[263]. Consequently, Donders lines up against a collective right to cultural identity, asserting that such a right would raise even more problems about the obligations of States and its subject than an individual right. Besides, a collective cultural identity has a difficult content to specify on the basis of the kind of community of reference, which can be regional, religious, linguistic or national[264].

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[256] A. MARGALIT, M. HALBERTAL, *Liberalism and the Right to Culture, Social Research,* Vol.61, No.3, Fall 1994, pp.491, 497-499, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.100.

[257] *v. supra, note 256.*

[258] *v. supra, note 256.*

[259] *v. supra, note 256.*

[260] J. DONNELLY, *The Universal Declaration Model of Human Rights: A Liberal Defense*, Human Rights Working Papers, No.12, posted 12 February 2001 on http://www.du.edu/humanrights/workingpapaers/index.html, p.36, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.101.

[261] Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.102.

[262] *v. supra, note 261.*

[263] *v. supra, note 261.*

[264] *v. supra, note 261*, p.105.

*UNESCO* is responsible for the draft of relevant documents concerning the right to cultural identity, such as the *1966 Declaration of the Principles of International Cultural Cooperation*[(265)], the *1976 Recommendation on Participation by the People at Large in Cultural Life and their Contribution to it*[(266)], and the *1978 Declaration on Race and Racial Prejudice*[(267)]. The first one has a moral and political force, even if it is not binding on the legal ground[(268)]. It does not relate in an evident way to cultural identity because it is mostly focused on international cultural cooperation, but, in Article 1 there is a reference to two important aspects of a right to cultural identity, such as the parity between different cultures and the importance of the diversities between them[(269)].
In particular, paragraph 2, makes reference to the duty to develop culture, which is also a collective right[(270)]. The *1976 Recommendation* underlines the wide dimension of culture, emphasizes the right to an active cultural participation for both single individuals and communities, and it deals with the right to develop and preserve the cultural identity of minorities[(271)].
Its Preamble contains some connections to cultural identity declaring what follows:

> 'Considering that participation in cultural life takes the form of an assertion of identity, authenticity and dignity; that the integrity of identity is threatened by numerous causes of erosion stemming, in particular, from the prevalence of inappropriate models or of techniques which have not been fully mastered, considering that the assertion of cultural identity should not result in the formation of isolated groups, but should, on the contrary, go hand in hand with a mutual desire for wide and frequent contacts…[(272)]'.

Even if these sentences may sound unclear, they consider 'cultural identity as policy principle and a value[(273)]'. Moreover, they link cultural participation to cultural identity advancement.
Article 4(f) recommends States to defend the right of national and foreign minorities to maintain their cultural identity[(274)]. Although parity between cultures is declared, it is also underlined that minorities might be favoured in the preservation of their own cultural identity[(275)].

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[(265)]Paris, the 4th of November 1966, available at the website http://www.unesco.org, last accessed 09/02/2016.
[(266)]Nairobi, the 26th of November 1976, available at the website http://www.unesco.org, last accessed 09/02/2016.
[(267)]Paris, the 27th of November 1978, available at the website http://www.unesco.org, last accessed 09/02/2016.
[(268)]Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.112.
[(269)]*v. supra, note 268*, p.111.
[(270)]*v. supra, note 268*, cit., p.112.
[(271)]*v. supra, note 268,* p.112.
[(272)]*v. supra, note 268.*
[(273)]*v. supra, note 272.*
[(274)]*v. supra, note 272*, cit., p.113.
[(275)]*v. supra, note 272*, p.113.

Article 18(d) also relates to cultural identity affirming that 'Member States should develop cultural exchanges to promote … an ever deeper appreciation of the values of each culture and, in particular, draw attention to the cultures of the developing countries as a mark of esteem for their cultural identity[(276)']. The *Declaration on Race and Racial Prejudice* deals with cultural identity in more than one article and Article 1(3) can be cited as an example: 'Identity of origin in no way affects the fact that human beings can and may live differently, nor does it preclude the existence of differences based on cultural, environmental and historical diversity, nor the right to maintain cultural identity[(277)]'. It emphasizes that the right to keep cultural identity is not affected by the original identity of human beings[(278)].

Another clear reference to cultural identity, and especially to the collective protection of cultural identity[(279)], is provided by Article 5(1), asserting that:

> 'Culture […]offer men and women increasingly effective means of adaptation, enabling them not only to affirm that they are born equal in dignity and rights, but also to recognise that they should respect the right of all groups to their own cultural identity and the development of their distinctive cultural life within the national and international contexts, it being understood that it rests with each group to decide in complete freedom on the maintenance, and, if appropriate, the adaptation or enrichment of the values which it regards as essential to its identity[(280)]'.

It underlines that culture shows that a principle of equality exists between people and that in light of this, they all benefit from the same rights. Culture also makes people understand that the right of communities to their cultural identity should be respected[(281)]. These communities should also freely decide which identity values have to be preserved and the degree of their taking part to the shared culture[(282)]. The *Declaration on Race and Racial Prejudice* proves that the right to cultural identity represents more 'a policy goal or a principle[(283)]' than a real right, despite having being expressed into a *Declaration* of international level[(284)].

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[(276)]Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.113.
[(277)]*v. supra, note 276,* cit., p.119.
[(278)]*v. supra, note 276*, p.119.
[(279)]*v. supra, note 276,* cit., p.120.
[(280)]*v. supra, note 276*, cit., p.120.
[(281)]*v. supra, note 276*, p.120.
[(282)]*v. supra, note 281.*
[(283)]*v. supra, note 276,* cit., p.121.
[(284)]v. supra, note 276, p.121.

Finally, *UNESCO* has promoted matters that refer to the right to cultural identity in the *Universal Declaration on Cultural Diversity*[285] of 2001 and in its *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*[286] of 2005[287] to quote some more recent documents. Considering the former, many connections to a right to cultural identity were present in the initial draft, but then they were lost when the document was finally adopted. In the Preamble of the Draft, in fact, cultural identity was described as what '…represents all the ethnic, linguistic, religious and other references that underpin the conscious or unconscious identification with a group[288]'. In the final *Declaration* there is not a definition of the concept of cultural identity anymore and the word 'cultural identity' is difficult to be found in this instrument, at most 'as a general value and certainly not in terms of rights[289]'. Considering the latter, it must be noticed that it does not specify a right to freedom of cultural identity because it mainly concentrates on the role of cultural diversity in human rights fulfilment[290].

5. States' obligations and violations of cultural rights

It is difficult to determine which kind of obligations States have with respect to cultural rights because it is not certain whether or not they have a legal nature[291]. This explains why when a judicial case concerning cultural rights is presented before a judge he will have some hesitations in defining the concrete meaning of such rights in that specific case[292].

According to Cranston, all human rights would be better defined as moral rather than legal rights, exactly because they are not justiciable[293]. Justiciability is the key to have real rights in international law even for Vierdag. Following this reasoning, since when economic, social and cultural rights are considered, the action of governments is distant from law implementation and non-justiciability, these rights cannot be defined real rights[294].

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[285] Paris, the 2nd of November 2001, available at the website http://www.unesco.org, last accessed 09/02/2016.
[286] Paris, the 20th of October 2005, it entered into force on the 18th of March 2007, it has 139 State Parties, available at the website http://www.unesco.org, last accessed 09/02/2016.
[287] F. FRANCIONI, M. SCHEININ, (edited by), *Cultural Human Rights,* International Studies in Human Rights, vol. 95, Leiden-Boston, Martinus Nijhoff Publishers, 2008, p.325.
[288] *v. supra, note 287*, cit., p.334.
[289] *v. supra, note 287,* cit., p.335.
[290] *v. supra, note 287,* p. 337.
[291] Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.66.
[292] *v. supra, note 291.*
[293] M. CRANSTON, *What are Human Rights?* Bodley Head, London, 1973, p.21, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.66.
[294] E. VIERDAG, *The Nature of the Rights Granted by the International Covenant on Economic, Social and Cultural Rights*, Netherlands Yearbook of International Law, vol.9, 1978, pp.71-73, in in Y. M. DONDERS, *Towards a Right to*

However, as these rights are part of legally-binding documents on human rights, it was confirmed that they can be considered real rights. At a national level, judges have dealt with economic, social and cultural rights, even though people cannot directly address to the supervisory body of the *International Covenant*[(295)] yet. The Special Rapporteur on the Realisation of Economic, Social and Cultural Rights, Türk, reiterates that these rights 'are generally recognised as being legal rights, although authors and States may have different opinions on the content of the rights and the corresponding State obligations[(296)]'. 'Rights imply a claim by the beneficiary or holder of a right towards the addressee to do something or to refrain from doing something. In the specific case of cultural rights, the State is thought to be the main addressee [(297)]'.

In a 2002 Resolution the Commission of the United Nations reiterated this by stating that '[…]States have the primary responsibility for the protection of the full enjoyment of cultural rights by everyone…[(298)]'. Usually, cultural rights established in a convention, have to respond to the State obligations provided by that convention. Article 2(1) of the *International Covenant* concerns States obligations and it states that: 'States should undertake to take steps to the maximum of their available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including, in particular, the adoption of legislative measures[(299)]'. The obligations of States towards cultural rights can be divided into the obligations of conduct and those of result[(300)]. In the former, the State is not free because it is obliged to follow a precise path and these obligations concern the addressee's behaviour; in the latter, the focus is on the outcome to be achieved or avoided by the State.

The desired outcome leaves freedom to States to choose the actions and procedures they want to adopt[(301)].

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*Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, pp.66-67.

[(295)] Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.67.

[(296)] The reports of Special Rapporteur Türk are: UN Doc. E/CN.4/Sub.2/1989/19, 28 June 1989; UN Doc. E/CN.4/Sub.2/1990/19,6 July 1990; UN Doc. E/CN.4/Sub.2/1991/17, 18 July 1991; UN Doc .E/CN.4/Sub.2/1992/16, 3 July 1992, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.67.

[(297)] *v. supra, note 295,* cit., p.81.

[(298)] Commission on Human Rights Resolution 2002/26, *Promotion of the enjoyment of the cultural rights of everyone and respect for different cultural identities*, 22 April 2002, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.81.

[(299)] *International Covenant on Economic, Social and Cultural Rights*, art. 2(1), in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.83.

[(300)] *v. supra, note 295,* p.81.

[(301)] *v. supra, note 295,* pp.81-82.

In any case, these kinds of obligations have a difficult relationship because only the situation and the events can decide which rights generate which obligations[(302)] as highlighted by Eide.

Besides, cultural rights imply both positive and negative obligations for States[(303)].

In positive obligations an action of the State is required, in negative obligations the State should avoid acting. States obligations towards cultural rights are mostly negative, according to Meyer-Bisch, who cites linguistic rights as an example for this. It would not be possible to ban the language chosen to be used at home, but, these rights cannot be claimed facing the authorities[(304)]. As far as the right to education is concerned, a community cannot be prohibited to teach its values, it can just be restricted in the building of educational facilities on the basis of its available resources by the State[(305)]. Nevertheless, the same author recognizes that some cultural rights demand positive obligations, such as literacy, which requires a compelling action to States[(306)].

The obligations provided by the *International Covenant* have been interpreted in the *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*[(307)], which some experts produced as a result of a Conference held in Maastricht in 1986[(308)]. The *Principles* were the result of the work of the *Committee on Economic, Social and Cultural Rights* to determine scope and character of obligations and violations of the States[(309)].

The participants at the Conference were twenty-nine scholars, four of which of the *Committee on Economic, Social and Cultural Rights* as well as experts gathered by the International Commission of Jurists, those from the University of Limburg in The Netherlands and those from the Urban

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[(302)]A. EIDE, UN Doc. E/CN.4/Sub.2/1987/23, 1987, par.71-72; UN Committee on Economic, Social and Cultural Rights, General Comment 3 on the nature of States parties obligations (art.2, par.1 of the Covenant), fifth session, December 1990, par.1, Maastricht Guidelines, 1998, guideline 7, pp.4; F. VLEMMINX, *Een Nieuw Profiel van de Grondrechten – Een Analyse van de Prestatieplichten ingevolge Klassieke en Sociale Grondrechten*, A New Profile of Basic Rights, An Analysis of the Obligations of Conduct of Classic and Social Rights, W.E.J. Tjeenk Willink, Zwolle, 1998, pp.67-72, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.82.

[(303)]*v. supra, note 295*, p.71.

[(304)]P. MEYER-BISCH, *Les Droits Culturels Forment-ils une Catégorie Spécifique de Droits de l'Homme ? Quelque difficultés logiques*, in : P. MEYER-BISCH (ed.), *Les Droits Culturels, une catégorie sous-développée de droits de l'homme*, Actes du VIIIe Colloque interdisciplinaire sur les droits de l'homme, Editions Universitaires Fribourg Suisse, 1993, pp.29-30, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.82.

[(305)]*v. supra, note 304*, pp.82-83.

[(306)]*v. supra, note 304*, p.83.

[(307)]*The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, *Human Rights Quarterly*, Vol.9. 1987, pp.122-135, also published as UN Doc. E/CN.4/1987/17, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.83.

[(308)]Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.83.

[(309)]E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond,* Leiden-Boston, Martinus Nijhoff Publishers, 2007, pp.149-150.

Morgan Institute for Human Rights of the University of Cincinnati in the USA[(310)]. Despite having been adopted with unanimous votes and having become a legitimate document of the United Nations, the nature of the *Principle*s is not legally-binding precisely because they have resulted from a Conference[(311)]. An important part of the *Limburg Principles* is contained in the *General Comment*[(312)], non-legally binding too, adopted by the *Committee on Economic, Social and Cultural Rights* in 1990[(313)]. Article 2 of the *General Comment* declares 'that the obligation to take steps or measures as laid down in Article 2(1) has an immediate character[(314)]' and that 'States should take steps …within a reasonable, short period of time...after the Covenant has entered into force[(315)]'. Freedom is left to States in the choice of the measures to implement the Articles of the *International Covenant*, even if it is finally the Committee to be responsible for declaring whether the measures adopted by the State were appropriate or not[(316)].

Shue and Eide elaborated the theory of the tripartite typology of State obligations, which are to respect, to protect and to fulfil. This theory is known at international level and it is contained in several academic publications[(317)]. In the duty to respect, the State must avoid meddling when cultural rights are enjoyed. For example, there is a violation of cultural rights if publications or radio programmes in the language of a Country are banned by States. Under this duty, states have to impede the possibility that third parties violate cultural rights[(318)]. The duty to fulfil does not intend that the measures have to be taken instantly and it recognizes that some rights need time to be implemented[(319)]. The theory makes no reference to precise Articles of concrete Conventions, but believes that all typologies of human rights can generate these three obligations by States[(320)].

As far as economic, social and cultural rights are concerned, the obligations of States of realizing and fulfilling are the most dynamic obligations. 'The adoption of laws providing for equal access to media by migrant or minority communities and non-discrimination provisions for the use of mother tongue in public'[(321)] are examples of provisions concerning cultural rights.

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[(310)] *v. supra, note 309*, cit., p.52.
[(311)] *v. supra, note 308*, p.84.
[(312)] UN *Committee on Economic, Social and Cultural Rights*, *General Comment 3* on the nature of States parties' obligations (Art.2(1) of the Covenant), fifth session, December 1990.
[(313)] *v. supra, note 311.*
[(314)] Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.84.
[(315)] *General Comment* No.3, 1990, pp.83-87, par.2.
[(316)] *General Comment* No.3, 1990, par. 4 and 7; Limburg Principles, 1987, no.17, 18 and 20.
[(317)] *v. supra, note 314,* p.90.
[(318)] E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond,* Leiden-Boston, Martinus Nijhoff Publishers, 2007, p.151.
[(319)] *v. supra, note 314*, p.90.
[(320)] *v. supra, note 314*, p.87.
[(321)] *v. supra, note 318,* cit., p.151.

For Eide, legal rights, differently from moral rights, should be justiciable. But, human rights are particular legal rights as their subject, the single individual, cannot always claim the violations of these rights[322]. According to the author, 'the difficulty or impossibility in determining whether a right has been the object of a violation derives from the ambiguity of State obligations[323]'.

This theory has been used by several authors to make the subject of these rights clear. In the book '*Basic Rights*'[324], Shue delineated the foundation of the tripartite typology of State obligations, in which he states that basic rights are of three types: the right to liberty, to security, and to subsistence, which can be considered the 'rights to minimum of economic security [325]'.

From the author point of view, different positive and negative obligations are linked to each of these rights, such as:

1. 'Duties to avoid depriving, which means a negative obligation '…not to eliminate a person's only available means of subsistence';
2. 'Duties to protect from depriving, which means a positive obligation '…to protect people against deprivation of the only available means of subsistence';
3. 'Duties to aid the deprived, which also means a positive obligation '…to provide for the subsistence of those unable to provide for their own[326]'.

If Shue concentrated on the subsistence rights, Eide applied the tripartite typology to all human rights, which allows to make a step further in connecting different human rights[327]. In particular, it demonstrates that one or more of these requirements are entailed in each right, regardless its category of belonging[328]. The theory of the tripartite typology is authoritative enough to illustrate scope and subject of cultural rights, and especially of a right to cultural identity[329].

Margalit and Halbertal asserted that States' obligations with respect to a right to cultural identity are structured in three different levels which correspond to the duties to respect, protect and fulfil of the

[322]Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.87.
[323]A. EIDE, UN Doc. E/CN.4/Sub.2/1987/23, 1987, pp.13-14, par. 56-58, 63-64.
[324]H. SHUE, *Basic Rights,* Princeton University Press, 1980, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.88.
[325]H. SHUE, *Basic Rights,* Princeton University Press, 1980, pp.21-23, 71-87; B.C.A. TOEBES, *The Right to Health as a Human Right in International Law,* School of Human Rights Research Series No.1, Hart/Intersentia, Antwerp/Groningen/Oxford, 1999, p.307.
[326]H. SHUE, *Basic Rights,* Princeton University Press, 1980, pp.53,55; B.C.A. TOEBES, *The Right to Health as a Human Right in International Law,* School of Human Rights Research Series No.1, Hart/Intersentia, Antwerp/Groningen/Oxford, 1999, p.308.
[327]*v. supra, note 322*, p.89.
[328]*v. supra, note 322*, cit.,p.89.
[329]*v. supra, note 322*, p.90.

tripartite typology[330]. The first one is the obligation States have to keep a comprehensive way of life within the larger society without interference, and with only the limitation of the harm principle. The second level includes the first and adds the States' obligation to make the general society aware of the community's way of life. The third level includes both the previous levels and adds the obligation for States' institutions to support the community's way of life so that culture can flourish[331]. Therefore, in the case of a right to cultural identity, States' duty to respect would be to let people and communities free to develop and enjoy their cultural identities. The duty to protect would refer to the protection of people and communities by the State from third parties meddling in the enjoyment of the right to cultural identity. Finally, the obligation to fulfil could refer to States provision of the measures which people and communities need to create and enjoy their cultural identity[332]. Cultural rights are living a gradual fulfilment but also 'minimum core obligations exist', which are immediate obligations[333] where the state is responsible for proving that it is moving forward the complete realization of such rights. Moreover, the state can be both unable or unwilling to meet its obligations towards cultural rights. In the first hypothesis, it is obliged to show it is facing it[334]. The *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*[335] were adopted with unanimous votes by some scholars who gathered in Maastricht in 1997 after ten years from the adoption of the *Limburg Principles* and who studied the possible violations of economic, social and cultural rights. Many elements provided by the *Guidelines* conditioned to define what violation of such rights mean, as well as the kind of obligations, 'the margin of discretion and the minimum core obligation[336]'. They describe what the positive obligations of States mean in the protection and fulfilment of rights, highlighting that this process requires four elements to be sustained: availability, accessibility, acceptability, and adaptability[337].

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[330]Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.92.

[331]A. MARGALIT, M.HALBERTAL, *Liberalism and the Right to Culture, Social Research,* Vol.61, No.3, Fall 1994, pp.498-499, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.92.

[332]*v. supra, note 330,* cit., p.92.

[333]E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond*, Leiden-Boston, Martinus Nijhoff Publishers, 2007, p.150.

([334])*v. supra, note 332.*

[335]TH. VAN BOVEN, C. FLINTERMAN, I. WESTENDORP, (eds.), *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, SIM Special,* No.20, SIM, Utrecht, 1998, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.86.

[336]*Maastricht Guidelines*, 1998, guidelines 14 and 15, pp.7-8, in Y. M. DONDERS, *Towards a Right to Cultural Identity?,* School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, cit., p.87.

[337]E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond*, Leiden-Boston, Martinus Nijhoff Publishers, 2007, p.53.

Cultural rights violations may be both acts of commission or omission. For example, banning to some people or groups to use their language is a violation by acts of commission, as well as sustaining the provisions of a movie industry which imply the ethnic cleansing of some artists and the hindrance of cultural rights realization by the State, unless it is done because the resources are not enough or because of a *force majeure* cause[(338)]. States commit violations through acts of omission if, for example, they are not able to govern people or groups activities in a way that do not to repeatedly annoy some artists. A violation of cultural rights can be also considered the inability to modify a legislation which is clearly against the cultural rights of a particular group[(339)].

In the field of cultural rights, what is defined 'the minimum core obligations of the State'[(340)], is an important notion because these rights are those which governments should consider only after the realization of peoples elementary necessities[(341)]. States obligations have not to be just seen in terms of resources, because in this case the government would be finally not responsible for respecting, protecting and fulfilling cultural rights and, as shown by the core obligations concerning cultural rights, their consideration and promotion go beyond public financial resources and it is depicted as a democratic question[(342)]. If we consider cultural rights as legal rights, core obligations refer to the aid necessary to determine the case in which we have an evident governmental disposition of political kind which enables to fulfil the obligations. Full obligations for human rights are more than core obligations and these latter express 'the political will to fulfil these obligations, with no or few financial resources[(343)]'. Non-discrimination principle is a fundamental core obligation, for example in the allocation of public resources. States' minimum core obligations concerning the right to participate in cultural life are the ban of discrimination in law and practice, as provided by Article 2(2) of the *International Covenant on Economic, Social and Cultural Rights*, 'the ban of meddling in the freedom of cultural expression of individuals and groups, defence of the exercise of the freedom to take part in in cultural life, when a non-state actor puts it at risk, through the state's regular discharge of police and justice functions, ensuring representative participation of society in the definition, preparation and implementation of policies dealing with cultural matters, promoting policies of respect for cultural rights, and taking steps towards the full enjoyment and fulfilment of cultural rights[(344)]'. According to *the Maastricht Guidelines*, violations of economic, social and cultural rights can produce both individuals and groups as victims, and some groups such as, for

[(338)] *v. supra, note 337*, p.152.
[(339)] *v. supra, note 337,* p.153.
[(340)] *v. supra, note 337*, cit., p.153.
[(341)] *v. supra, note 337*, p.153.
[(342)] *v. supra, note 337,* p.153.
[(343)] *v. supra, note 337,* cit., p.154.
[(344)] E. STAMATOPOULOU, *Cultural Rights in International Law: article 27 of the Universal Declaration of Human Rights and beyond*, Leiden-Boston, Martinus Nijhoff Publishers, 2007, cit., pp.154-156.

example, 'women, lower-income groups, indigenous and tribal people [..][(345)]' suffer more than others. Appropriate remedies as well as an adequate reparation should be provided to any person or group who is a victim of a violation of a cultural right at both national and international levels [(346)].
Since until now the majority of scholars attention has concentrated on the explanation of the cultural rights notion, the matter of their justiciability has not taken so much into consideration.
However, it must be reminded that the possibility to deal with these topics in courts is possible[(347)].

6. Universalism or relativism for cultural rights?

Since the adoption of the *Universal Declaration* in 1948, the evolution of human rights has been marked by the relationship between culture and rights[(348)] and it is focused on wondering whether there are more advantages in the adoption of an all-encompassing system of rights or in the protection of cultural diversity, that is, on wondering whether it is better to rely on universalism or relativism in the human rights context. In the debate, both culture and rights are conceived in an abstract way, they both have a clear character as well as a variability from the empirical and theoretical points of view[(349)]. The contrast between universalism, which comes from a European understanding of rights, and relativism, intended as the observance of the differences between cultures at a local level, reflects the same contrast existing between culture and rights[(350)].
Such a contrast made possible the redefinition of both these concepts. Rights are conceived as deriving from the idea of individual rights that were born in the European continent in the eighteenth century as an exclusively Western notion. Culture is defined an 'integrated system of beliefs and values attached to a relatively small and isolated group of people[(351)]'.
Relativism conceived from a moral point of view originated by this interpretation of culture. Cultural relativism was born in the fifth century B.C. sophist school and then it gradually developed in a more complex theory through the works of Hume and Montaigne[(352)]. The majority of anthropologists in the United States supported relativism, and in particular ethical relativism,

[(345)] *v. supra, note 344,* cit., p.161.
[(346)] *v. supra, note 345.*
[(347)] *v. supra, note 345*, p.161.
[(348)] R. CAMMARATA, L. MANCINI, P. TINCANI, (a cura di), *Diritti e culture. Un'antologia critica*, Torino, G. Giappichelli Editore, 2014, cit.,p.1.
[(349)] J. K. COWAN, M. B. DEMBOUR, R. A. WILSON, (edited by), *Culture and Rights. Anthropological Perspectives*, Cambridge, Cambridge University Press, 2001, p.31.
[(350)] *v. supra, note 349*, p.32.
[(351)] *v. supra, note 349*, cit., p.32.
[(352)] F. DEI, *Chi ha paura del relativismo?* B. Barba (a cura di), *Tutto è relativo. La prospettiva in Antropologia*, Seid, Firenze, 2008, p.35, in G. DECARLI, *Diritti Umani e Diversità Culturale. Percorsi internazionali di un dibattito incandescente*, Firenze, SEID Editori, 2012, cit.,p.25.

headed by Benedict and Herskovitz, who contrasted the theory of evolution and belittled uncivilized people.

Cultural relativism is not just a method suitable to understand the peculiarity of each culture in accordance with its history and features, but it is also an ethical concept, in the sense that each culture has to be considered on the basis of its own cultural models, in addition to be studied[(353)]. Therefore, cultural relativism stands up for equal respect towards each culture because differently from evolutionism, which adopting just its own interpretative pattern, obtains a wrong explanation of other cultures from the scientific point of view, it also leads to the organization of cultures on the basis of their pertinence to the chosen reference[(354)]. According to Herskovitz, 'it is impossible to evaluate different cultures by any universal standards because even when other cultures are oppressive, they are still valued by their members as the best way of life for themselves[(355)]'.

As a consequence, 'the very core of cultural relativism is the social discipline that comes of respect for differences – of mutual respect[(356)]'. With the beginning of the twentieth century, cultural relativism affirmed as a new notion which criticized the supposed better morality of Western society[(357)]. Herskovitz, made part of the Boasians, who believed that the views of non-Western Countries can be evaluated as those of the West[(358)]. According to Boasian relativism, it is not possible to evaluate one culture according to the system of value of another[(359)], an idea that had an effect on the 1947 recommendation of the Executive Board of the *American Anthropological Association* entitled *Statement on Human Rights* to be proposed to the Commission on Human Rights of the United Nations. This document was the response to the invitation of the *UNESCO* which, in the same year, had asked to give any suggestion concerning the drafting of the *Declaration*[(360)].

Its author, the same Herskovitz, was an anthropologist and student of Boas, the scholar who provided the definition of cultural relativism, according to which: 'it is not possible neither to lead

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[(353)]T. PITCH, *I diritti fondamentali: differenze culturali, disuguaglianze sociali, differenza sessuale*, Torino, G. Giappichelli Editore, 2004, cit.,p.40.

[(354)]*v. supra, note 353*, p. 40.

[(355)]M. J. HERSKOVITZ, *Cultural Relativism; Perspectives in Cultural Pluralism*, New York, Random House, 1972, cit., pp.8-9, in J. K. COWAN, M. B. DEMBOUR, R. A. WILSON, (edited by), *Culture and Rights. Anthropological Perspectives*, Cambridge, Cambridge University Press, 2001, cit., p.32.

[(356)]*v. supra, note 355,* cit., p.33, in J. K. COWAN, M. B. DEMBOUR, R. A. WILSON, (edited by), *Culture and Rights. Anthropological Perspectives*, Cambridge, Cambridge University Press, 2001, cit., pp.32-33.

[(357)]E. HATCH, *The Good side of Relativism*, Journal of Anthropological Research, No.53, 1997, pp.371-381, in J. K. COWAN, M. B. DEMBOUR, R. A. WILSON, (edited by), *Culture and Rights. Anthropological Perspectives*, Cambridge, Cambridge University Press, 2001, p.33.

[(358)]*v. supra, note 357,* p.380, in in J. K. COWAN, M. B. DEMBOUR, R. A. WILSON, (edited by), *Culture and Rights. Anthropological Perspectives*, Cambridge, Cambridge University Press, 2001, cit., p.33.

[(359)]J. K. COWAN, M. B. DEMBOUR, R. A. WILSON, (edited by), *Culture and Rights. Anthropological Perspectives*, Cambridge, Cambridge University Press, 2001, cit.,p.33.

[(360)]R. CAMMARATA, L. MANCINI, P. TINCANI, (a cura di), *Diritti e culture. Un'antologia critica*, Torino, G. Giappichelli Editore, 2014, p.1.

back all cultures to a universally valid framework of cultural development, nor to determine the development phases in the same way for every culture[361]'.

Following this reasoning, the Commission accepted Herskovitz recommendation to 'do not intend the *Declaration* considering just the prevailing values in the Western-European countries and in the United States of America, and highlighting the need to consider not just the dimension of rights, that is, the respect for the personality of the individual as such and the right to their full development as a member of their society, but also the dimension of culture – the respect for cultures of the different human groups at the global level – struggling to produce a *Declaration* which went beyond the simple utterance of the respect for the individual as such[362]'.

The *Statement* maintained that the *Declaration* that was about to be ratified was the expression of a 'specific universalism', as it is clearly acknowledged today[363]. In fact, when the *American Anthropological Association* was asked to give its opinion on the *Declaration* in its first *Draft*, it opposed to the notion that human rights were universal, by stating that different peoples conceive rights in a different way and consider different authorities as well[364].

Three propositions descend from this declaration. Firstly, 'that the individual realizes his personality through his culture, and therefore, respect for individual differences implies respect for cultural differences. […]. Secondly, respect for differences between cultures is validated by the scientific fact that no technique to qualitatively assess cultures was discovered […] and, thirdly, that standards and values are relative to the culture from which they derive and so, any attempt to formulate postulates that come out of the beliefs or moral codes of a culture restricts to that aspect the applicability of any Declaration of Human Rights to humanity as a whole […] what is considered a human right in a society can be seen as anti-social by another people, or by the people itself in another period of its history[365]'.

Usually, the discussion on universalism and relativism towards human rights is based on the idea that only one of the two conditions can be supported. In reality, they have not to be considered separately because each of them cannot be sustained or defended alone[366]. Moreover, if they are just conceived as two opposites, reality is simplified a lot, as the debate between them is far more articulate[367]. For universalism, only for the fact of being human, every person has some human rights which defend his dignity and which should be enjoyed on equal terms by everybody.

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[361] *v. supra, note 360*, cit.,p.1.
[362] *v. supra, note 360,* cit.,pp.1-2.
[363] *v. supra, note 360*, p.2.
[364] *v. supra, note 360*, p.14.
[365] American Anthropological Association, *Statement on Human Rights,* in American Anthropologist, 49, 1947, 4, p.542, in L. BACCELLI, *I diritti dei popoli. Universalismo e differenze culturali,* Bari-Roma, Editori Laterza, 2009, cit., p.66.
[366] J. K. COWAN, M. B. DEMBOUR, R. A. WILSON, (edited by), *Culture and Rights. Anthropological Perspectives*, Cambridge, Cambridge University Press, 2001, p.56.
[367] *v. supra, note 362*, p.1.

Despite recognizing the presence of cultural and historical diversities between peoples, universalism believes in the existence of some principles valid for everybody since the Enlightenment and the doctrine of natural law, according to which the rights of each person were such by nature and therefore inalienable[(368)]. On the other hand, for relativism, since cultures in the world are many, human rights might be understood in different ways and, as a consequence, human values are not universal[(369)]. Since human rights were born in a specific historic and geographical context, which was not possible to be left out of consideration, these rights cannot be universal. According to the supporters of this theory, the source of human rights has not to be searched in man as an abstract entity, but instead, in man as the outcome of a specific culture which would lead to completely overturn the core of these rights[(370)].

Universalism can mean two different things. First of all, that universal rights are such because they are owned by all the people belonging to a specific class. Dealing with human rights, this class is the whole mankind. Secondly, rights are universal because they create a set of ethical or legal regulations which is universally recognized or in any case established so that to acquire a universal validity[(371)]. Universalism corresponds to a form of ethnocentrism or, even more, to an instrument of cultural imperialism, according to many critics, who argue that universalism supporters are not aware of the fact that the rights we can find in the 1948 *Universal Declaration of Human Rights* and in later legal instruments, express some Western values which can contrast with those of different cultures[(372)]. In reality, both the idea that cultures are static and homogeneous and the idea that international legal documents exclusively display Western culture is a prejudice[(373)].

In fact, the *Universal Declaration* as well as later documents reveal a cross-cultural nature[(374)].

They express a plurality of ideological and cultural awareness, as many scholars highlighted[(375)].

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[(368)]G. DECARLI, *Diritti Umani e Diversità Culturale. Percorsi internazionali di un dibattito incandescente*, Firenze, SEID Editori, 2012, p.22.

[(369)]Y. M. DONDERS, *Towards a Right to Cultural Identity*?, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.14.

[(370)]*v. supra, note 368*, p.25.

[(371)]L. BACCELLI, *I diritti dei popoli. Universalismo e differenze culturali*, Bari-Roma, Editori Laterza, 2009, cit., p.8.

[(372)]T. MAZZARESE, (a cura di), *Diritto, tradizioni, traduzioni. La tutela dei diritti nelle società multiculturali*, Torino, G. Giappichelli Editore, 2013, cit., p.226.

[(373)]*v. supra, note 372.*

[(374)]*v. supra, note 372,* p.27.

[(375)]A. CASSESE, *I diritti umani nel mondo contemporaneo,* Roma-Bari, Laterza, 1988 e *I diritti umani oggi,* Roma-Bari, Laterza, 2005, pp.28-40, 60-74; E. MESSER, *Pluralist Approaches to Human Rights.* In Journal of Anthropological Research, 53, 1997, n.3, pp. 297-298; J. MORSINK, *The Universal Declaration of Human Rights: Origins, Drafting, intent.* Philadelphia, University of Pennsylvania Press, 1999; T. MAZZARESE, *Nuove sfide e tentativi di delegittimazione. Un'introduzione.* In T.MAZZARESE, P.PAROLARI (eds.), *Diritti fondamentali. Le nuove sfide.* Torino, Giappichelli, pp.1-14; in T. MAZZARESE, (a cura di), *Diritto, tradizioni, traduzioni. La tutela dei diritti nelle società multiculturali*, Torino, G. Giappichelli Editore, 2013, cit.,p.234.

It is believed that if the *Universal Declaration* is considered ethnocentric, it is because its creation is insufficiently known. In fact, the representatives of different cultures gathered in the *Commission on Human Rights* which finally drafted the *Declaration*[(376)].

It was especially in the United Nations World Conference on human rights held in Vienna in 1993 where the cross-cultural character of the *Declaration* emerged, as the representatives of several non-governmental national and international organizations of different parts of the world were present as well as the representatives of the State Parties of the United Nations and those of the intergovernmental organizations committed to the promotion and protection of fundamental rights[(377)]. The relationship between universalism and relativism has to be tackled considering that despite the character of human rights is universal, they have to be evaluated in the context of a dynamic evolutionary process of international law, which does not neglect national and regional distinctive traits, as well as the various historical, cultural and religious backgrounds[(378)].

Human rights need a comparison with different cultures in order to acquire a real universal dimension. Their subject must exit from the classic legislation and undertake a reinterpretation of concepts which has not to consider detached individuals but the system of relations in which they are inserted[(379)]. 'Universalism of basic rights is a value, relativism is a fact, as well as equality is a value and diversity is a fact. The latter have to be recognized in order to fulfil the former[(380)]'.

The requirement for basic rights is the awareness of diversity as a fact as well as a value to be protected[(381)]. A mistake is attributed to cultural relativism, that is, the fact of considering cultures as circumscribed realities which respond only to themselves, instead of «media», that is, systems used by men to refer to an anthropological, or even metaphysical reality because it cannot be demonstrated directly, but only through cultural mediation[(382)]. Relativism supporters can intend both that each culture has to be known and explained on the basis of its own history and its own

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[(376)]J. MORSINK, *The Universal Declaration of Human Rights: Origins, Drafting, intent.* Philadelphia, University of Pennsylvania Press, 1999, pp.1-12; P.COSTA, *I diritti oltre lo Stato. La Dichiarazione del 1948 e la sua retorica «universalistica».* In M.SALVATI (ed.), *Dichiarazione universale dei diritti dell'uomo. 10 dicembre 1948. Nascita, declino e nuovi sviluppi.* Roma, Ediesse, 22006, p.51, 55-61 e *Dai diritti del cittadino ai diritti dell'uomo: alle origini della Dichiarazione Onu del 1948*, 2010, pp.16, 23-27. In T.MAZZARESE, P.PAROLARI (eds.), *Diritti fondamentali. Le nuove sfide.* Torino, Giappichelli, pp.15-33, in T. MAZZARESE, (a cura di), *Diritto, tradizioni, traduzioni. La tutela dei diritti nelle società multiculturali*, Torino, G. Giappichelli Editore, 2013, cit., p.234.

[(377)]T. MAZZARESE, (a cura di), *Diritto, tradizioni, traduzioni. La tutela dei diritti nelle società multiculturali*, Torino, G. Giappichelli Editore, 2013, p.235.

[(378)]L. BACCELLI, *I diritti dei popoli. Universalismo e differenze culturali*, Bari-Roma, Editori Laterza, 2009, p.72.

[(379)]A. FACCHI, *I diritti nell'Europa multiculturale. Pluralismo normativo e immigrazione*, Bari-Roma, Editori Laterza, 2001, p.34.

[(380)]*v. supra, note 379,* cit., p.34.

[(381)]*v. supra, note 379.*

[(382)]C. VIGNA, S. ZAMAGNI, (a cura di), *Multiculturalismo e identità*, Milano, Vita e Pensiero Editrice, 2002, p.47.

cultural models, as well as that each culture can be evaluated only through its own standards[(383)]. Cultural relativism can be also conceived as the Western delayed regret towards the colonized and destroyed societies subjected to a supposed pre-eminence of one culture over the others.

This concept faced a crisis with decolonization and the consequences of the Second World War[(384)]. The post-war period was characterized by the adoption of the treaties on human rights, which reflect the highest elements of a specific and single culture, the Western, and which are considered universal because they seem able to assure the free development and respect not just of a specific culture but also of every person who belongs to any culture[(385)]. The fact that in each culture differences, conflicts and contradictions exist is witnessed by the philosophical debate which animates universalism of basic rights. Western scholars are the most dubious about universalism[(386)] and they question the same concept of Western culture in its connections with the values which form part of the *Universal Declaration* and other documents. According to them, the notion along which basic rights express Western culture is absolutely not self-evident[(387)].

According to Bruno Celano,

> 'Western culture is not a uniform block, because it is conflicting in its interior. This point tends to be hidden if, one the one hand, it is thought that the crucial problem concerns the relationship or compatibility between the rhetoric of rights, which expresses a supposed unitary Western culture and, on the other hand, non-Western cultures. It is worthy to wonder if, to what extent, according to which aspects, limited to which components, and so on, a culture of human rights in its different and conflicting parts, is compatible with the specific parts of Western culture or not. The answer to this is not always affirmative. It is a sign of short-sightedness maintaining the existence of a Western culture that, differently from the others, would be integrally compatible with human rights[(388)]'.

In addition to this research, another analysis suggests to downsize the range of the differences for which the connection of certain cultures with the culture of fundamental rights is complicated, by

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[(383)]T. PITCH, *I diritti fondamentali: differenze culturali, disuguaglianze sociali, differenza sessuale*, Torino, G. Giappichelli Editore, 2004, p.29.

[(384)]*v. supra, note 383.*

[(385)]*v. supra, note 383*, cit., p.30.

[(386)]T. MAZZARESE, (a cura di), *Diritto, tradizioni, traduzioni. La tutela dei diritti nelle società multiculturali*, Torino, G. Giappichelli Editore, 2013, p.227.

[(387)]*v. supra, note 386*, pp.228-229.

[(388)]B. CELANO, *Diritti umani e diritto a sbagliare, La cultura occidentale è compatibile con i diritti umani?*, 2005, In Jura Gentium. Rivista di filosofia del diritto internazionale e della politica globale. Online all'URL http://www.juragentium.unifi.it/it/forum/ignatief/celano.htm, in T. MAZZARESE, (a cura di), *Diritto, tradizioni, traduzioni. La tutela dei diritti nelle società multiculturali*, Torino, G. Giappichelli Editore, 2013, cit., p.229.

questioning the spread characterisation of some of the non-Western cultures[(389)]. In fact, the values expressed in the *Universal Declaration* as well as in later documents, can be also found in Islam, in traditional African societies, in Confucian China or in Hindu India as many authors argue[(390)].

Even if equality of fundamental rights has been sanctioned, cultural differences are not excluded and they 'contribute to make of each person an individual different from each other and of each individual a person like any other[(391)]'.

Nowadays, relativism is not just an anthropological doctrine, but it also focuses on politics and power centres. In this logic, it represents a resistance against a common global sense as well as an instrument to question the universal thought which is typical of the process of globalization[(392)].

As already stated at the end of the first paragraph, cultural rights have met some difficulties in their recognition also because they were accused of threatening the universality of human rights and of supporting some practices which were harmful for the human dignity through the protection of cultural diversity[(393)]. Cultural diversity has not to be seen as an absolute value to be protected because it is not exempt from the observance of human rights and fundamental freedoms. In fact, in both the *UNESCO* Conventions of 2001 and 2005, it is reiterated that 'cultural diversity cannot be invoked to justify a violation of human rights and fundamental freedoms[(394)]'.

Even the *Fribourg Declaration* states that 'nobody can invoke these rights to violate another right recognized under the *Universal Declaration* or under other instruments concerning human rights[(395)]'.

In this sense, human rights are not questioned by cultural rights protection because this is obliged to the respect of human rights and so, cultural rights implementation cannot lead to the violation of other human rights[(396)].

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[(389)]T. MAZZARESE, (a cura di), *Diritto, tradizioni, traduzioni. La tutela dei diritti nelle società multiculturali*, Torino, G. Giappichelli Editore, 2013, p.229.

[(390)]*v. supra, note 389.*

[(391)]L.FERRAJOLI, *La differenza sessuale e le garanzie dell'uguaglianza,* in *Democrazia e diritto*, 33, 1993, n.2, p.53, in T. MAZZARESE, (a cura di), *Diritto, tradizioni, traduzioni. La tutela dei diritti nelle società multiculturali*, Torino, G. Giappichelli Editore, 2013, cit., p.283.

[(392)]M.HERZFELD, *Antropologia: pratica della teoria nella cultura e nella società*, Seid, Firenze, 2006, cit., p.6, in G. DECARLI, *Diritti Umani e Diversità Culturale. Percorsi internazionali di un dibattito incandescente*, Firenze, SEID Editori, 2012, cit., p.27.

[(393)]J.H. BURGERS, *Introduction Item: the Right to Cultural Identity,* in J. BERTIN ET AL. (eds.), *The Human Rights in a Pluralist World: Individuals and Collectivities,* Meckler, Westport, 1990, pp.252-253, in M. FERRI*, Dalla partecipazione all'identità. L'evoluzione della tutela internazionale dei diritti culturali*, Milano, Vita e Pensiero Casa editrice, 2015, cit.,p.65.

[(394)]M. FERRI*, Dalla partecipazione all'identità. L'evoluzione della tutela internazionale dei diritti culturali*, Milano, Vita e Pensiero Casa editrice, 2015, cit., pp.65-66.

[(395)]*Fribourg Declaration of Cultural Rights*, II *Considerando* e art.1, lett. c), in M. FERRI*, Dalla partecipazione all'identità. L'evoluzione della tutela internazionale dei diritti culturali*, Milano, Vita e Pensiero Casa editrice, 2015, cit.,p.67.

[(396)]M. FERRI*, Dalla partecipazione all'identità. L'evoluzione della tutela internazionale dei diritti culturali*, Milano, Vita e Pensiero Casa editrice, 2015, p.67.

Since cultural rights protect cultural identity, they were criticized of promoting an excessive particularism, jeopardizing in this way the universality of human rights[(397)]. However, the principle of cultural suitability is able to reject this critique because the cultural character of human rights proves that cultural rights guarantee to universality and particularity to meet each other. Universalism of human rights does not mean that rights have to be applied following a model, but, on the contrary, that their implementation considers the cultural dimension of every single right as well as the cultural characteristics of every different situation[(398)].

Finally, cultural rights enable us to find the correct meaning to be given to the principle of universality of human rights because despite being universally accepted, they have not the same fulfilment every time, depending this on the cultural resources available in each specific context[(399)].

[(397)] J.H. BURGERS, *Introduction Item: the Right to Cultural Identity,* in J. BERTIN ET AL. (eds.), *The Human Rights in a Pluralist World: Individuals and Collectivities,* Meckler, Westport, 1990, p.252, in M. FERRI*, Dalla partecipazione all'identità. L'evoluzione della tutela internazionale dei diritti culturali*, Milano, Vita e Pensiero Casa editrice, 2015, p.67.

[(398)] *v. supra, note 396*, cit.,p.67.

[(399)] *v. supra, note 396,* pp.67-68.

# Chapter two

# Linguistic rights in International Law

## 1. The development of linguistic rights as a category of cultural rights

'Language is one of the most fundamental components of human identity.
Hence, respect for a person's dignity is intimately connected with respect for a person's identity and consequently for the person's language[(400)]'.

'Language is a bedrock principle of international human rights law[(401)]'.

'The importance of language rights is grounded in the essential role that language plays in human existence, development and dignity. It is through language that we are able to form concepts; to structure and order the world around us. Language bridges the gap between isolation and community, allowing human beings to delineate the rights and duties they hold in respect of one another, and thus to live in society[(402)]'.

'[…]without language we could not delineate any rights and duties at all. In this general sense, language is the conceptual substructure of all rights and indeed all other moral concepts.
It is not merely a desirable feature of human life; it is an essential one[(403)]'.

«Lingua facit pacem»[(404)].

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[(400)]Explanatory note to *The Oslo Recommendations regarding the linguistic rights of national minorities*, February 1998, Foundation on Inter-Ethnic Relations, Prinsessegracht 22, 2514 AP, The Hague, cit.,p.11.
[(401)]*Guidelines on the use of Minority Languages in the Broadcast Media*, October 2003, cit., p.16.
[(402)]L. GREEN, *Are Language Rights Fundamental?,* in Osgoode Hall Law Journal, York University, Vol. 25, No. 4, winter 1987, Article 1, *http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1831&context=ohlj,* cit., pp.650-651.
[(403)]*v. supra, note 402*, cit., p.651.
[(404)]Latin dictum, in R. TARAS, *Nations and Language-Building: Old Theories, Contemporary Cases, Nationalism and Ethnic Politics,* 1998, cit., p.79.

The first chapter had the purpose of highlighting the complexity of cultural rights within the human rights family. The difficulty in their characterisation mainly lies in the fact that they create a category of rights which overlaps other classes of rights[(405)]. The previous chapter also showed that the right to cultural identity is a particularly hard kind of cultural right because it can delineate both a concept and a cultural right including or 'underlying sub-rights in the field of culture[(406)]' which comprehend religious rights, land rights and linguistic rights[(407)]. As a consequence, it can be understood that linguistic rights are a sub-category of the major category of cultural rights, which, in its turn, forms part of the even larger class of human rights. According to Meyer-Bisch, linguistic rights are contained in cultural rights because culture must be conceived as a manifestation of the identity of a single individual or of a group of people and not just as a product of consumption[(408)]. 'Some commentators maintain that language, because it is so meaningful and widespread a format of transmission for a people's culture, is the most important of all cultural rights[(409)]'.

Linguistic rights, also called language rights, are human and civil rights[(410)] which belong to both single individuals and communities and they indicate the right to use their own native language even if it does not correspond to the standard or official language of the State in which the single individual or communities live. The most evident example of this concerns the language of minorities which live in a wider political community[(411)], that is, the legal situation of people who speak languages which are not dominant or of places where there is no any dominant language[(412)]. Under the notion of linguistic rights, the single individual has the right to use his native language as well as minorities have the right to use their language in private as well as at school and in other public and juridical places[(413)]. 'When two or more languages are officially recognized, […] the purpose of these rights is to enable speakers of the minority language to use their own language rather than the majority language[(414)]'.

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[(405)]Y. M. DONDERS, *Towards a Right to Cultural Identity?*, School of Human Rights research series, vol. 15, Oxford-New York, Intersentia Antwerpen Publisher, 2002, p.93.

[(406)]*v. supra, note 405*, cit.,p.93.

[(407)]*v. supra, note 405,* cit.,p.93.

[(408)]*v. supra, note 405*, p.70.

[(409)]W. K. BARTH, *On cultural rights : the equality of nations and the minority legal tradition*, Leiden-Boston, Brill Publishers, 2008, cit., p.10.

[(410)]*Linguistic rights*, from Wikipedia, The Free Encyclopaedia, *https://en.wikipedia.org/wiki/Linguistic_rights*, last accessed 09/02/2016.

[(411)]L. M. SAVOIA, *Diritti linguistici, in Enciclopedia dell'italiano 2010, Treccani, la cultura italiana, http://www.treccani.it/enciclopedia/diritti-linguistici_%28Enciclopedia_dell'Italiano%29*, p.1, last accessed 09/02/2016.

[(412)]X. ARZOZ, *The Nature of Language Rights*, *http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf*., in JEMIE, 6, European Centre for Minority Issues, 2007, p.4.

[(413)]*v. supra, note 411*; *Linguistic rights*, from Wikipedia, The Free Encyclopaedia, *https://en.wikipedia.org/wiki/Linguistic_rights*, last accessed 09/02/2016.

[(414)]D. G. RÉAUME, *Official-Language Rights: Intrinsic Value and the Protection of Difference,* in W. KYMLICKA and W.NORMAN, (eds)., *Citizenship in Diverse Societies,* Oxford, Oxford University Press, 2000, in X. ARZOZ, *The Nature of*

Certainly, language rights also belong to those people who speak a dominant language, but, in this case, these rights are pledged and implemented by practices and regulations of the society[(415)].

As far as the speakers of dominant languages are concerned, rules within different languages can control the use of just one language. If a dialect is imposed in the school system of a State, on the one hand this will obviously promote one region over another, and on the other hand, it will penalize native speakers of non-standard dialects, exactly as the forcing of a language penalizes the native speakers of languages which are not official. In any case, generally, academic writings and international legal instruments neglect or omit these disagreements between languages[(416)].

Some rights which are included in the category of linguistic rights are, for example, the right to choose the language to be used in administrative and legal situations, as well as in judicial acts, the language to be used in education, as well as in the media. In international law, linguistic rights are contained in the family of cultural and educational rights[(417)]. However, some scholars argue that giving a definition of linguistic rights seems to be an unattainable challenge.

'The only valid generalization one can make about linguistic rights is that the practical meaning of such rights has not yet been established anywhere[(418)]'. Differently from the more common liberal-democratic rights, linguistic rights are not yet justified in an adequate manner by an overall account, even though the historical, sociological, and even legal literature on them is abundant[(419)]. Anyway, both State and human conduct procedure always involves a linguistic element, in a direct or indirect manner[(420)].

Consequently, linguistic rights deal with the regulations adopted by public institutions concerning the use of a language in multiple situations[(421)]. From a constitutional perspective, such rights indicate a specific language or a little cluster of languages [(422)].

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*Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, cit.,p.4.

(415)X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.4.

(416)*v. supra, note 415.*

(417)*Linguistic rights*, from Wikipedia, The Free Encyclopaedia, https://en.wikipedia.org/wiki/Linguistic_rights, last accessed 09/02/2016.

(418)D. A. KIBBEE, *Presentation: Realism and Idealism in Language Conflicts and Their Resolution,* in D. A. KIBBEE (ed.), *Language Legislation and Linguistic Rights: Selected Proceedings of the Language Legislation and Linguistic Rights Conference, the University of Illinois at Urbana-Champaign, March 1996,* J. Benjamin Publishers, Amsterdam, Philadelphia, 1998, in X. ARZOZ, The Nature of Language Rights, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, cit., p.4.

(419)L. GREEN, *Are Language Rights Fundamental?,* in Osgoode Hall Law Journal, York University, Vol. 25, No. 4, winter 1987, Article 1, http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1831&context=ohlj, cit., p.640.

(420)*v. supra, note 415.*

(421)W. KYMLICKA, A. PATTEN, (edited by), *Language Rights and Political Theory,* Oxford, Oxford University Press, 2003, pp. 16-25, in X. ARZOZ, The Nature of Language Rights,

The issue of linguistic rights dates back to the epoch of ancient documents such as edicts, instructions and regulations which had to be spread and be as clear as possible since they were an expression of public interest in early European history. In fact, in the Middle Ages, it was precisely the need of clearness which dictated the passage from the use of Latin to oral vernacular languages in written texts in addition to reasons of identity, and this was particularly evident in the case of legal documents[(423)]. For example, the «Placiti campani», one of the most ancient new Latin documents of the tenth century B.C., were written in vernacular, such as *the Strasbourg oaths* which declared the renewed alliance between the king of the Western Franks and the king of Bavaria in 842 B.C.[(424)]. During the sixteenth century, early national politics were witnessed by unambiguous linguistic directives, such as the Villers-Cotterêts decree of 1539, through which the King of France Francis the First dictated to use the French language in all public documents, as well as the administrative orders through which the Arabic language in Spain and native languages in the American colonies were banned by the Spanish Kings. Finally, also *the Act for the English order, habit, and language* of 1536-37, through which the English government aimed at establishing English language and culture in Ireland, can be mentioned[(425)].

At the beginning, linguistic rights played a vital role in maintaining stability in those States which were characterized by divisions on the grounds of nationality or language on the basis of linguistic diversity[(426)]. Since national language is the main parameter of the symbolic assimilation of the State, in modern times the matter of linguistic rights was connected to the development of national States in the nineteenth century. In fact, national language provides the psychological means for self-identification on the territorial, ethnic, and cultural basis to the State, causing therefore the exclusion of the linguistic and cultural realities which cannot be attributed to it[(427)].

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http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.4.

[(422)]X. ARZOZ, The Nature of Language Rights, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.4.

[(423)]L. M. SAVOIA, *Diritti linguistici, in Enciclopedia dell'italiano 2010, Treccani, la cultura italiana,* http://www.treccani.it/enciclopedia/diritti-linguistici_%28Enciclopedia_dell'Italiano%29, p.1.

[(424)]*v. supra, note 423.*

[(425)]R. EUFE, *Vicende coloniali e usi linguistici. I veneziani ed il volgare a Creta e a Venezia,* in *Lingue, istituzioni, territori. Riflessioni teoriche, proposte metodologiche ed esperienze di politica linguistica.* Atti del XXXVIII congresso internazionale della Società Linguistica Italiana, Modena, 23-25 settembre 2004, a cura di C. Guardiano et al., Roma, Bulzoni, pp.193.206, in L. M. SAVOIA, *Diritti linguistici, in Enciclopedia dell'italiano 2010, Treccani, la cultura italiana,* http://www.treccani.it/enciclopedia/diritti-linguistici_%28Enciclopedia_dell'Italiano%29, p.1.

[(426)]*Linguistic rights*, from Wikipedia, The Free Encyclopaedia, cit., https://en.wikipedia.org/wiki/Linguistic_rights, last accessed 09/02/2016.

[(427)] B. ANDERSON, *Comunità immaginate. Origini e fortuna dei nazionalismi.* Roma, Manifestolibri, 1st ed., *Imagined communities. Reflections on the origin and spread of nationalism*, London, Verso, 1991, in L. M. SAVOIA, *Diritti linguistici, in Enciclopedia dell'italiano 2010, Treccani, la cultura italiana,* http://www.treccani.it/enciclopedia/diritti-linguistici_%28Enciclopedia_dell'Italiano%29, p.1.

As a consequence, it can be easily imagined that nationalism has always taken position against the linguistic rights of minority groups by definition and this was evident especially under the fascism period and the language policy it adopted. Minorities were assimilated and suppressed; moreover, *the Commission for the Italian character of the language*, which aimed at protecting language purity and identity, was established in 1941[(428)]. Since language is the main means which enables people and nations to communicate, none State can declare neutral from a linguistic point of view and, as proved by the process of State-building, there were always intense policies pushing towards a linguistic homogenization[(429)]. Not only language has communicative and instrumental functions, but also symbolic functions which allowed the creation of collective identities.

Corpus planning, that is, the standardization of scripts, semantics and grammar, and the canonization of literatures, were among the most prominent policy tools in processes of nation-building worldwide[(430)]. Anyway, it was only in the twentieth century that an official status was conferred to linguistic rights in the political field as well as in international treaties[(431)].

'The field of language rights is a relatively new one for normative political theorists, and to some extent we are still sorting out the relevant questions[(432)]'. At present, linguistic rights are thought to be part of human rights, intended as universal human rights which provide State obligations[(433)], such as the right of freedom of the individual because they are linked to the traditions of the Enlightenment and Liberalism which conceived the human being as the guardian of an original set of individual, collective and natural rights[(434)].

The *Déclaration des droits de l'homme et du citoyen*, which was adopted by the National Assembly in 1789 during the French Revolution, established this notion and it ascribed a natural state of

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[(428)]G. KLEIN, *La politica linguistica del fascismo,* Bologna, Il Mulino, 1986, in L. M. SAVOIA, *Diritti linguistici, in Enciclopedia dell'italiano 2010, Treccani, la cultura italiana,* http://www.treccani.it/enciclopedia/diritti-linguistici_%28Enciclopedia_dell'Italiano%29, p.1.

[(429)]E. WEBER, *Peasants into Frenchman,* Chatto and Windus, London, 1979, in M. KOENIG, P. de GUCHTENEIRE, (edited by), *Democracy and human rights in multicultural societies*, Paris : UNESCO; Aldershot ; Burlington, VT : Ashgate, 2007, p.10.

[(430)]B. ANDERSON, *Imagined Communities. Reflections on the Origin and Spread of Nationalism,* Verso, London, 1983; S. WRIGHT, *Language Policy and Language Planning. From Nationalism to Globalization,* Palgrave, London/New York, 2004, in M. KOENIG, P. de GUCHTENEIRE, (edited by), *Democracy and human rights in multicultural societies*, Paris : UNESCO; Aldershot ; Burlington, VT : Ashgate, 2007, cit.,p.10.

[(431)]*Linguistic rights*, from Wikipedia, The Free Encyclopaedia, https://en.wikipedia.org/wiki/Linguistic_rights, last accessed 09/02/2016.

[(432)]W. KYMLICKA, A. PATTEN, (edited by), *Language Rights and Political Theory*, Oxford, Oxford University Press, 2003, cit., p.51.

[(433)]X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.7.

[(434)]P. CARROZZA, *Profili giuridico-istituzionali,* in *L'esilio della parola. La minoranza linguistica albanese in Italia. Profili storico-letterari, antropologici e giuridico-istituzionali,* a cura di F. ALTIMARI, M. BOLOGNARI, P. CARROZZA, Pisa, ETS, 1986, pp.115-217; A. PIZZORUSSO, *Minoranze e maggioranze,* Torino, Einaudi, 1993, in L. M. SAVOIA, *Diritti linguistici, in Enciclopedia dell'italiano 2010, Treccani, la cultura italiana,* http://www.treccani.it/enciclopedia/diritti-linguistici_%28Enciclopedia_dell'Italiano%29, cit.,pp.1-2.

equality and freedom before the law to every individual and especially the right to freely communicate one's own opinions and thoughts[435].

The current debate on language rights consists of three parameters regarding their being part of fundamental rights. The three parameters do not conflict with each other, indeed, they can blend together[436]. The first one, which refers to the basic categorisation of linguistic rights within the fundamental rights family, states that language rights and fundamental rights do not represent two distinct universes even though the first cannot be mistaken for the second. Besides, fundamental rights have an important position in the protection of linguistic diversity[437].

Since freedom of speech involves the choice of the language of speech, the right to respect for private and family life involves respect for cultural customs and language spoken in the private sphere, and the right to fair trial implies the necessity for the accused to understand the language of the accusation, otherwise an interpreter will be required, it can be inferred that several basic rights contain a non-stated linguistic character. Their recognition is generally universal even though they can be more or less evident; moreover, every person can benefit from these rights independently from his language or Country[438]. The basic categorisation of linguistic rights within the fundamental rights family is especially demonstrated by freedom of language.

In a State which is respectful from the linguistic point of view, an appropriate jurisprudence on language is not usually needed, as well as a suitable constitutional identification is not necessary for freedom of language. Sometimes, freedom of language is clearly identified by some constitutional regimes, which are defined 'openly multilingual' legal orders[439], such as the German, «Sprachenfreiheit», and the French, «liberté de la langue»[440], where freedom of language was born as a linguistic minorities right historically[441].

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[435] L. M. SAVOIA, *Diritti linguistici, in Enciclopedia dell'italiano 2010, Treccani, la cultura italiana,* http://www.treccani.it/enciclopedia/diritti-linguistici_%28Enciclopedia_dell'Italiano%29, p.2.

[436] X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.25.

[437] B. DE WITTE, *Fundamental Rights and the Protection of Linguistic Diversity,* in Paul Pupier and José Woerhling (eds.), Language and Law: Proceedings of the First Conference of the International Institute of Comparative Linguistic Law, Wilson and Laufleur, Montreal, 1989, p.85; A. MILIAN-MASSANA, *Language Rights and Fundamental Rights in Spain,* 30 Revista Vasca de Administración Pública, 1991, p.69, J. VERNET, E. PONS, A. POU, J. RAMON SOLÉ and A. M. PLA, *Language Law,* Cossetània, Valls, 2003, pp.139-158, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.25.

[438] *v. supra, note 436*, cit., p.25.

[439] *v. supra, note 436*, cit., p.25.

[440] *v. supra, note 436*, cit., p.25.

[441] E. D. FAINGOLD, *Language Rights and language justice in the constitutions of the world. Language Problems and Language Planning,* 2004, p.13, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, pp.25-26.

In the case of States which do not present any provisions concerning freedom of language in their constitutional orders, the subject of such a freedom is guaranteed in any case if they are democratic. Moreover, as already seen, when freedom of language is not explicitly recognized from the constitutional point of view, it can be inferred by basic rights such as, for instance, ban of discrimination, freedom of expression, and right to respect for private and family life [(442)].

The Constitution of Belgium, for instance, states in Article 30: 'The use of languages current in Belgium is optional; only the law can rule on this matter, and only for acts of the public authorities and for legal matters[(443)]' and this notion dates back to the *1831 Belgian liberal Constitution*, proving that it was not conditioned by the prospect of defending minority groups or by the legislation on human rights of the post-war period[(444)]. The jurisprudence of Austria recognizes too freedom of language since the *St. Germain peace treaty* of 1919, whose Article 66, which is included *in the Austrian Constitution* according to its Article 149(1), proclaims:

> '(3) No restriction shall be imposed on the free use by any Austrian national of any language in private intercourse in commerce, in religion, in the press, or in publications of any kind, or at public meetings. (4) Notwithstanding any establishment by the Austrian Government of an official language, adequate facilities shall be given to Austrian nationals of non-German speech for the use of their language, either orally or in writing, before the courts[(445)]'.

Freedom of language was a non-written basic right for the federal court of Switzerland originally and, since 1999, it makes part of the Swiss constitutional order in Article 18[(446)].

Finally, also the 1996 *South African Constitution* declares in Section 30 that 'everyone has the right to use the language and to participate in the cultural life of their choice[(447)]'.

To sum up, since freedom of language is neither restricted to a specific territory nor to a specific individual speaking a specific language, it is defined a universal right.

It refers to the right to use one's mother tongue or any other language both orally and in writing.

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[(442)] X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, cit., p.26.

[(443)] *v. supra, note 442*.

[(444)] B. DE WITTE, *Droits Fondamentaux et protection de la diversité linguistique,* in Pupier and Woehrling (eds.), *Language and Law,* Montréal, Wilson et Laufleur, 1989, p.92, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, cit., p.26.

[(445)] *v. supra, note 442,* note 114, p.26.

[(446)] *v. supra, note 442*, p.26.

[(447)] M. REDDI, *Minority language rights in South Africa: a comparison with the provisions of international law,* CILSA, 2002, vol. XXXV, No. 3, p.332, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.26.

It is argued that basic rights would be hindered if the languages which are not dominant were suppressed[448]. Freedom of language refers to the private sector and to the right to the free choice of linguistic conduct. It does not only refer to minority groups but to all individuals, it cannot damage other people rights and it must respect the goals which a community has decided to achieve[449].
The second parameter maintains that linguistic or language rights can be considered fundamental rights only when the Constitutions confer them such a role, which is the reason why this criterion is defined relativist[450]. According to Turi, a distinction has to be made between the right to a language and the right to the language. The former, concerns the right to use one or more chosen languages in different spheres, especially in official domains; the second, concerns the right to use any language in various domains, particularly in informal spheres[451]. Authorities and citizens in society use one or a number of languages to communicate, and it can happen that the choice of such language or languages represents a constitutional supposition of uniformity at the linguistic level, in the sense that any action proclaiming it is required[452].

'The designated language(s) determine(s) the linguistic behaviour of government, the languages allowed in the relationships between it and citizens, and the linguistic content of public services being delivered[453]'.

Following Turi's line of reasoning:

> 'The right to the language will become an effective fundamental right, like other fundamental rights, only to the extent it is enshrined not simply in higher legal norms, but also in norms with mandatory provisions that identify as precisely as possible the holders and the beneficiaries of language rights and language obligations, as well as the legal sanctions that accompany them[454]'.

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[448] P. KIRCHHOFF, *Deutsche Sprache,* in Josef Isensse and Paul Kirchhoff (eds.), Handbuch des Staatsrechts der Bundersrepublik Deutschland I, 1995, p.764, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.26.
[449] X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.26.
[450] *v. supra, note 449*, p.28.
[451] *v. supra, note 449*, cit.,p.28.
[452] P. KIRCHHOFF, *Deutsche Sprache,* in Josef Isensse and Paul Kirchhoff (eds.), Handbuch des Staatsrechts der Bundersrepublik Deutschland I, 1995, p.764, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, cit.,p.28.
[453] *v. supra, note 449,* cit.,p.28.
[454] J.G. TURI, *Typology of Language legislation,* in Skutnabb-Kangas and Phillipson, (eds.), 1995, p.116, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, cit.,p.28.

In Constitutions that protect linguistic diversity, Articles which deal with the preservation and promotion of language are divided from those concerning traditional basic rights. However, the former are not less important than the latter[455]. For instance, *the Spanish Constitution* provides Articles about the conditions of languages in the Preliminary Title and fundamental rights in Title I. This separation increases the importance of the provisions on the conditions of languages for the national unity from a political point of view. The protection attributed to basic rights is not contemplated for language rights, which descend from the Articles on the condition of languages, that exceed the linguistic nature of traditional fundamental rights. Nevertheless, in case of correction, the provisions on linguistic rights are exposed to stronger requisites than those concerning the Articles on fundamental rights.

To sum up, linguistic rights are not recognized as basic rights under *the Spanish Constitution*, but they are not secondary to the latter for this reason[456]. Any right dealing with the use of languages is clearly provided under the Spanish constitutional order, which just declares that the languages of the different autonomous communities are official in its Article 3(2). Anyway, the official character of the languages spoken in Spain is a proper aspect of its Constitution, which makes the recognition of linguistic rights in Catalonia, Galicia, and the Basque region possible. Moreover, there are also other linguistic expressions which deserve protection under Article 3(3). As a consequence, language rights have two aspects under *the Spanish Constitution*: the rules about official languages as well as those about the safeguard of other languages[457].

In conclusion, linguistic rights are a socio-political construction and they are not universal with respect to the second parameter. The institutionalization of linguistic rights by some States and not by others is clarified through the connection between the socio-political and the legal. However, this criterion only attests that States adopt a different method towards linguistic rights as basic rights and therefore it does not legitimize the linguistic rights identification[458].

The third parameter deals with illustrating how language rights link to fundamental rights.

It emphasizes the peculiarity of authentic language rights[459]. Traditional basic rights have a universal character and protect the freedom of the single individual against his State whether it is invasive or coercive as well as personal independence aiming at achieving all people and

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[455] X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.28.

[456] *v. supra, note 455*, pp.28-29.

[457] *v. supra, note 455,* p.29.

[458] *v. supra, note 455*, cit., p.30.

[459] P. FOUCHER, *Le Droit et les Langues en Contact: du Droit Linguistique aux Droits des Minorités Linguistique,* in Anette Boudreau, Lise Dubois, Jacques Maurais, and Grant McConell (eds.), L'Ecologie des langues, 2002, pp.50-51, 54, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.30.

communities parity. On their side, linguistic rights concern the supervision of public services and the social management through one or more chosen language, for instance, in the field of education, when relating with authorities, in publications of legislation, as well as in the signage of streets and roads[(460)] but they do not concern personal behaviour. Therefore, it could be stated that linguistic rights defend social freedom and equality, going beyond those of the single person, but, anyway, such a defence is restricted to a number of linguistic groups within the same territory.

From this point, the essence of the character of linguistic rights can be inferred, that is, that language rights may have an individual dimension, but they also have a collective dimension that should influence their extent and their interpretation[(461)].

As underlined by Fernand de Varennes, one of the most important legal specialists on linguistic rights[(462)], the international legal instruments show that linguistic rights are attributed to the rights of minorities or communities in an improper way because in reality claims to the use of minority languages are considered human rights of the single individual. Although minorities do not own collective rights in themselves, the reflection on human rights at international level compels States to the respect and promotion of linguistic diversity by opposing to language homogenization[(463)].

Nowadays, the protection of fundamental freedoms and linguistic differences is weakened by socio-cultural and economic globalization which shows the tendency to establish the same cultural frameworks and a lingua franca, such as the English language. On the one hand, Western societies are more and more multicultural and multilinguistic; on the other hand, there is a spread awareness of the fact that the languages spoken all around the world create a common heritage to all peoples[(464)]. This is the reason why *UNESCO General Conference* established the *International Mother Language Day* on 21st February 1999.

The General Conference believed that linguistic diversity was a quality to be protected as well as a principle of tolerance and reciprocal respect between different peoples and cultures in its No.12 *Resolution* entitled *Implementation of a global language policy based on multilingualism.*

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[(460)]X. ARZOZ, *The Nature of Language Rights*, *http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf*., in JEMIE, 6, European Centre for Minority Issues, 2007, cit., p.31.

[(461)]*v. supra, note 460*, p.54, cit., p.31; L.LE BORGNE, *Language Rights in Education and in the Administration in Austria-Hungary Between 1867 and 1941,* in P. PUPIER and J. WOEHRLING (eds.), *Language and Law*: *Proceedings of the First Conference of the International Institute of Comparative Linguistic Law,* Wilson and Laufleur, Montréal, 1989, pp. 325, 341.

[(462)]M. PAZ, *The Failed Promise of Language Rights: A Critique of the International Language Rights Regime*, in Harvard International Law Journal, Vol. 54, No.1, winter 2013, cit.,p.160.

[(463)]F. de VARENNES, *Language, Minorities and Human Rights,* Martinus Nijhoff, The Hague, 1996, in M. KOENIG, P. de GUCHTENEIRE, (edited by), *Democracy and human rights in multicultural societies*, Paris : UNESCO; Aldershot ; Burlington, VT : Ashgate, 2007, p.10.

[(464)]L. M. SAVOIA, *Diritti linguistici, in Enciclopedia dell'italiano 2010, Treccani, la cultura italiana, http://www.treccani.it/enciclopedia/diritti-linguistici_%28Enciclopedia_dell'Italiano%29*, p.3.

Since 1981 with the *Arfè Resolution* on the promotion of the cultural and linguistic heritage of the European regions, even the European Parliament started to deal with linguistic rights.
More recently, in 2005, the *Communication of the European Commission on multilingualism* linked multilingualism to a broader and more tolerant culture which states the basic values of the individual freedom declaring that:

> 'In addition to the twenty-three official languages in the European Union […] there are more than sixty indigenous languages and dozens of non-indigenous languages spoken by the communities of migrants. It is precisely this diversity that makes the European Union […] not a melting-pot in which differences blend, but a common home where […] our many native tongues are a source of wealth and a bridge towards greater solidarity and mutual understanding. […]
> Together with respect for the individual, openness towards other cultures, tolerance and acceptance of others, respect for linguistic diversity is a core value of the European Union[(465)]'.

Today, linguistic diversity caused by migration at a global level and by social networks based on new electronic means to communicate, poses a challenge to the traditional notion of nation-state together with the multilingualism which international human rights forced on States.
International law does not provide neither new frameworks nor a collection of evident values and regulations in order to fulfil linguistic diversity[(466)]. New policies are therefore needed to guarantee language rights respect[(467)].
The first *International Congress of Linguistic rights* was held in Teramo, Italy, in May 2015 and it was organized by the University of the city together with the *International Academy of Linguistic Law*[(468)]. The Congress gathered the fourteenth *International Conference of the International Academy of Linguistic Law* on law and language, as well as the nine Days of Linguistic Rights.
The scientific Partnership of the European Multilingualism Observatory, the International Observatory of Linguistic Rights, the Language policies Group of the Society of Italian Linguistics

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[(465)] L. M. SAVOIA, *Diritti linguistici, in Enciclopedia dell'italiano 2010, Treccani, la cultura italiana,* http://www.treccani.it/enciclopedia/diritti-linguistici_%28Enciclopedia_dell'Italiano%29, cit., p.3.
[(466)] X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.31.
[(467)] M. KOENIG, *Cultural diversity and language policy,* International Social Science Journal, No. 161,1999, pp.401-408; W. KYMLICKA, A. PATTEN, (eds)., *Language Rights and Political Theory,* Oxford, Oxford University Press, 2003, in M. KOENIG, P. de GUCHTENEIRE, (edited by), *Democracy and human rights in multicultural societies*, Paris : UNESCO; Aldershot ; Burlington, VT : Ashgate, 2007, p.10.
[(468)] *I diritti linguistici tra rappresentazioni, ideologie e politiche linguistiche. Quali rapporti, quale(i) intervento(i)?* in Primo Congresso Mondiale dei Diritti Linguistici, XIV Conferenza internazionale dell'Accademia Internazionale di Diritto Linguistico – IX Giornate di dei Diritti Linguistici, Teramo, Italia, 19-23 maggio 2015, Prima circolare, 3 giugno 2014, http://www.associazionelemitalia.org/attachments/article/107/Teramo%20CMDL%202015%20-%20Prima%20Circolare_ITA.pdf, p.1.

and the University of the Euro-linguistic network, as well as other several Universities all around the world with the University of Teramo in particular, gave support to this event[(469)].

At the Congress, experts of different disciplines were gathered together, such as Law, Linguistics, Sociology, Science, Politics and Economics since linguistic rights constitute a wide field of research. The meeting focused on the analysis of the relationship between linguistic representations, the models on the bases of which such representations are built or conditioned, and ideas and judgements on languages, to the concrete level of these linguistic imaginaries at the level of language policies[(470)]. An important part of the event was saved for the study of linguistic planning strategies because the goal of the Congress was the advancement in the building of a linguistics of intervention at the global level. In order to achieve this aim, different institutions as well as members of the civil society participated at the Congress and gave a particular attention to some issues considered urgent by the public opinion and by linguistic minorities in addition to the scientific and artistic groups.

Several sessions structured the Congress in a logical way so as to delineate some coherent conclusions and each session was focused on a specific topic for research[(471)]. For example, the first topic analysed was focused on the relation between the single individual and his linguistic community, which was multilingual, and the questions of linguistic sovereignty and linguistic disadvantage. The second session was characterized by the identities representations in a multilingual situation, explaining the reasons and the means of intervention. In the third session, the explored theme was language law, that is, the methods of legal codification of linguistic rights and the influence of the linguistic-cultural level on that codification. Besides, the notion of law and language as outcomes of the tradition of a community was observed. The fourth topic took into consideration concerned the case studies dealing with shortages and legal and political violations of linguistic rights, such as the excess of recognition or political manipulation, which can be directly or indirectly linked to the distortions of the social and cultural representations of languages.

The following topic was about the linguistic rights in front of linguistic supremacies, that is, about the role linguistic rights have in creating an equilibrium between linguistic hegemonies.

Some key-points were linguistic majorities and minorities from the historical point of view, the new linguistic minorities and the indigenous populations rights, as well as linguistic rights at work and

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[(469)] *I diritti linguistici tra rappresentazioni, ideologie e politiche linguistiche. Quali rapporti, quale(i) intervento(i)?* in Primo Congresso Mondiale dei Diritti Linguistici, XIV Conferenza internazionale dell'Accademia Internazionale di Diritto Linguistico – IX Giornate di dei Diritti Linguistici, Teramo, Italia, 19-23 maggio 2015, Prima circolare, 3 giugno 2014, http://www.associazionelemitalia.org/attachments/article/107/Teramo%20CMDL%202015%20-%20Prima%20Circolare_ITA.pdf, p.1.

[(470)] *v. supra, note 469.*

[(471)] *v. supra, note 469.*

in business companies. Finally, during the sixth session, effective procedures to the formulation of a language policy and of a linguistic of intervention were analysed considering matters such as the education of the public opinion to linguistic diversity, the methods of implementation of linguistic rights, the range and meaning of languages recognition. The languages of work used during the whole event were English, French, Italian and Spanish[(472)]. To conclude, as it can been inferred from this paragraph, the nature of linguistic rights is very debated since language rights do not provide an all-encompassing knowledge[(473)]. Linguistic rights are not provided in essence and do not originate before their positive fulfilment. They do not represent unchangeable universals, they are demands bearing a regional range and a historical origin[(474)]. The analysis of several Constitutions proves that linguistic rights are not at the core of essential rights, generally.

Linguistic rights were provided with an identification as a reply to a political reason, in fact, they were originally created at the State level. Since views on linguistic matters vary a lot, different democratic States adopt different solutions. Therefore, the various frameworks do not only depend on different political philosophies or theories, but also on various juridical values. From the same applied value, such as the equality of citizens before the law, contrary linguistic systems can arise if it is conceived in a different way, such as, for instance, a system based just on one language in France and a system based on two or more languages in Belgium, Switzerland and Canada[(475)].

The same Europe, which was founded on shared principles, presents an enormous variety of linguistic systems. States also have different reasons for recognising linguistic rights which can be, for instance, 'relations of power between dominant and non-dominant groups, benevolence, reciprocity in terms of the treatment other states provide for minorities, justice, welfare, and obligations as necessary conditions to achieve or recover the independence of a Country[(476)]'.

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[(472)] *I diritti linguistici tra rappresentazioni, ideologie e politiche linguistiche. Quali rapporti, quale(i) intervento(i)?* in Primo Congresso Mondiale dei Diritti Linguistici, XIV Conferenza internazionale dell'Accademia Internazionale di Diritto Linguistico – IX Giornate di dei Diritti Linguistici, Teramo, Italia, 19-23 maggio 2015, Prima circolare, 3 giugno 2014, *http://www.associazionelemitalia.org/attachments/article/107/Teramo%20CMDL%202015%20-%20Prima%20Circolare_ITA.pdf*, pp.1-3.

[(473)] G. C. N. WEBBER, *Canadian Language Rights: Charter, Section 16,* in J. MAGNET (ed)., Official Languages of Canada (forthcoming 2007); J. VERNET, E. PONS, A. POU, J. RAMON SOLÉ and A. M. PLA, *Language Law,* Cossetània, Valls, 2003, p.139, in X. ARZOZ, *The Nature of Language Rights*, *http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf*., in JEMIE, 6, European Centre for Minority Issues, 2007, p.31.

[(474)] X. ARZOZ, *The Nature of Language Rights*, *http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf*., in JEMIE, 6, European Centre for Minority Issues, 2007, p.31.

[(475)] *v. supra, note 474,* p.32.

[(476)] *v. supra, note 474*, cit., p.32.

'Every language is an immensely valuable depository of human experiences, of joys, sorrows, and uniquely irreplaceable perceptions of the world. Those whose lives have been shaped by a language have a basic right to its possession and, if necessary, its defence[(477)]'.

## 2. International instruments defining linguistic rights

As already stated in the first paragraph of this chapter, linguistic rights started to be explicitly sanctioned in documents of international importance only in the twentieth century, that is, in the epoch of democratic Constitutions as well as of documents of supranational entities which were drafted after the Second World War[(478)]. However, the scope and character of language rights provided by these instruments seem to be rather scarce[(479)]. International instruments on human rights adopt a fundamental system of tolerance towards language matters, such as defence against discrimination and methods of integration but, there are not precise linguistic rights which grant such defence. Normally, are overall human rights those that sanction the protection against discrimination, such as, for instance, the right to adopt measures against discrimination, the right to assembly and association, the right to freedom of expression, and the right to respect for private and family life[(480)]. These protective measure are provided to every person, regardless being part of a minority group or not. According to the scholars opinions on the issue, 'it cannot be said that, even under these various instruments, language rights have been given the status of fundamental rights under International Law[(481)]. '[…]While individuals and groups are supposed to enjoy cultural and social rights, linguistic rights are neither guaranteed nor protected[(482)]'.

The *1948 Universal Declaration of Human Rights*[(483)], considering linguistic rights international human rights, was the first instrument to deal with them[(484)] in five of its Articles.

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[(477)]P. BERGER, *Facing up to Modernity,* Harmondsworth Penguin, 1979, p.161, in L. GREEN, *Are Language Rights Fundamental?*, in Osgoode Hall Law Journal, York University, Vol. 25, No. 4, winter 1987, Article 1, http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1831&context=ohlj, cit., p.655.

[(478)]L. M. SAVOIA, *Diritti linguistici*, in Enciclopedia dell'italiano 2010, Treccani, la cultura italiana, http://www.treccani.it/enciclopedia/diritti-linguistici_%28Enciclopedia_dell'Italiano%29, p.2.

[(479)]X. ARZOZ, *The Nature of Language Rights,* http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.8.

[(480)] *v. supra, note 479.*

[(481)]R. DUNBAR, *Minority Language Rights in International Law,* 50 International and Comparative Law Quarterly, 2001, p.119, in X. ARZOZ, *The Nature of Language Rights,* http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, cit., p.10.

[(482)]T. SKUTNABB-KANGAS, R. PHILLIPSON, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination*, Berlin – New York, Mouton de Gruyter, 1995, p.89, in X. ARZOZ, *The Nature of Language Rights,* http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, cit., p.11.

[(483)]New York, the 9th of December 1948, it has 193 State Parties, in R. LUZZATTO, F. POCAR, *Codice di diritto internazionale pubblico*, sesta ed., Torino, G. Giappichelli Editore, 2013, p.159.

In fact, it declares that 'all human beings are born free and equal in dignity and rights' in Article 1 and that such rights and fundamental freedoms belong to individuals 'without any distinction of race, colour, language, religion, political opinion', etc. in Article 2[(485)]. Article 10 states that 'individuals are entitled to a fair trial, and in the name of fairness of judicial proceedings, it is an established linguistic right of an individual to involve the right to an interpreter if he does not understand the language used in criminal court proceedings, or in a criminal accusation'[(486)]. In Article 19, it is underlined that 'every person has the right to freedom of expression, including the right to choose any language as the means of expression', and finally, the concept that 'everyone has the right to education', underlining the importance of language as a means of instruction in Article 26[(487)]. Also the *International Covenant on Civil and Political Rights*[(488)] deals with linguistic rights in Article 26, which highlights that 'every person is equal before the law and has the right to be equally protected by the law without any kind of discrimination'. The law itself is responsible for prohibiting 'any discrimination and for protecting all individuals against every kind of discrimination of race, colour, sex, religion, political opinion, national or social origin, economic condition, birth, and language[(489)]'. Article 27 also makes reference to linguistic rights, but focusing exclusively on those of minorities, which, according to it, 'shall not be denied the right to use of their own language[(490)]'. Every kind of discrimination, including that against language, is also prohibited under the *European Convention on Human Rights*[(491)]. It often happens that international organizations such as *UNESCO* participate in the notion of a mistaken representation of a wide degree of defence of language rights because consulting the webpage of these organizations and looking at the instruments concerning linguistic rights at the international level, it seems that 'linguistic human rights are a consolidated category with a sound basis in contemporary international law[(492)]'.

In fact, forty-four instruments concerning linguistic rights, such as the Declarations, Recommendations and Conventions of *UNESCO* and the United Nations and the Conventions and

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[(484)]*Linguistic rights,* from Wikipedia, The Free Encyclopaedia, *https://en.wikipedia.org/wiki/Linguistic_rights*, last accessed 09/02/2016, p.5.

[(485)]L. M. SAVOIA, *Diritti linguistici*, in Enciclopedia dell'italiano 2010, Treccani, la cultura italiana, *http://www.treccani.it/enciclopedia/diritti-linguistici_%28Enciclopedia_dell'Italiano%29*, cit., p.2.

[(486)]*v. supra, note 484*, cit., p.6.

[(487)]*v. supra, note 486.*

[(488)]New York, the 16th of December 1966, it entered into force on the 23rd of March 1976, it has 186 State Parties, available at the website *http://treaties.un.org*, last accessed 09/02/2016.

[(489)]*v. supra, note 484,* p.7; Art.26 of the *International Covenant on Civil and Political Rights, v. supra, note 488.*

[(490)]Art.27 of the *International Covenant on Civil and Political Rights, v. supra, note 488.*

[(491)]Rome, the 4th of November 1950, it entered into force on the 3rd September 1953, it has 47 State Parties, available at the website *http://www.coe.int/en/web/conventions*, last accessed 09/02/2016.

[(492)]X. ARZOZ, *The Nature of Language Rights, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf*.,in JEMIE, 6, European Centre for Minority Issues, 2007, cit., p.2.

Declarations of Europe, Africa and America but, looking deeper at the substance of these documents, it can be inferred that linguistic human rights are fewer and that their safeguard is not as broad as it could seem at first sight[493].

Linguistic rights are considered in a more specific way in an international instrument which deals completely with them, the *Universal Declaration of Linguistic Rights*[494] *(UDLR)*, called also the *Barcelona Declaration* of 1996. It was adopted in occasion of the *World Conference on Linguistic Rights* which was held in Spain, in the city of Barcelona, from the 6th to the 9th of June of the same year and it aims at sustaining linguistic rights, with a special attention for those of languages close to extinction. At the *Conference*, the delegates from more than ninety Countries represented NGOs and many Pen Centres[495] and also a considerable number of experts participated. It was organised by the Translations and Linguistic Rights Commission of the International PEN Club[496].

Despite having been submitted to the General Director of *UNESCO* in the same year of its adoption, it was never formally endorsed by the Organization, which, in any case gave it a moral sustain[497].

The *Declaration* aims at demonstrating that linguistic rights have a very considerable meaning worldwide and it gives its contribution to the enlargement of this concept. The will of drafting this *Declaration* came from the necessity to fill the gap left by previous instruments and regulations which, despite dealing with the safeguard of certain languages, did not tackle neither the issue of linguistic rights at a global level, nor that of the all existing world languages. In addition to this, it was believed that a parity between linguistic rights had to be proclaimed independently from the existing variations in political or geographical conditions. Its purpose was that of fostering the observance of linguistic communities rights as well as the rights of people living outside their native region worldwide[498]. Since the *Barcelona Declaration* does not provide any distinction among official, non-official, local, regional, majority and minority languages[499], its composition was problematic both because a consensus at global level was needed for it and because meanings, actions and motivations had to be equal[500]. As previously maintained, the *1948 Universal Declaration of Human Rights*, despite considering language as one of the values which cannot be

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[493] *v. supra, note 492,* p.2.

[494] Barcelona, Spain, the 9th of June, 1996, available at the website *UNESCO* Culture of Peace Programme, http://www.unesco.org/cpp, last accessed 09/02/2016.

[495] *PEN International* is a non-political organisation with a Special Consultative Status at the UN and Associate Status at UNESCO, it was founded in 1921 and promotes literature and freedom of expression, available at the website http://www.pen-international.org/#sthash.dGGOzPQt.dpuf, cit., last accessed 09/02/2016.

[496] *Universal Declaration of Linguistic Rights*, from Wikipedia, The Free Encyclopaedia, https://en.wikipedia.org/wiki/Universal_Declaration_of_Linguistic_Rights, cit., p.2, last accessed 09/02/2016.

[497] *Dichiarazione universale sui diritti linguistici – Conferenza Internazionale sui diritti linguistici,* Barcellona, 9 giugno 1996, http://www.arlef.it/download/DICHIARAZIONE_UNIVERSALE_SUI_DIRITTI_LINGUISTICI.pdf, p.1.

[498] *v. supra, note 496,* p.2, last accessed 09/02/2016.

[499] *v. supra, note 496*.

[500] *v. supra, note 498.*

subjected to any kind of discrimination, did not focus or enumerate linguistic rights in an evident manner[501]. The first proposal for a *Universal Declaration of Linguistic Rights* dated back to 1984, when the *International Federation of Modern Language Teachers*[502] was submitted to such a request by the Brazilian professor and linguist Francisco Gomes de Matos.

Besides, three years later, the suggestion to elaborate such an instrument was also made during the Twelfth Seminar of the *International Association for the Development of Intercultural Communication*[503], which was held in Brazil, at the end of which a *Draft Declaration* listing certain categories of linguistic rights was adopted[504]. Since establishing notions and their vocabulary was one of the main difficulties, there was the need of organising additional Sessions, which were held respectively in Paris, Portugal, Frankfurt[505]. *The International Federation of Modern Language Teachers* succeeded in writing a programme containing those that should have been the main values of a *Universal Declaration of Linguistic Rights* in occasion of workshop held in Hungary in 1991. Besides, during a 1993 Session of the *Translation and Linguistic Rights Commission* of the *International PEN*[506], there was also a debate on the *Barcelona Declaration.*

It was only in 1994 when the first twelve Drafts of the *Declaration* were written by some scholars of different nationalities and studies. From that moment, experts started to make their suggestions with the aim of progressively adjusting and enhancing the document[507]. Since the year of its adoption, it was published in English, French, Spanish and Catalan and it was translated into other languages, such as, Italian, Portuguese and Russian only gradually. As *UNESCO* did not approve this instrument, the *World Conference on Linguistic Rights* instituted a supplementary *Committee of the Universal Declaration of Linguistic Rights*[508] with the purpose of improving the *Declaration* through the sustain of global organisations, considering the opinions of *UNESCO* delegates so as not to lose the link with the Organisation, and creating a web in order to spread the consciousness of

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[501] *Dichiarazione universale sui diritti linguistici – Conferenza Internazionale sui diritti linguistici,* Barcellona, 9 giugno 1996, http://www.arlef.it/download/DICHIARAZIONE_UNIVERSALE_SUI_DIRITTI_LINGUISTICI.pdf, p.1.

[502] The *Fédération Internationale des Professeurs de Langues Vivantes (FIPLV)* is the only international multilingual association of teachers of languages and it was founded in Paris in 1931. It is an official partner of UNESCO and it is represented as an NGO with the Council of Europe, cit., available at the website http://fiplv.com/, last accessed 09/02/2016.

[503] *The International Association for Intercultural Communication Studies (IAICS),* is made up of experts from different cultural sciences and from more than thirty-two States who do research on communication across cultures. The group meets in different places every year. The outcomes of their work are published in the journal of the organization, Intercultural Communication Studies (ICS), cit., available at the website http://web.uri.edu/iaics/, last accessed 09/02/2016.

[504] *Universal Declaration of Linguistic Rights*, from Wikipedia, The Free Encyclopaedia, https://en.wikipedia.org/wiki/Universal_Declaration_of_Linguistic_Rights, p.2, last accessed 09/02/2016.

[505] *v. supra, note 504.*

[506] *v. supra, note 495*.

[507] *v. supra, note 504.*

[508] *v. supra, note 504*, p.3.

the *UDLR* as much as possible. Therefore, some experts in Linguistic Law convened in a Scientific Council established by the *Committee* which is responsible for receiving proposals to enhance and upgrade the *Declaration*[509].

Different sections constitute this instrument, that is, *Preliminaries*, *Preamble*, *Concepts*, *General Principles*, *Overall linguistic regime*, which is divided into six sections, *Additional Dispositions* and *Final Dispositions*[510]. The *Preliminaries* are dedicated to the consideration of the previous legal documents elaborated on the topic of linguistic rights, such as, to make some examples, in addition to the already mentioned *Universal Declaration of Human Rights*[511] and the *International Covenant on Civil and Political Rights*[512], the *International Covenant on Economic, Social and Cultural Rights*[513], which states the impossibility for individuals to be free without the circumstances which allow them to benefit from their civil and political rights as well as their economic, social and cultural rights[514]. Also the *Declaration on the Rights of Persons belonging to National, Ethnic, Religious and Linguistic Minorities*[515] of 1992 is taken into consideration in the *Preliminaries*, as well as the documents drafted by the Council of Europe. The 1990 *Universal Declaration of the Collective Rights of Peoples*[516] deals with language in Article 9 which states that 'all peoples have the right to express and develop their culture, language and rules of organization and, to this end, to adopt political, educational, communications and governmental structures of their own, within different political frameworks[517]'. Believing in the necessity of a Universal Declaration of Linguistic Rights in order to correct the lack of equilibrium on the ground of language through the assurance of the respect and full development of all languages and the establishment of the principles for a just and equitable linguistic peace all around the world as a fundamental element to keep harmonious social relations[518], the second part of the *Preliminaries* deals with the observation of some relevant points.

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[509] *Universal Declaration of Linguistic Rights*, from Wikipedia, The Free Encyclopaedia, https://en.wikipedia.org/wiki/Universal_Declaration_of_Linguistic_Rights, p.3.

[510] *Universal Declaration on Linguistic Rights*, World Conference on Linguistic Rights, Barcelona, Spain, 9 June 1996, available at the website *UNESCO* Culture of Peace Programme, http://www.unesco.org/cpp, p.1, last accessed 09/02/2016.

[511] New York, the 9th of December 1948, it has 193 State Parties, in R. LUZZATTO, F. POCAR, *Codice di diritto internazionale pubblico*, sesta ed., Torino, G. Giappichelli Editore, 2013, p.159.

[512] New York, the 16th of December 1966, it entered into force on the 23rd of March 1976, it has 186 State Parties, available at the website http://treaties.un.org, last accessed 09/02/2016.

[513] New York, the 16th of December 1966, entered into force on the 3rd of January 1976, it has 176 State parties, available at the website http://treaties.un.org, last accessed 09/02/2016.

[514] *v. supra, note 510,* cit., p.1.

[515] New York, adopted by the *Resolution 47/135* of 18/12/1992 of the General Assembly of the United Nations, available at the website http://www.un-documents.net/a47r135.html, last accessed 09/02/2016.

[516] Barcelona, the 27th of May 1990, available at the website https://slmc.uottawa.ca/?q=int_rights_cesn, last accessed 09/02/2016.

[517] *v. supra, note 510*, cit., p.2.

[518] *v. supra, note 510*, p.2.

First of all, there is awareness of the fact that those peoples which are not independent are more subjected to the imposition of the political and bureaucratic systems and of the language of other states. Besides, in these peoples there is a greater possibility of having an endangered language. Secondly, that the adherence of individuals to their language is damaged by dispositions of linguistic hierarchy which originate from processes of occupation, invasion or colonization that generally impose an external language.

Thirdly, the belief that uniformity and separation have to be avoided if universalism is the objective to achieve, favouring on the contrary diversity in terms of culture and language. Fourthly, that the establishment of general values is necessary to promote and respect all languages as well as their use in the private and public spheres, if different linguistic groups want to live peacefully side by side. Finally, that linguistic rights have to be taken into consideration in a broad dimension to solve those problems that result in the extinguishment, exclusion and decline of several languages and which can be determined by historical, geographical, political and economic reasons[(519)].

The *Preamble* to the *UDLR* has the role of reminding that every language stands in some specific conditions which depend on the integration of several causes that can be related to politics, jurisprudence, ideology, history, demography, geography, economics, society, culture, language, and sociolinguistics. In particular, the prevalent inclination in States to encourage trends against multiplicity in the cultural and linguistic fields, and to an economy, culture, information at a global level which damage the methods of relation that safeguard unity within linguistic groups.

Finally, an increasing discrepancy in economy, society, culture and language caused by the growth model of the economists which wanted to associate liberalisation with development and competitive self-interest with freedom[(520)]. Lack of autonomy, a restricted or dispersed population, a weak economic system, an intact language, a cultural model different from the one that prevails are generally undermining components for linguistic groups. Only the regard for the political, the cultural and the economic aims allows the survival and development of languages. The political one concerns the management of linguistic diversity in order to let language communities take part to the new model of growth in a concrete way, the cultural objective deals with the participation on equal terms of all individuals, peoples and linguistic groups in the process of development through a suitable area of interaction at the international level and, finally, the economic goal refers to the shared participation and the fair relations between cultures and languages in order to promote sustainable development. This explains why the *Universal Declaration of Linguistic Rights* has the aim of fostering the establishment of a political system 'for linguistic diversity based upon harmonious

[(519)] *Universal Declaration on Linguistic Rights*, World Conference on Linguistic Rights, Barcelona, Spain, 9 June 1996, available at the website *UNESCO* Culture of Peace Programme, http://www.unesco.org/cpp, p.2.
[(520)] *v. supra, note 519*, p.3.

coexistence, respect and mutual benefit[(521)]'. In addition to this, it gives support to those international organizations that work towards the progress of all human beings and considers language communities rather than States[(522)].

The section of the *Declaration* dedicated to *Concepts* deals with Articles from 1 to 6. In the first Article, the definitions of language community and of language specific to a territory are provided. The former, refers to 'any human society established historically in a particular territorial space, whether this space be recognized or not, which identifies itself as a people and has developed a common language as a natural means of communication and cultural cohesion among its members[(523)]' and the latter to 'the language of the community historically established in such a space[(524)]'. Under the *UDLR*, a language group is 'any group of persons sharing the same language which is established in the territorial space of another language community but which does not possess historical antecedents equivalent to those of that community', for instance, immigrants, refugees, deported persons and members of diasporas[(525)].

It describes linguistic rights taking the model of a language community living in its territory and considering this one not only from the geographical point of view but also as 'the social and functional space vital to the full development of the language[(526)]'. Moreover, under the *UDLR*, linguistic rights are both individual and collective. Language communities in their own territory have to comply with one of three possible contexts to be defined in such a way:

i. 'When they are separated from the main body of their community by political or administrative boundaries;
ii. When they have been historically established in a small geographical area surrounded by members of other language communities; or
iii. When they are established in a geographical area which they share with the members of other language communities with similar historical antecedents[(527)]'.

Article 3 defines individual and collective linguistic rights. The former include:

a. 'The right to be recognized as a member of a language community; the right to the use of one's own language both in private and in public; the right to the use of one's own name;
b. The right to interrelate and associate with other members of one's language community of origin;

[(521)] *v. supra, note 519*, cit., p.3.
[(522)] *Universal Declaration on Linguistic Rights*, World Conference on Linguistic Rights, Barcelona, Spain, 9 June 1996, available at the website *UNESCO* Culture of Peace Programme, http://www.unesco.org/cpp, p.3.
[(523)] Article 1(1) of the *Universal Declaration on Linguistic Rights*, *v. supra, note 522*, cit., p.4.
[(524)] *v. supra, note 523.*
[(525)] Article 1(5), *v. supra, note 523.*
[(526)] Article 1(2), *v. supra, note 523.*
[(527)] Article 1(3), *v. supra, note 523.*

c. The right to maintain and develop one's own culture[(528)'].

The latter are:

a. 'The right for their own language and culture to be taught; the right of access to cultural services;
b. The right to an equitable presence of their language and culture in the communications media;
c. The right to receive attention in their own language from government bodies and in socioeconomic relations[(529)'].

The section on *General Principles* deals with Articles from 7 to 14. In Article 10 it is stated that 'for all language communities a principle of equality exists and that any kind of discrimination against them cannot be permitted[(530)']. The section concerning *Overall linguistic regime* consists of six sections in its turn. The first section, which is made up of eight Articles, concerns the recognition of the language of linguistic communities by public administration and official bodies.

In particular, Article 15 declares that: 'All language communities have the right for legal and administrative acts, public and private documents and records in public registers which are drawn up in the language of the territory to be valid and effective and no one can allege ignorance of this language[(531)'].

For Article 16, 'public authorities have to give attention to all the individuals of a language community in the language of these last ones. Besides, the members of a language community have the right to appeal to the authorities in their own language[(532)']. According to Article 20, 'everyone has the right to use the language historically spoken in a territory, both orally and in writing, in the Courts of Justice located within that territory[(533)']. Section two deals with Articles from 23 to 30 and is about Education. According to Article 23 'every person has the right to learn any language[(534)']' since education has to give its contribution in helping the language community to promote its self-expression in the fields of culture and language and in developing and conserving the language of the group. Finally, 'education must always be at the service of linguistic and cultural diversity and of harmonious relations between different language communities throughout the world[(535)']'.

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[(528)] Article 3(1), *v. supra, note 522,* cit., p.5.
[(529)] Article 3(2) of the*Universal Declaration on Linguistic Rights*, World Conference on Linguistic Rights, Barcelona, Spain, 9 June 1996, available at the website *UNESCO* Culture of Peace Programme, http://www.unesco.org/cpp, cit., p.5.
[(530)] Article 10, *v. supra, note 529,* cit., p.6.
[(531)] Article 15(2), *v. supra, note 529,* cit., p.7.
[(532)] Article 16, *v. supra, note 529,* p.7.
[(533)] Article 20(1), *v. supra, note 529,* cit., p.8.
[(534)] Article 23(4), *v. supra, note 529,* p.9.
[(535)] Article 23(1),(2), (3), *v. supra, note 529,* cit.,p.9.

The third section covers Articles 31, 32, 33 and 34 and concerns Proper names. All linguistic groups have the right to use their own system of proper names orally and writing and in both public and private situations, including the name of places and the name with which the communities define themselves in their language[(536)]. The fourth section is about Communications media and new technologies and covers Articles from 35 to 40[(537)]. For Article 35, in fact, 'the communities have the right to choose how much their language has to be used in the media of their geographic area[(538)]'. The media have to provide to communities knowledge of their cultural heritage and also information about other cultures that communities might want to study. Besides, in the communications media all over the world, the languages of linguistic groups cannot be subjected to any kind of discrimination[(539)]. Section five relates to Culture from Article 41 to Article 46. As stated in Article 41, 'All language communities have the right to use, maintain and foster their language in all forms of cultural expression[(540)]'. Finally, the last section of the Overall linguistic regime concerns the socioeconomic sphere in the sense that all linguistic group can determine the use of their language in all socioeconomic activities within their territory, as stated in Article 47[(541)], such as 'in economic transactions of all types, for example, the sale and purchase of goods and services, banking, insurance, job contracts[(542)], as well as in advertising[(543)], in relations with firms, commercial establishments and private bodies[(544)]'.

The *Additional Dispositions* underline that the implementation of the linguistic rights listed in the *UDLR* is up to the public authorities, which should also make certain that companies and governmental bodies are aware of the *Declaration*. Besides, if linguistic rights were violated, the public authorities are responsible for deciding the relative sanctions[(545)].

Finally, the *Final Dispositions* contain the suggestion for a Council of Languages, that is, an international law organisation designated for the protection of linguistic groups which has to be established by the General Assembly of the United Nations, which should also describe its functions and select its members.

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[(536)]Section three of the the*Universal Declaration on Linguistic Rights*, World Conference on Linguistic Rights, Barcelona, Spain, 9 June 1996, available at the website *UNESCO* Culture of Peace Programme, http://www.unesco.org/cpp, p.10.
[(537)]Section four, *v. supra, note 536.*
[(538)]Article 35 of the*Universal Declaration on Linguistic Rights*, World Conference on Linguistic Rights, Barcelona, Spain, 9 June 1996, available at the website *UNESCO* Culture of Peace Programme, http://www.unesco.org/cpp, p.10.
[(539)]Articles 37 and 38, *vedi supra, note 538,* p.11.
[(540)]Article 41, *vedi supra, note 538*,cit., p.11.
[(541)]Article 47(1), *vedi supra, note 538*, p.12.
[(542)]Article 48(1), *vedi supra, note 538*, cit., p.12.
[(543)]Article 50(1), *vedi supra, note 538*, p.13.
[(544)]Article 51(1), *vedi supra, note 538*, p.13.
[(545)]*Universal Declaration on Linguistic Rights*, World Conference on Linguistic Rights, Barcelona, Spain, 9 June 1996, available at the website *UNESCO* Culture of Peace Programme, http://www.unesco.org/cpp, pp.13-14.

Then, a final suggestion is indicated in these *Dispositions*, that is, the establishment of an advisory body gathering the exponents of several institutions dealing with linguistic law, the World Commission on Linguistic Rights[(546)].

Since the *Declaration* believes in the equality of all languages and it encourages all historic languages of various communities to be used in a complete way, it was understood as being unrealistic[(547)]. Differently from the *Universal Declaration of Human Rights*, the *UDLR* did not receive the ratification of the General Assembly of the United Nations and neither that of *UNESCO*. In 2002, the International PEN[(548)] gathered a summit in Barcelona in the occasion of the Congress on Language Policies where the *International Federation of Modern Language Teachers*[(549)] proposed a revision of the *UDLR* for a further implementation. Other suggestions and meetings followed in 2003 to give support to it. Several efforts to make consider linguistic rights to the Member States of the *Human Rights Council* of the United Nations (*UNHRC*)[(550)] were made since 2008. However, these States understood that there was not any agreement on the issue and therefore they rejected the offer. But, in the same year, at the Linguistic Rights to enhance Human Rights conference of Geneva, there was the attempt to obtain some help about a *UDLR* draft resolution to be submitted to the following session of the *UNHRC*, which came from the Mexican, Bolivian, Chilean, Armenian and Nigerian delegates. Then, the *UNHRC* Committee was given the responsibility for suggesting the attachment of the *Universal Declaration of Linguistic Rights* to the *Universal Declaration of Human Rights*, which did not end well[(551)]. The *UDLR* has some eminent supporters at the present time such as Nelson Mandela, Noam Chomsky and Dalai Lama, just to mention some of them[(552)].

'The ideal of formulating linguistic human rights is indeed a magnificent undertaking and also long overdue. […] I endorse the general spirit of the undertaking[(553)]'.

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[(546)] *v. supra, note 545*, p.14.

[(547)] *Universal Declaration of Linguistic Rights*, from Wikipedia, The Free Encyclopaedia, https://en.wikipedia.org/wiki/Universal_Declaration_of_Linguistic_Rights, p.4, last accessed 09/02/2016.

[(548)] *v. supra, note 495.*

[(549)] *v. supra, note 502*.

[(550)] *The Human Rights Council* is an inter-governmental body of the United Nations with the role of reinforcing the promotion and defence of human rights in the world, of dealing with human rights violations and of making suggestions on them. It is able to tackle all human rights matters as well as the circumstances that require its attention throughout the year. Its meetings take place in Geneva, at the UN Office, cit., available at the website http://www.ohchr.org/hrc/, last accessed 09/02/2016.

[(551)] *v. supra, note 547,* p.5.

[(552)] *v. supra, note 547*, p.6.

[(553)] N. MANDELA, *Universal Declaration of Linguistic Rights*, Follow-up Committee, Institut d'Edicions de la Diputació de Barcelona, April 1998, available at the website, http://www.linguistic-declaration.org/versions/angles.pdf, cit., p.32.

'I think it is a project very much worth implementing, reaching to crucial issues of human rights, and very timey as well[554]'.

'I am honoured to receive a copy of the Universal Declaration of Linguistic Rights and would like to extend my full support for it. I believe that all language communities have the right to preserve their linguistic and cultural heritage. The encouragement and promotion of these will go a long way in enriching the linguistic and cultural diversity of our common world[555]'.

The *Translation and Linguistic Rights Commission* of the *International PEN* elaborated the *Girona Manifesto on Linguistic Rights* in 2011 fifteen years after the *UDLR*. Summarizing the main concepts of the *Declaration*, it was conceived in order to foster its implementation.

The *Girona Manifesto* was approved by the PEN General Assembly at its seventy-seventh Congress with the aim of putting linguistic rights at the centre of the international focus. It is more synthetic if compared to the *Declaration* because it is made up just of the ten main points of the *UDLR* and it was conceived to be 'translated and disseminated as a tool to defend linguistic diversity around the world[556]' and 'it could give a clear public document with which to defend and advance languages with smaller populations as well as endangered languages[557]'. Between its points, the ones which deserve to be mentioned are the first, which is about linguistic diversity, declaring that it 'is a world heritage that must be valued and protected[558]'. The second, stating that 'in order to build and keep peace and dialogue at the international level, regard for all languages and cultures is essential[559]', the fourth, for which different languages and different ways of speaking constitute the social environment for the growth of human beings and for the building of cultures, in addition to means of communication. The fifth, maintaining that one's own language to be used as an official language is a right of each linguistic group within its territory, the seventh, focusing on language learning, for which if people know several languages, they will be more open-minded and therefore they will know more even their own mother tongue[560] and finally, the tenth, for which the United Nations should admit the right to use and safeguard the language of everybody as one of the basic human rights[561]. Until now, the *Manifesto* has been translated into thirty-two languages[562].

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[554] N. CHOMSKY, *v. supra, note 553,* cit., p.40.

[555] D. LAMA, *Universal Declaration of Linguistic Rights*, Follow-up Committee, Institut d'Edicions de la Diputació de Barcelona, April 1998, available at the website, *http://www.linguistic-declaration.org/versions/angles.pdf*, cit., p.44.

[556] *v. supra, note 547*, cit., p.5.

[557] *v. supra, note 556.*

[558] *Girona Manifesto on Linguistic Rights*, in PEN International, London, UK, *http://www.pen-international.org/who-we-are/translation-linguistic-rights/girona-manifesto/*, cit., p.1, last accessed 09/02/2016 .

[559] *v. supra, note 558.*

[560] *v. supra, note 558.*

[561] *v. supra, note 558*, cit., p.1.

## 3. Language rights and Linguistic Human Rights

'Language rights are a bastard stepchild in the wider family of human rights, roundly rejected as problematic and/or regularly ignored at worst, reluctantly acknowledged and desultory implemented at best[(563)]'.

'The literature on linguistic human rights is very hortatory and at times strident. It echoes to 'shalls' and 'shoulds' and 'musts' […][(564)]'.

From a theoretical point of view, it is necessary to be able to distinguish between language rights and linguistic human rights, where the latter are made up of the union of language rights with human rights. The former, instead, refers to a broader extent. First of all, it is important to clarify that all linguistic human rights are language rights, whereas not all language rights are linguistic human rights. These two categories of rights can be separated if a distinction is made between what is fundamental from what is additional[(565)]. In this sense, linguistic human rights are those language rights that are necessary to fulfil people's basic needs and for them to live a respectable life[(566)], such as, for instance, the right to one's own identity in relation to language, the right to the access to one's own mother tongue, to an official language, as well as to a second language; the right to receive a language-grounded basic education and the right for minority communities to continue to use their own language. Besides, these rights are so fundamental that no state, no individual or group is supposed to violate them[(567)].

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[(562)] *Universal Declaration of Linguistic Rights*, from Wikipedia, The Free Encyclopaedia, https://en.wikipedia.org/wiki/Universal_Declaration_of_Linguistic_Rights, p.5, last accessed 09/02/2016.

[(563)] S. MAY, *Language Rights: the 'Cinderella' of Human Rights,* in *Journal of Human Rights*, 2011, cit., p.265, in M. TOSCANO MÉNDEZ, *Language Rights as Collective Rights: Some Conceptual Considerations on Language Rights*, in Res Publica: Revista de Filosofía Política, 27, 2012, https://www.academia.edu/2026162/Language_Rights_as_Collective_Rights_Some_Conceptual_Considerations_on_Language_Rights, cit., p.1.

[(564)] C. B. PAULSTON, *Epilogue: Some Concluding Thoughts on Linguistic Human Rights,* in *International Journal of the Sociology of Language* 1997, p.188, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, cit., p.1.

[(565)] *Linguistic rights,* from Wikipedia, The Free Encyclopaedia, https://en.wikipedia.org/wiki/Linguistic_rights, last accessed 09/02/2016, p.6.

[(566)] T. SKUTNABB-KANGAS, *An Introduction to Language Policy. Theory and Method,* Oxford, Blackwell Publishing, 2006, p.273.

[(567)] *v. supra, note 566.*

Actually, often language is an instrument used to deny single persons and communities or in any case to subject them to a bad regard[(568)]. In the majority of cases, those individuals for which linguistic human rights are not provided, cannot benefit from various human rights, such as, for instance, fair trial and representation in politics, access to information, to education, freedom of speech, and the right to preserve their cultural heritage[(569)]. On the contrary, the right to learn and use foreign languages is an example of an additional right or enrichment right, because it is above fundamental requirements[(570)] and so, it is only a language right.

From this it can be understood that the matter is a very complex one, and that therefore what should be contemplated as a linguistic human right and what should not is a no so much evident question. This explains the reason of the abundance of discussions on the issue, which is hard mainly because it deals with multiple disciplines. Therefore, it frequently happens that the scholars of human rights have a very restricted knowledge of language, as well as language experts are not so much familiar with jurisprudence[(571)]. In any case, what seems to be clear is that to assimilate language rights with human rights, that is, considering all language rights as human rights is not only incorrect, but it also offers a misrepresented reality of the connection existing between the political field and that of jurisprudence[(572)]. This because human rights theoretically restrict the conduct of States, whereas the matter of linguistic rights is assigned to politics. So, a distinction between recognized human rights and the ideals which for somebody should be portrayed as the previous category of rights has to be respected[(573)]. Besides, despite humanities, social sciences and international law deal with the matter, linguistic human rights have not yet received a clear characterisation[(574)]. A human rights approach to language rights has been supported by some experts in matters of minority languages, who diffused the notion of linguistic human rights[(575)] and who took for granted that language rights are fundamental human rights[(576)].

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[(568)]T. SKUTNABB-KANGAS, R. PHILLIPSON, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination*, Berlin – New York, Mouton de Gruyter, 1995, p.2.

[(569)]T. SKUTNABB-KANGAS, R. PHILLIPSON, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination*, Berlin – New York, Mouton de Gruyter, 1995, p.2.

[(570)]*Linguistic rights,* from Wikipedia, The Free Encyclopaedia, *https://en.wikipedia.org/wiki/Linguistic_rights*, last accessed 09/02/2016, p.6.

[(571)]*v. supra, note 566,* p.275.

[(572)]X. ARZOZ, *The Nature of Language Rights*, *http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf*., in JEMIE, 6, European Centre for Minority Issues, 2007, p.1.

[(573)]*v. supra, note 572,* p.3.

[(574)]*v. supra, note 569*, p.1.

[(575)]R. PHILLIPSON, M. RANNUT, T. SKUTNABB-KANGAS, *Introduction* and T. SKUTNABB-KANGAS, R. PHILLIPSON, *Linguistic Human Rights, Past and Present,* both in T. SKUTNABB-KANGAS and R. PHILIPPSON (eds.), *Linguistic Human Rights: Overcoming Linguistic Discrimination,* Mouton, The Hague, 1994, pp. 1,71; T. SKUTNABB-KANGAS *Language Policy and Linguistic Human Rights,* in T. RICENTO (ed*)., An Introduction to Language Policy: Theory and Method*, Oxford, Blackwell, 2006, p.273; R.E. HAMEL, *Introduction: Linguistic Human Rights in a Sociolinguistic Perspective, International Journal of the Sociology of Language* No.127, 1997, pp.1-24; M. KONTRA, R. PHILLIPSON, T. SKUTNABB-

This notion, refers to a broad plan of language rights for the advantage of every person.

In particular, the linguistic human rights approach focuses on language rights to education, which are defined the only 'inalienable, fundamental linguistic human rights', that is, 'the right for a person to learn and use his mother tongue as well as to learn one of the official languages of the State where he lives[(577)']. In the reasoning outside the circumstance of the rights to education, the concept of linguistic human rights is more confused[(578)]. The human rights method to language rights, based on some supposition which are contestable for law, is difficult[(579)].

Language rights are portrayed as having the typical regard provided for human rights and so the reason why such an essential human right has received a scant care or no care at all has to be explored[(580)]. Firstly, it is noticeable that this approach does not consider so much the concept of limits which instead is very important in the analysis of whether linguistic human rights are part or not of human rights since the concept of limits cannot be separated from the consideration of rights and in particular of human rights, which have not an absolute value, obstruct other important values and oppose to each other[(581)]. However, the core of the question concerns the risk of offering a distorted image of language rights condition and meaning both in international law and in the jurisprudence of human rights. In fact, the main point deals with the uncertainty of attributing linguistic human rights to international law or to models and demands typical of the theoretical sphere. In the first case, violations of these rights would be included as well as their denial; in the second case, there would be a reference to the search for inalienable and essential linguistic human rights.

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KANGAS (eds)., *Language: A Right and a Resource. Approaching Linguistic Human Rights,* Central European University Press, Budapest, 1999.

[(576)]T. SKUTNABB-KANGAS and R. PHILIPPSON (eds.), *Linguistic Human Rights: Overcoming Linguistic Discrimination,* Mouton, The Hague, 1994, in M. TOSCANO MÉNDEZ, *Language Rights as Collective Rights: Some Conceptual Considerations on Language Rights,* in Res Publica: Revista de Filosofía Política, 27, 2012, *https://www.academia.edu/2026162/Language_Rights_as_Collective_Rights_Some_Conceptual_Considerations_on_Language_Rights*, cit., p.111.

[(577)]T. SKUTNABB-KANGAS and R. PHILIPPSON (eds.), *Linguistic Human Rights: Overcoming Linguistic Discrimination,* Mouton, The Hague, 1994, p.102; T. SKUTNABB-KANGAS *The Right to Mother Tongue Medium Education: The Hot Potato in Human Rights Instruments,* II *Mercator International Symposium: Europe 2004: A new framework for all languages?* 2005, available at the website *http://www.ciemen.org/mercator/pdf/simp-skuttnab.pdf*.

[(578)]X. ARZOZ, *The Nature of Language Rights*, *http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf*., in JEMIE, 6, European Centre for Minority Issues, 2007, p.2.

[(579)]A. PATTEN, W. KYMLICKA, *Introduction: Language Rights and Political Theory: Context, Issues, and Approaches,* in W. LYMLICKA and A. PATTEN (eds)., Language Rights and Political Theory, Oxford University Press, Oxford, 2003, pp. 1, 33-37; L. GREEN, *Are Language Rights Fundamental?,* 25 Osgoode Hall Law Journal, 1987, p.693; D.G. RÉAUME, Official Language Rights: Intrinsic Value and the Protection of Difference, in W. KYMLICKA and W. NORMAN (eds)., *Citizenship in Diverse Societies,* Oxford University Press, Oxford, 2000, p.245.

[(580)]M. TOSCANO MÉNDEZ, *Language Rights as Collective Rights: Some Conceptual Considerations on Language Rights*, in Res Publica: Revista de Filosofía Política, 27, 2012, *https://www.academia.edu/2026162/Language_Rights_as_Collective_Rights_Some_Conceptual_Considerations_on_Language_Rights*, p.111 .

[(581)]J. LAWS, *The Limitations of Human Rights,* Public Law, 1998, p.254.

What can be stated is that this method has the clear purpose of assuring the transmission of the languages of the minority groups from a generation to another and the resolution of some of the disparities. Anyway, the prevalent line of thought on the argument seems to suggest that linguistic human rights are something theoretical and ambitious which does not make part of coercive international laws and therefore States cannot be considered responsible for their fulfilment[582]. According to Robert Dunbar, an expert on the subject, 'it cannot be said that, […] language rights have been given the status of fundamental rights under international law[583]'.

Dominique Rousseau, a French constitutional lawyer[584], recognises that «Le fait que les droits linguistiques puissant être considérés comme des Droits de l'Homme,[…] est très majoritairement contesté par l'ensemble de la communauté philosophique, politique, juridique»[585], even though he, from his part, agrees with considering language rights as human rights, at least from the philosophical perspective. It can be seen that the same position is approved also by supporters of linguistic human rights, according to which it can be proved that social and cultural rights are provided to single persons and groups, who, on the other hand, do not benefit from linguistic human rights since no safeguard is considered for them[586].

Different is instead the position of Fernand de Varennes, who sustains the linguistic human rights approach. In fact, he maintains that language rights form part of the human rights of the individual under international law, between which there are the rights to freedom of expression, to non-discrimination, to private life, to use their language with other persons of their group for the individuals belonging to a minority linguistic group[587]. The author is convinced of the fact that language rights constitute entrenched human rights and no an exceptional class of rights.

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[582] X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.3.

[583]R. DUNBAR, *Minority Language Rights in International Law,* 50 International and Comparative Law Quarterly, 2001, cit., p.119; X. D. MADINABEITIA, *Language Rights in International Law,* 33 Revista de Lengua i Dret, 2000, p. 43; L. MÄLKSOO, *Language Rights in International Law: Why the Phoenix is still in the ashes?*, 12 Florida Journal of International Law, 2000, p.465; S. DEL VALLE, *Language Rights and the Law in the United States: Finding Our Voices,* Multilingual Matters, 2003, pp.336-341, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, cit., p.10.

[584]*v. supra, note 582,* cit., p.11.

[585]D. ROUSSEAU, *The Philosophy of Law,* in H. GIORDAN (eds)., *Les Minorités en Europe : Droits Linguistiques et Droits de l'Homme,* Éditions Kimé, Paris, 1992, cit., p.79, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, cit., p.11.

[586]T. SKUTNABB-KANGAS and R. PHILIPPSON (eds.), *Linguistic Human Rights: Overcoming Linguistic Discrimination,* Mouton, The Hague, 1994, p.89, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.11.

[587]*v. supra, note 582,* cit., p.11.

Moreover, according to him, language rights do not only belong to special groups of persons, for instance, the minorities living within a State; rather, even if a person is not a minority group member, is provided with basic human rights bearing a linguistic aspect[588]. However, highlighting the fact that language rights have a human rights dimension, could also lead to the incorrect idea that each person should enjoy the same language rights, with the belief that human rights originate the majority of language rights[589]. Since de Varennes separates people' use of a language in the private domain from the authorities use of a minority language, his belief that language rights are contained within the human rights category, essentially concerns the right to have an interpreter in legal action in the case of criminality and the private domain[590]. Democratic societies, in fact, do not oppose to human rights but to the fact that public authorities use minority languages and, international law instruments as well as European covenants do not contain a right to language or to use a minority language[591]. Finally, it has to be noticed that the reflection of de Varennes is alone within the international law framework and according to Arzoz, a Spanish jurist of Administrative and European Union Law at the University of the Basque Country[592], language rights cannot 'be monolithically regarded as well-established human rights[593]'.

Another important scholar of linguistic right is Stephen May, who supports the human rights approach to language rights. In fact, he wonders about the position of language rights within the human rights framework and about their adequacy to the legal literature at the global level, as well as about the reasons why international institutions and States dealing with defence and observance of human rights should consider language rights. This last point connects to the identification of language rights with human rights on the legal ground[594]. Since generally the supporters of the human rights approach to language rights combine all these elements, confusion is produced about the evaluation of such rights as being about jurisprudence or ethics. Differently from his colleagues, Stephen May considers the matter of language rights in a multidisciplinary way, that is, making

[588] *v. supra, note 582,* p.11.
[589] *v. supra, note 588,* p.12.
[590] F. de VARENNES, *Language Rights as an Integral Part of Human Rights*, 3 *International Journal on Multicultural Societies*, 2001, pp.15-17.
[591] A. PATTEN, W. KYMLICKA, *Introduction: Language Rights and Political Theory: Context, Issues, and Approaches,* in W. LYMLICKA and A. PATTEN (eds)., Language Rights and Political Theory, Oxford University Press, Oxford, 2003, p.33; F. de VARENNES, *Language Rights as an Integral Part of Human Rights*, 3 *International Journal on Multicultural Societies*, 2001, p.16.
[592] *v. supra, note 588,* cit., p.35.
[593] *v. supra, note 588,* cit., p.13.
[594] M. TOSCANO MÉNDEZ, *Language Rights as Collective Rights: Some Conceptual Considerations on Language Rights*, in Res Publica: Revista de Filosofía Política, 27, 2012, *https://www.academia.edu/2026162/Language_Rights_as_Collective_Rights_Some_Conceptual_Considerations_on_Language_Rights*, p.110.

reference to both international law and political philosophy[595]. From this point of view, the attention on the matter of language rights is scant in both disciplines. Anyway, wondering if language rights make part of basic rights or not should imply both legal as well as ethical ways of thinking and, it is argued that only if a legal right because of safeguarding a moral right is in part legitimized, can it be considered an essential right[596]. This idea is very important in the debate of considering language rights as category of human rights. As May states, the explanation of language rights as human rights does not have an evident meaning because the same extent of language rights seems vague and the development of the concept of language rights is at a primordial phase[597]. Despite the consideration of language rights as legal or ethical rights, the evaluation of powers, immunities, privileges and claims concerning language rights can assist in the focusing of the notion of language rights and from this it can be inferred that such rights include various types of rights[598]. Language rights have to be examined taking into consideration four main elements, that is, the identification of their possible holder, the definition of their subject, the selection of the person or people to which they can be directed and the level of their rigorousness[599].

Also authors such as Robert Phillipson, Mart Rannut and Tove Skutnabb-Kangas sustain the human rights approach to language rights as they maintain that they make part of the category of fundamental human rights. These experts conveniently clarify that all linguistic human rights are provided to the groups of people who speak a predominant language, that is, one of the official languages, who are defined linguistic majorities, whereas these rights are not enjoyed in most cases by linguistic minorities[600]. As a consequence, inequality due to linguistic factors has a fundamental weight in social injustice and only the explanation and the encouragement of what has to be intended for essential and inalienable linguistic human rights can lead to a major fairness within

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[595]R. DUNBAR, *Minority Language Rights in International Law*, International and Comparative Law Quarterly, 50, 2001, pp.90-120, in M. TOSCANO MÉNDEZ, *Language Rights as Collective Rights: Some Conceptual Considerations on Language Rights*, in Res Publica: Revista de Filosofía Política, 27, 2012, *https://www.academia.edu/2026162/Language_Rights_as_Collective_Rights_Some_Conceptual_Considerations_on_Language_Rights*, p.110.

[596]L. GREEN, *Are Language Rights Fundamental?, in Osgoode Hall Law Journal, York University, Vol. 25, No. 4, winter 1987, Article 1, http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1831&context=ohlj*, p.647.

[597]L. MÄLKSOO, *Language Rights in International Law: Why the Phoenix is still in the ashes?, Florida Journal of International Law,* Volume 12, No.3, cit., p.431.

[598]M. TOSCANO MÉNDEZ, *Language Rights as Collective Rights: Some Conceptual Considerations on Language Rights*, in Res Publica: Revista de Filosofía Política, 27, 2012, *https://www.academia.edu/2026162/Language_Rights_as_Collective_Rights_Some_Conceptual_Considerations_on_Language_Rights*, p.111.

[599]*v. supra, note 598*, p.113.

[600]T. SKUTNABB-KANGAS, R. PHILLIPSON, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination*, Berlin – New York, Mouton de Gruyter, 1995, cit., pp.1-2.

society. According to the authors, time has come to find a place for linguistic human rights within the international legal framework as well as to fight against their potential offences[(601)].

Finally, according to Skutnabb-Kangas and Phillipson, only the necessary rights should be considered inalienable, fundamental linguistic human rights, while the enrichment rights are relevant linguistic rights because they concern language, but they are not inalienable linguistic human rights[(602)].

## 4. The different typologies of linguistic rights

A first classification which can be made of linguistic rights is the distinction between individual and collective linguistic rights. The former, arise from those human rights such as the right to private life, the right to freedom of expression, the right to non-discrimination, and the right for the individuals belonging to the same linguistic minority community to use their language with each other, independently from the condition of their language[(603)], that is, a minority or a majority language[(604)]. Individual linguistic rights therefore include the right to receive a primary education in one's mother tongue, the right to use it in several formal situations, and the right to learn one or more official languages of State in which one lives. When these rights are not fully enjoyed, a violation of basic linguistic human rights has occurred[(605)]. Individual collective rights concern the connection across different generations, for example because they involve the acquisition of the cultural heritage of previous generations[(606)]. As already stated in the second paragraph of this chapter, it is the *Universal Declaration of Human Rights* which lists individual linguistic rights, even if in a rather restricted number of Articles[(607)]. In addition to the individual linguistic rights already analysed, Francisco Gomes de Matos, a Brazilian professor and linguist, as well as a member of the *FIPLV*[(608)] made a list including other rights which, from his point of view, should also be contained within the category of individual linguistic rights. Between them, the right to individual linguistic development can be mentioned, that is, the right to develop from the linguistic

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[(601)] *v. supra, note 600* pp.17-18.
[(602)] *v. supra, note 600,* cit., p.102.
[(603)] F. de VARENNES, *Language Rights as an Integral Part of Human Rights. A Legal Perspective,* in M. KOENIG, P. GUCHTENEIRE (eds)., *Democracy and human rights in multicultural societies,* UK, Ashgate Publishing Ltd., 2007, pp.115-125.
[(604)] T. SKUTNABB-KANGAS, R. PHILLIPSON, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination*, Berlin – New York, Mouton de Gruyter, 1995, cit., p.2.
[(605)] *v. supra, note 604,* p.2.
[(606)] *v. supra, note 604,* pp.11-12.
[(607)] *Linguistic rights,* from Wikipedia, The Free Encyclopaedia, https://en.wikipedia.org/wiki/Linguistic_rights, p.6, last accessed 09/02/2016.
[(608)] *v. supra, note 502*.

point of view, which refers to the right of every individual to learn his native language throughout his life[(609)]. Another individual linguistic right according to Gomes de Matos should be the linguistic choice-making, that is, the right for each person to choose a variety of his language depending on the circumstances of every communicative context. This implies the selection of the grammar, the vocabulary, the pronunciation and the style to be used[(610)].

Moreover, not only every person has the right to support the use of his language, but also the right of enhancing the vocabulary of his native language as well as of conferring importance to it being aware of the fact that it allows them to communicate at the local, national, regional and international levels[(611)]. Finally, everybody should have the right to learn a second language or a greater number of languages once primary education has been completed, as well as to comprehend the person toward which he is addressing, when they speak the same language, including the possibility of making mistakes, of correcting himself and of acquiring the means in order to become more accurate[(612)].

In the second part of his research, the expert considers some individual linguistic rights which, according to him, should be ascribed to different categories of people. The types of people considered are children, parents, learners, teachers, authors together with writers and journalists, patients, women, bilinguals, and participants in international meetings[(613)]. In order to promote his first learning of the language, every child should socialize with his parents. The school should be responsible for communicating to parents the development of the process of linguistic learning of their children, and every parent has the right to choose a manner to interact with his children which is appropriate to them[(614)]. Learners should not be penalized in the case they make a wrong decision on the linguistic ground, as the right to make mistakes should be recognised to them. As far as the category of teachers is concerned, they have the right to acquire a basic experience on linguistic frameworks, to enhance their linguistic skills, and to revise the mistakes made by their students. Authors, writers and journalists have the task of enriching the vocabulary of their language through their creativity and the right to choose their attitude towards language, that is, for instance, to use it in a formal or informal way and to be synthetic or verbose[(615)].

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[(609)]F. GOMES de MATOS, Two typologies of Linguistic Rights, http://www.humiliationstudies.org/documents/MatosTwoTypologiesofLinguisticRights.pdf, p.2.

[(610)]E. BECHARA, *The teaching of grammar: oppression? Freedom?,* in Newsletter of the Brazilian Association of Linguistics, December 1981, p.38, in F. GOMES de MATOS, Two typologies of Linguistic Rights, http://www.humiliationstudies.org/documents/MatosTwoTypologiesofLinguisticRights.pdf, cit., p.2.

[(611)]F. GOMES de MATOS, Two typologies of Linguistic Rights, http://www.humiliationstudies.org/documents/MatosTwoTypologiesofLinguisticRights.pdf, p.2.

[(612)]*v. supra, note 611.*

[(613)]*v. supra, note 611,* pp.3-4.

[(614)]*v. supra, note 611,* p.3.

[(615)]*v. supra, note 614.*

Doctors and healthcare assistants have the right to use a comprehensible language to patients at their workplace, women should not suffer from any kind of linguistic discrimination, and people speaking normally two languages have the right to choose which one of the two languages they want to use in each specific situation or to choose to adopt a mixture of both. In this last case, the bilingual should verify that his addressee is able to interpret what he is saying[(616)].

Finally, the last category taken into consideration by Gomes de Matos concerns the participants in international meetings. For him, these people should enjoy the right to decide in which language they want to hold these events[(617)].

Collective linguistic rights, from their point of view, are defined as the right of a linguistic community to guarantee the preservation of its language and to transmit the language to future generations[(618)] because these rights refer to the rights of a linguistic group or a State. If States have clear borders that delineate them, the same thing is tougher for linguistic communities both because the notion of language is not clear and because the positions the individuals of a linguistic community bestow to their language are several. States enjoy collective linguistic rights because they adopt one or more languages when they pronounce on[(619)]. However, since a common approved identification on the legal ground is lacking, each State presents its own provisions on linguistic rights[(620)]. In those Countries where special conditions exist from the point of view of their history or the organization of their society, also regulations on the protection of collective linguistic rights exist[(621)]. Collective linguistic rights include the right to the development of a minority language and the right of minorities to found institutions concerning education which impart knowledge in their language, the right of minorities to be represented in the political matters of the Country where they live as well as to be autonomous in the administration of the community problems, especially those dealing with society, education, culture, religion and information through economic instrument, such as, for example, taxation. As already seen for individual linguistic rights, also for collective rights, when they are not fully enjoyed, there is a violation of basic linguistic human rights[(622)].

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[(616)] *v. supra, note 613.*

[(617)] *v. supra, note 611,* p.4.

[(618)] A. H. Y. CHEN, *The Philosophy of Language Rights.* Language Science, Vol.20, No.1, January 1998, pp.45-54.

[(619)] F. COULMAS, *Language Rights, Interests of State, Language Groups and the Individual,* Language Science, Vol.20, No.1, January 1998, pp.63-72.

[(620)] C. B. PAULSTON, *Language Policies and Language Rights. Annual Review Anthropology,* No.26, pp.73-85.

[(621)] *v. supra, note 619.*

[(622)] T. SKUTNABB-KANGAS, R. PHILLIPSON, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination*, Berlin – New York, Mouton de Gruyter, 1995, p.2.

Collective linguistic rights imply collaboration between persons because they join groups and peoples allowing everybody to use the culture and the language of everybody else[(623)].

From Stephen May point of view, one of the main causes for contrasting the identification of linguistic rights with human rights is precisely the fact that they are also collective rights.

The concept of collective rights is complicated and it can be analysed from two different perspectives according to the kind of possessor of the linguistic right or the type of good on which the possessor has the right[(624)]. The two perspectives of collective rights are defined the corporate and the collective[(625)]. In the former, it is thought that various social groups can be possessors of a right, in addition to single individuals. In this sense, it is the identity of the right-possessor that determines collective rights. It is obvious that the right of a social group can also concern the right of every member who forms part of this group, however, for this first notion, collective rights have to be intended to belong to the group as a whole and not as the totality of its single members.

Only if the possibility for a social group to have its own rights and requirements, others than those belonging to its single components is considered, because the group is seen as a totality in its own, the corporate perspective can be elaborated. So, the corporate notion looks at collective rights as those rights belonging to social groups as totalities[(626)]. According to the latter perspective, the collective, the rights in question do not belong to social groups, but to a collective or common good. As a consequence, single persons with a shared interest in a collective good own collective rights.

The focus of this notion of collective rights is not on the identity of the right-possessor but on the type of good on which he has the right. For the collective notion, a collective right can be defined as such only if the fact that some individuals have an obligation to respect is justified by an element of the interest of people, but also if these persons are part of a group and they are interested in a public good because this makes their interest being them part of the group.

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[(623)] *v. supra, note 622,* p.12.

[(624)] L. GREEN, *Two Views of Collective Rights,* Canadian Journal of Law and Jurisprudence, 1991, Vol.4, No.2, pp.315-325, in M. TOSCANO MÉNDEZ, *Language Rights as Collective Rights: Some Conceptual Considerations on Language Rights*, in Res Publica: Revista de Filosofía Política, 27, 2012, *https://www.academia.edu/2026162/Language_Rights_as_Collective_Rights_Some_Conceptual_Considerations_on_Language_Rights*, p.114.

[(625)] P. JONES, *Human Rights, Groups Rights, and People's Rights,* Human Rights Quarterly, 1999, Vol.21, No.1, pp.80-107, in M. TOSCANO MÉNDEZ, *Language Rights as Collective Rights: Some Conceptual Considerations on Language Rights*, in Res Publica: Revista de Filosofía Política, 27, 2012, *https://www.academia.edu/2026162/Language_Rights_as_Collective_Rights_Some_Conceptual_Considerations_on_Language_Rights*, p.114.

[(626)] M. TOSCANO MÉNDEZ, *Language Rights as Collective Rights: Some Conceptual Considerations on Language Rights*, in Res Publica: Revista de Filosofía Política, 27, 2012, *https://www.academia.edu/2026162/Language_Rights_as_Collective_Rights_Some_Conceptual_Considerations_on_Language_Rights*, p.114.

Finally, if despite the lack of interest of the individuals making part of the group in that public good, that interest will be in any case enough to have another individual to submit to an obligation[(627)].

Only single individuals have a right to a public good according to the collective perspective[(628)]. Even though the right refers to the interest people have in the public good, in this case the interest of every person alone is not enough for the obligation of giving the public good to be explained.

Since languages cannot be excluded, suppose a shared provision, and do not compete in consumption, they constitute the typical example of a public good. In fact, any person with the will of learning and using a language can access them. Not all speakers are needed to generate and maintain any language but just a number of them, because any speaker is sufficient to achieve that purpose. Finally, languages do not compete in the field of consumption because the use of the language by a speaker does not reduce the possibility for other individuals to use it[(629)].

From the economic point of view, languages have positive externalities in the sense that the more a language is used, the more its speakers find it useful because it allows more possibilities to remain in contact and a greater availability of goods and services[(630)].

In addition to collective and individual linguistic rights, another classification of them depends on two different degrees of legal protection. The former, is defined 'the regime of linguistic tolerance[(631)]' and it concerns those rights on the safeguard of people speaking a minority language from integration and differentiation, the latter, that is, 'the regime of linguistic promotion[(632)]', which is about the right to have access, using a minority language, to education, to relations with public institutions, and to public mass media[(633)]. Linguistic rights can also be distinguished on the bases of the standard of territoriality or on that of personality. According to the former, these rights refer just to a single region, as in Switzerland, where the different cantons in terms of language also have different linguistic rights.

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[(627)] J. RAZ, *The Morality of Freedom,* Oxford, Oxford University Press, 1986, p.208, in M. TOSCANO MÉNDEZ, *Language Rights as Collective Rights: Some Conceptual Considerations on Language Rights*, in Res Publica: Revista de Filosofía Política, 27, 2012, https://www.academia.edu/2026162/Language_Rights_as_Collective_Rights_Some_Conceptual_Considerations_on_Language_Rights, pp.115-116.

[(628)] M. TOSCANO MÉNDEZ, *Language Rights as Collective Rights: Some Conceptual Considerations on Language Rights*, in Res Publica: Revista de Filosofía Política, 27, 2012, https://www.academia.edu/2026162/Language_Rights_as_Collective_Rights_Some_Conceptual_Considerations_on_Language_Rights, cit., p.116.

[(629)] *v. supra, note 627.*

[(630)] *v. supra, note 628.*

[(631)] X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, cit., p.5.

[(632)] *v. supra, note 631,* p.5.

[(633)] R. DUNBAR, *Minority Language Rights in International Law,* 50 International and Comparative Law Quarterly, 2001, pp.91-92, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.5.

The standard of personality considers the linguistic condition of people as a reference, such as in Canada where, according to the federal legislation, in the whole territory different services can be allowed both in English and French[(634)].

It is possible to categorise linguistic rights depending on their orientation to assimilation or to maintenance. On the one hand, which can reveal in a milder manner, that is, toleration or in a more drastic one, that is, prohibition, the regulation of a State has the will of absorbing all the people living in it. For instance, the Kurds are not allowed to speak their language in Turkey, they are therefore subjected to a prohibition rule. On the other hand, linguistic rights oriented to maintenance can reveal through approval or through advancement and they deal with the purpose of preserving all the languages of a State. The so called 'Basque Normalization Law[(635)]' encouraging the Basque language is an example of regulation which foster linguistic rights[(636)]. Furthermore, linguistic rights can be examined on the basis of the level of overtness and covertness. In the first case, linguistic rights are expressed in an evident manner in treaties and regulations; in the case of covertness these instruments do not refer to such rights in a clear manner. The rules in effect in India belong to the first case, whereas, for instance, the *Universal Declaration of Human Rights*[(637)], the *International Covenant on Economic, Social and Cultural Rights*[(638)], as well as the *International Covenant on Civil and Political Rights*[(639)] are covert toward language rights[(640)].

Finally, linguistic rights can be positive or negative depending on the State role in their promotion. If the State is demanded to take a positive action through public funds, this is the case of positive linguistic rights. Some examples can be the provision of education in public schools as well as the supply of services in a certain language. On the other hand, if the State does not participate with any kind of activity dealing with linguistic rights fostering, it is appropriate talking about negative linguistic rights[(641)]. Generally, positive linguistic rights are defined 'programmatic provisions[(642)]' because they consider indispensable the State intervention, having it a responsibility to operate so as to enable its citizens to enjoy the rights bestowed by the Constitution.

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[(634)] C. B. PAULSTON, *Language Policies and Language Rights. Annual Review Anthropology,* No.26, pp.73-85.

[(635)] *Linguistic rights,* from Wikipedia, The Free Encyclopaedia, https://en.wikipedia.org/wiki/Linguistic_rights, p.8, last accessed 09/02/2016.

[(636)] *v. supra, note 635.*

[(637)] New York, the 9th of December 1948, it has 193 State Parties, in R. LUZZATTO, F. POCAR, *Codice di diritto internazionale pubblico*, sesta ed., Torino, G. Giappichelli Editore, 2013, p.159.

[(638)] New York, the 16th of December 1966, entered into force on the 3rd of January 1976, it has 176 State parties, available at the website http://treaties.un.org, last accessed 09/02/2016.

[(639)] New York, the 7th of March 1966, it entered into force on the 4th of January 1969, it has 192 State Parties, available on the website http://treaties.un.org, last accessed 09/02/2016.

[(640)] T. SKUTNABB-KANGAS, *Linguistic Genocide in Education or Worldwide Diversity and Human Rights?,* New Jersey - London, Lawrence Erlbaum Associates Inc., 2000, p.484.

[(641)] A. H. Y. CHEN, *The Philosophy of Language Rights,* Language Science, Vol.20, No.1, January 1998, pp.45-54.

[(642)] X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, cit., p.7.

Those rights which imply the indispensable State interference are respectively defined in France, Italy and Germany jurisprudence, «droits de créance», «diritti di prestazione» and «Leistungsrechte»[(643)].

Obviously, this implies that single persons cannot compel the State to implement these rights on the event that it does not show to have the intention of doing it[(644)].

[(643)] *v. supra, note 642.*

[(644)] *v. supra, note 642,* p.7.

# Chapter three
# Linguistic rights of linguistic minorities

## 1. History of the linguistic rights of people belonging to linguistic minorities in International Law

'Just as one's colour of skin should not diminish one's worth or dignity, so the State should not have any prejudice in its conduct towards or relationship with linguistic minorities[(645)]'.

'Only when minorities are able to use their own languages, run their own schools…can they begin to achieve the status which majorities take for granted[(646)]'.

As already stated in the previous chapter, since in the majority of the cases linguistic rights are denied to minority groups, the label 'linguistic rights' primarily refers to the linguistic rights of linguistic minorities[(647)].

International law started to deal with the matter of language rather late if compared to domestic law, even if since the early period of its history it has proven to provide some protection to the members belonging to particular groups, such as, for instance, those making part of religious minorities[(648)]. However, the linguistic and racial aspects were not considered interesting enough to be recognized or defended with appropriate measures in the international legal framework[(649)]. But, language was already present in many agreements, actually, and especially in those concerning the human beings who needed to be safeguarded[(650)]. The development of the linguistic rights of linguistic minority groups in International Law can be divided into five different periods according to the type of agreement, that is, national, bilateral, regional, multilateral or international, the concern for particular rights of linguistic minority communities and the variations in the degree of conceding

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[(645)]F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, cit., p.29.

[(646)]*United Nations Human Rights Fact Sheet on Minorities,* No.18, March 1992, p.4, in T. SKUTNABB-KANGAS, R. PHILLIPSON, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination*, Berlin – New York, Mouton de Gruyter, 1995, p.77.

[(647)]T. SKUTNABB-KANGAS, R. PHILLIPSON, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination*, Berlin – New York, Mouton de Gruyter, 1995, p.3.

[(648)]F. de VARENNES, *Language, minorities and Human Rights*, The Hague, Martinus Nijhoff Publishers, 1996, pp.23-24.

[(649)]P. THORNBERRY, *International Law and the Rights of Minorities,* Clarendon Press, Oxford, United Kingdom, pp.25-54, in F. de VARENNES, *Language, minorities and Human Rights*, The Hague, Martinus Nijhoff Publishers, 1996, p.24.

[(650)]*v. supra, note 645,* p.24.

them[651]. In the first, previous to 1815, only bilateral agreements involved linguistic rights, which were not yet considered by documents of international relevance. An example of this is the *Treaty of Perpetual Union* between France and the Helvetic State of 1516 which dedicated a special attention to the Swiss people who only spoke German[652]. What is more, the rights of minority groups were included in treaties on religious instead of linguistic minorities[653]. In the late fifteenth century, when the modern States of Europe were developing, Spain suggested for the first time that all the different communities residing within its territory should use one single language as part of an administrative plan of action. That language guaranteed internal obedience and external growth. The model of one single language was then applied to the rest of the world and in colonial empires people speaking their mother tongue were denied their rights as a consequence of the imposition of the colonizer's language. In the French context, despite the fact that during the 1789 Revolution French was the native language just of a minority of the whole population, all citizens could enjoy their freedoms through this language. In both the French and the British situations, minor languages were reduced to dialects, while the main language was exalted[654].

The 1815 *Final Act of the Congress of Vienna* can be ascribed to the second period instead, as it was concluded by seven European world powers. It marked the end of the period of the conquests of Napoleon and it was the first relevant international document with provisions that protected religious as well as linguistic minority groups[655]. It declared the Polish state dissolution and provided the safeguard of the Polish nationality[656] enabling in this way the Polish minority to use the Polish language in official concerns as well as German in official affairs[657]. In the same period, the linguistic rights of national minorities were also covered in a number of Constitutions, such as the 1867 Constitutional Law of Austria which provided the right to strengthen the language and nationality of the minority communities differently from other Countries which in the same period

[651]T. SKUTNABB-KANGAS, *Linguistic Genocide in Education or Worldwide Diversity and Human Rights?*, New Jersey, US, Lawrence Erlbaum Associates Inc., 2000; T. SKUTNABB-KANGAS, R. PHILLIPSON, M. RANUT, *Linguistic human rights: overcoming linguistic discrimination*, Berlin – New York, Mouton de Gruyter, 1995, cit., p.74.

[652]F. DESSEMONTET, *Le droit des langues en Suisse,* Éditeur officiel du Québec, Québec, p.29, in F. de VARENNES, *Language, minorities and Human Rights*, The Hague, Martinus Nijhoff Publishers, 1996, p.24.

[653]F. CAPOTORTI, *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*, UN Doc. E/CN.4/Sub.2/384/Rev.1/1991, New York, United Nations, 1991, in T. SKUTNABB-KANGAS, R. PHILLIPSON, M. RANUT, *Linguistic human rights: overcoming linguistic discrimination*, Berlin – New York, Mouton de Gruyter, 1995, p.74.

[654]T. SKUTNABB-KANGAS, R. PHILLIPSON, M. RANUT, *Linguistic human rights: overcoming linguistic discrimination*, Berlin – New York, Mouton de Gruyter, 1995, p.74.

[655]*v. supra, note 654.*

[656]*British and Foreign State Papers,* 1814-1815, Vol.II, 1839, pp.7-55, in F. de VARENNES, *Language, minorities and Human Rights*, The Hague, Martinus Nijhoff Publishers, 1996, p.24.

[657]*v. supra, note 654,* p.4.

adopted a one-single language regime[(658)]. It must also be reminded that even those agreements concerning the safeguard of ethnic or religious minorities had in some cases a pervasiveness on the linguistic ground[(659)]. For instance, when the Turkish language was adopted in Greece by the Muslim minority in the nineteenth century, the treaty of 1881 dealing with religious freedom and care for Islamic buildings and courts also reflected in the fact that the Turkish minority language continued to be used during the social and religious functions of the Muslims[(660)].

However, International Law started to consider the issue of the protection of the members belonging to linguistic minorities only since the modern State development and the advent of democracy, that is, since people started to interact more with their respective governments. In fact, only when the State became the major reference for education, employment, and social benefits, also the governments started to be directly involved in the social life of their communities[(661)].

In the modern societies of the First World War, it was the increasing dynamism of governments which led to the duty to take into consideration the questions dealing with language at the international level[(662)]. However, at the end of the First World War, some disapproval arose when the League of Nations did not include any reference to the defence of minority communities and therefore, the later approval of some treaties concerning minority groups was decided with the supervision of the League of Nations. The provisions dealing with the safeguard of minority groups in Eastern and Central Europe were so contained in multilateral and international treaties in addition to Peace Treaties, and they referred to the right to use language in private contexts and the right to provide basic education in their mother tongue[(663)]. Moreover, the language of minority groups could be used by their members in trade, in their religious activities, in the publishing industry as well as in public events[(664)]. Even though a number of Constitutions also adopted such provisions, not all Countries actually recognized these rights to their minorities within their territory, which meant that the minority communities regime realized by the League of Nations finally revealed a

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[(658)]T. SKUTNABB-KANGAS, *Linguistic Genocide in Education or Worldwide Diversity and Human Rights?*, New Jersey, US, Lawrence Erlbaum Associates Inc., 2000; T. SKUTNABB-KANGAS, R. PHILLIPSON, M. RANUT, *Linguistic human rights: overcoming linguistic discrimination*, Berlin – New York, Mouton de Gruyter, 1995, p.75.

[(659)]F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, p.4.

[(660)]*v. supra, note 659,* pp.4-5.

[(661)]F. de VARENNES*, Language, minorities and Human Rights, The Hague, Martinus Nijhoff Publishers,* 1996*,* p.25.

*[(662)]v. supra, note 661.*

[(663)]F. CAPOTORTI, *Study of the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities,* UN Doc. E/CN.4/Sub.2/384/Rev.1/1991, New York, United Nations, 1991 New York, United Nations, 1991, p.13.

[(664)]T. SKUTNABB-KANGAS, R. PHILLIPSON, M. RANUT, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination*, Berlin – New York, Mouton de Gruyter, 1995, p.76.

failure and that those few Countries reserving a particular attention to their minority communities rights were viewed as States of second class in the global context[(665)].

The Conventions signed during the third period, that is, between the Two World Wars, also included the possibility to appeal both the League of Nations, as it was provided with a Secretariat for Minorities, and the International Court of Justice in case of dissatisfaction, even if in a restricted way[(666)]. Despite minorities treaties did not constitute a universal system valid throughout the European continent to safeguard the rights of minority groups, the majority of the minorities treaties were adopted by European countries[(667)]. Those treaties concerned the States which lost the war, that is, Hungary, Turkey, Austria, and Bulgaria, the States that were born after the end of the Ottoman Empire, as well as those States such as Romania, Poland, Yugoslavia, Czechoslovakia, and Greece which were affected by Wilson's self-determination principle with a change in their boundaries. Finally, agreements on minorities also included the Albania, Lithuania, Latvia, Estonia and Iraq unilateral declarations concerning their entrance into the League[(668)]. These documents were aware of the right to equality without discrimination to everybody, regardless being people members of a minority community or not[(669)], which is something important to remind as these instruments dealt with freedom of religion and with the protection of life without any distinction in terms of birth, nationality, race, religion, or language[(670)], even if it is normally believed that those treaties concerning minorities just considered the rights of minority communities[(671)].

On the contrary, such rights belong to every single individual despite having or not a minority status. The aforementioned treaties involved rights such as citizenship, building and supervision of institutions, equality and non-discrimination, and the State duty to subsidize schools with primary education in the minority language[(672)]. These agreements contained two main regulations; the former recognized the equality of the members of linguistic minorities with the others citizens of the same Country and the latter was about the guarantee of the instruments for the protection of

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[(665)]S. VILJAN (edited by), *Ethnic Groups in International Relations: Comparative Studies on Governments and Non-Dominant Ethnic Groups in Europe, 1850-1940,* European Science Foundation, New York University Press, New York, 1991, pp.14-45; A. LIEBICH, A. RESZLER (eds.) *L'Europe centrale et ses minorités: vers une solution européenne?,* Presses Universitaires de France, Paris, 1993, p.45, in F. de VARENNES, *Language, minorities and Human Rights*, The Hague, Martinus Nijhoff Publishers, 1996, p.28.

[(666)]T. SKUTNABB-KANGAS, *Linguistic Genocide in Education or Worldwide Diversity and Human Rights?*, New Jersey, US, Lawrence Erlbaum Associates Inc., 2000; T. SKUTNABB-KANGAS, R. PHILLIPSON, M. RANUT, *Linguistic human rights: overcoming linguistic discrimination*, Berlin – New York, Mouton de Gruyter, 1995, p.76.

[(667)]F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, p.5.

[(668)]F. de VARENNES*, Language, minorities and Human Rights, The Hague, Martinus Nijhoff Publishers,* 1996, p.26.

[(669)]*v. supra, note 668,* cit., p.26.

[(670)]*v. supra, note 669.*

[(671)]*v. supra, note 668.*

[(672)]*v. supra, note 669.*

minority groups characteristics such as, obviously, the language[(673)]. As noticed by the Permanent Court of International Justice, since if minorities were denied their own entities losing so the key element which made of them minority communities, majorities and minorities would never be equal and this proved that the two regulations connected to each other. This meant that the citizens belonging to linguistic minority communities as well as the other citizens had to benefit from an equivalent legal regard[(674)]. The members of linguistic minorities had the same right of the citizens of the linguistic majority to found schools using their own funds. Besides, in those town districts where many minorities members lived, they had right to an equal part of the total quantity of money which made not part of public money to achieve goals concerning religion, education or charity[(675)]. However, since violations of minorities rights occurred many times during the Second World War, and especially under fascism, a continuous unrest burst for the necessity of defending fundamental human rights at the international level. When the War ended, the global safeguard of the rights and freedoms of the individuals was pursued in such a way that whether language, religion or race were a reason for discrimination, the problem could be faced from the perspective of the individual rights defence, with a special attention for non-discrimination[(676)]. It was the period in which the Universal declarations were drafted aiming at preventing persons from unjust treatment[(677)]. Even if the United Nations Conference on International Organisation did not deal with the treaties on minority communities, the need for the adoption of a new method towards human rights was felt[(678)].

As far as language issues are concerned, the strong responsibility for individual rights reflected the new method. Actually, the same United Nations recognized that this period distinguished itself for a carelessness towards the rights of minority groups because the will of fostering human rights then translated into a failure of minorities safeguard, except for the wide statements against discrimination. Particular right for minority communities were considered redundant since the Conventions on human rights already reserved a sufficient attention to all persons and neither the *Charter of the United Nations*[(679)] makes any reference to minority groups[(680)].

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[(673)] *v. supra, note 668,* p.27.

[(674)] F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, p.6.

[(675)] *v. supra, note 674.*

[(676)] *v. supra, note 668,* p.28.

[(677)] T. SKUTNABB-KANGAS, R. PHILLIPSON, M. RANUT, *Linguistic human rights. Overcoming linguistic discrimination*, Berlin – New York, Mouton de Gruyter, 1995, cit., p.77.

[(678)] W. MCKEAN, *Equality and Discrimination under International Law,* Clarendon Press, Oxford, United Kingdom, 1983, p.53, in F. de VARENNES, *Language, minorities and Human Rights*, The Hague, Martinus Nijhoff Publishers, 1996, p.28.

[(679)] San Francisco, the 26th of June 1945, it entered into force on the 24th of October 1945, it has 194 State Parties, in R. LUZZATTO, F. POCAR, *Codice di diritto internazionale pubblico*, Sesta ed., Torino, G. Giappichelli Editore, 2013, pp.594-95.

[(680)] *v. supra, note 677,* p.77.

Hungary presented a draft of a Convention for the defence of minority communities at the London Peace Conference of 1946 but it was dismissed as well as the suggestions to provide Articles about minority groups in the *Universal Declaration of Human Rights*[(681)]. In this same period, several peace treaties provided references to the matter of language, such as the 1947 treaties signed with the Allies, which insisted on the fact that all States 'should take all the necessary measures to secure to all persons within their jurisdiction, without distinction as to language, the enjoyment of human rights and freedoms, including freedom of expression, of press and public opinion, and of public meeting[(682)]'.

This was the fourth period of the history of the linguistic rights of linguistic minorities.

In the fifth and last period, which started in the 1970s, the linguistic rights of minority groups started to be considered again as several European countries realized bilateral and multilateral agreements concerning the rights of their linguistic minorities, with specific references to the safeguard of their language, culture, and institutions[(683)]. The main work of this period was the report on the protection of minority groups written by Francesco Capotorti under the commission of the United Nations in 1971 and published for the first time in 1979[(684)]. The document mainly focused on the treatment to which minority communities of the various Countries were subjected and the author also suggested to write a Declaration on the rights of persons belonging to minorities, obviously also with the inclusion of their linguistic rights[(685)].

The different periods which have been analysed also show how much clearly the various documents deal with the linguistic rights of minorities. The Constitutions of States, being the first ones to provide protection to these groups from the linguistic point of view, offer the major level for their safeguard. A minor level of protection for the linguistic rights of these groups is provided by multilateral and especially continental documents on human rights, and finally, since the instruments bearing a universal scope face the language matter only in a superficial way, they are those that provide the least level of rights protection[(686)].

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[(681)]New York, the 9th of December 1948, it has 193 State Parties, in R. LUZZATTO, F. POCAR, *Codice di diritto internazionale pubblico*, sesta ed., Torino, G. Giappichelli Editore, 2013, p.159; *Human Rights Fact Sheet on Minorities,* No.18, March 1999, pp.3-4.

[(682)]Treaty with Italy, Vol.49 UNTS, p.3; Treaty with Romania, Vol.42 UNTS, p.3; Treaty with Bulgaria, Vol.41 UNTS, p.21; Treaty with Hungary, Vol.41 UNTS, p.135; Treaty with Finland, Vol.49 UNTS, p.203; Austrian State Treaty, Vol.217 UNTS, p.223, in F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, cit., p.8.

[(683)]T. SKUTNABB-KANGAS, *Linguistic Genocide in Education or Worldwide Diversity and Human Rights?*, New Jersey, US, Lawrence Erlbaum Associates Inc., 2000; T. SKUTNABB-KANGAS, R. PHILLIPSON, M. RANUT, *Linguistic human rights. Overcoming linguistic discrimination*, Berlin – New York, Mouton de Gruyter, 1995, p.77.

[(684)]F. CAPOTORTI, *Study of the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities,* UN Doc. E/CN.4/Sub.2/384/Rev.1/1991, New York, United Nations, 1991 New York, United Nations, 1991, in *v. supra, note 683*, pp.77-78.

[(685)]T. SKUTNABB-KANGAS, R. PHILLIPSON, M. RANUT, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination*, Berlin – New York, Mouton de Gruyter, 1995, p.78.

[(686)]*v. supra, note 685.*

The statement that all single individuals as well as communities should benefit from universal linguistic rights has to be referred mainly to the differences in the access to the political power.
In general, since linguistic majorities believe that the provision to minority groups of their linguistic rights might lead to their integration, they have the tendency to deny them such rights.
However, this reluctance to provide linguistic rights to linguistic minorities finds its bases on two stereotypes, the former, which believes that economic growth can flourish in the situations where only one language is spoken, and the latter, for which a Country is menaced by the rights of minority communities[(687)]. According to the former, the linguistic factor relates in part to the imbalances in the possession of resources and power in several countries, where the linguistic majorities own an excessive quantity. If Countries with different regimes on the ground of language are compared, an association between the use of several languages and poverty emerges in the sense that a lesser poverty characterizes those Countries where only one language is spoken, while Countries in which more languages are spoken are poorer. It can be inferred from this that since in one-single language regimes industrial, relational and educational activities work well, multilingual countries should reduce their range of languages to just one in order to enhance their economic system. However, this obviously requires minority communities to be integrated, which in turn implies the neglect of rights to people speaking minority languages and the sustain of services for minority communities using the language of the majority group. Furthermore, if a multilingual Country adopts a one-single language regime, linguistic rights result violated[(688)]. According to the latter stereotype, the maintenance and reproduction of minority communities as different groups is also based on cultural and linguistic rights and therefore, from the linguistic majorities point of view, the fact that minority groups have cultural and linguistic rights impedes their integration into the traditional society, which menaces the Country of reference. This is the reason why the classic way of thinking of the State believes that the quintessential State should present just one ethnic group and just one language[(689)]. As a consequence, any attempt to promote diversity will naturally lead to the uncertainty of the State homogeneity at the levels of politics and territory.
The forecast of this way of thinking is the final dissolution of State as the minority groups will use all their energies in order to constitute their own nation state with a political system of their own.
The sustained thesis is therefore that if cultural and linguistic rights are provided to minority communities, the natural consequence will be their demands for independence on the cultural,

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[(687)] *v. supra, note 685,* pp.3-4.
[(688)] D.P. PATTANAYAK, *Monolingual myopia and the petals of the Indian lotus: do many languages divide or unite a nation?,* in T. SKUTNABB-KANGAS and J.CUMMINS, (eds.), *Minority Education: from Shame to Struggle*, Clevedon: Multilingual Matters, 1988, pp.379-89, in T. SKUTNABB-KANGAS, R. PHILLIPSON, M. RANUT, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination*, Berlin – New York, Mouton de Gruyter, 1995, p.4.
[(689)] *v. supra, note 685*, p.4.

economic and political grounds[690]. Following this line of though, neither migrants nor immigrants can enjoy cultural and linguistic rights since this will enlarge the number of national minorities. Both Countries and minority groups are subjected to the will of protecting identities but the respect for the rights of minority communities has to be preferred to their rejection[691]. Especially when the claim of minority groups for their linguistic and cultural rights did not constitute a risk for the national unity, Countries have proved to be willing towards the recognition of the linguistic rights of some of their minorities and, in this way, a number of national linguistic minorities started to enjoy their linguistic rights. Anyway, the general behaviour of the States reflects their will of showing to make some progress in this sense but not to undertake effective measures in this direction[692]. Between the Preambles of the legal instruments at the regional or global level bearing positive purposes towards linguistic rights and their actual scarcity in the body of such documents there is a gap justified by the existing conflict between the State sincere will to grant, or at least to show to grant cultural and linguistic rights to the minority groups living within its territory and, on the other side, the State fear for its potential dissolution in the case of attribution of such rights to these communities, due to the reproduction of these groups in different groups from the rest of the national population[693]. Generally, States avoid commenting about the way in which the other countries regard their minority communities because they are aware of the fact that they do not reserve them the treatment indicated in the traditional Conventions on human rights. However, from their point of view, minority groups are not entitled to attribute their rights themselves, just through their declaration, because they have to be approved by the Country of residence of the minority groups[694]. The approval of these rights can be obtained through a procedure of negotiation in which the minority communities constitute normally the most fragile groups. In the case in which this procedure did not have a positive ending, minority groups can only rely on the recognition of their ability to live by other Countries[695]. Some kind of quarrels are caused by the dearth of linguistic rights because since language is a fundamental cultural value for the majority of ethnic groups, if it is threatened, what is put at risk is the community conservation on the linguistic and cultural grounds[696].

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[690]T. SKUTNABB-KANGAS, R. PHILLIPSON, M. RANUT, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination*, Berlin – New York, Mouton de Gruyter, 1995, p.4.

[691]G. ALFREDSSON, *Minority rights: Equality and non-discrimination,* in H. KRAG, N. YUKHNEVA, (eds.), *The Leningrad Minority Rights Conference. Papers,* Copenhagen: The Minority Rights Group in Denmark, 1991, p.39, in *v. supra, note 690,* p.5.

[692]*v. supra, note 690,* p.5.

[693]*v. supra, note 690,* pp.5-6.

[694]*v. supra, note 690,* p.6.

[695]*v. supra, note 694.*

[696]J. J. SMOLICZ, *Culture and Education in a Plural Society,* Canberra, Curriculum Development Centre, 1979, in *vedi supra, note 695,* p.7.

If a minority group cannot not enjoy linguistic rights, it cannot benefit from the same regard which is reserved to other people at the levels of politics, economics and education. Therefore, conflicts between different ethnic groups are enhanced by the lack of respect for linguistic rights and, on the contrary, the possibility of conflict decreases if linguistic rights are recognized to such groups[(697)]. More recent studies have highlight the importance of implementing the linguistic rights of linguistic minorities in order to enable these groups to take part in social life[(698)]. First of all, if such rights are exercised, the education of the children belonging to linguistic minorities can progress from the points of view of both its quality and their admission to schools. In fact, a very scant education is generally provided to children belonging to minority groups. Secondly, since women belonging to linguistic minority communities make part of the most discriminated groups of persons at the global level, the exercise of linguistic rights can foster their empowerment and equality[(699)]. Being them victims of ethnic or gender discrimination, they have less opportunities to go to school and to study an official language, whereas they can escape from misery and exclusion and so also advance in their studies if they receive education in their mother tongue. Thirdly, since it is not very profitable to use resources for broadcasting or informative campaigns for the public through an unknown language for the majority of the inhabitants, resources are better employed if minority languages are used, as they are understood by the society as a whole[(700)]. Fourthly, through the exercise of linguistic minority rights, public services and communication will result enhanced because this leads to a better quality of education, employment, justice, social services and health, as well as to a greater possibility to enjoy these services for the public. Besides, the linguistic rights of minorities if adopted to face problems such as estrangement and isolation, can prevent conflicts and anxieties between the various ethnic groups of the same Country as well as foster the national cohesion because they allow these groups to take part to social life and also to have a major possibility to find a job. On the contrary, the probabilities of instability and mistreatment increase if minority groups are submitted just to a single official language[(701)].

Finally, the implementation of the linguistic rights of minorities is fundamental for the preservation of linguistic diversity, which contributes to fight against racial discrimination and intolerance[(702)].

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[(697)] *v. supra, note 690,* pp.7-8.

[(698)] *Language Rights of Linguistic Minorities. A Practical Guide for Implementation*, http://www.ohchr.org/Documents/Issues/IEMinorities/LanguageRightsLinguisticMinoritiesHandbook.docx., last accessed 09/02/2016, p.6.

[(699)] *v. supra, note 698.*

[(700)] *v. supra, note 698,* p.7.

[(701)] *v. supra, note 698,* pp.7-8.

[(702)] *v. supra, note 698,* p.8.

## 2. Non-language discrimination for minority groups

The principle of non-discrimination on the basis of language also applies to the members of linguistic minorities who are entitled to choose the language they prefer to use as long as suitable and justified by the circumstances. Therefore, this right has to be considered an essential human right of their own rather than an exceptional grant or an unusual care[(703)]. Anyway, this concept finds not all scholars united and uncertain when they have to decide the role of language within the human rights framework. According to Alfredsson, minorities enjoy particular rights that are necessary to provide the instruments which allow them to protect the character and customs which portray them as a different group from the rest of the persons living within the same Country.

An example of such instruments is constituted by the application of those provisions concerning the implementation of effective services such as the attendance at schools where persons can be taught in in their language[(704)]. As stated in Article 26 of the *International Covenant on Civil and Political rights*[(705)], 'equality before the law has to be assured to everybody without any kind of discrimination against colour, race, sex, religion, language, etc. […], as well as everybody's protection by the law'. In light of this Article, a positive action toward the guarantee for minority communities to preserve their customs and personal nature as well as to continue to practice their own culture, does not represent a sort of banned discrimination and, therefore, a case could be presented by an individual belonging to a minority group asking for a useful positive action in order to practice the rights provided by the aforementioned *Covenant* being such individual equal to a majority individual[(706)]. However, Article 26 on the ban of discrimination actually concerns the individual as such without considering the connection existing between the majority and minority groups and so, it might not be recalled to offer a distinct regard to the members of the two groups[(707)]. As a consequence, the reasoning of Alfredsson seems to forget about the fact that language mainly constitutes a characteristic of the single person and so that the person whose mother tongue is not the State favourite one is oppressed by the linguistic choice of a Country.

In this way, the State divides its population into different groups of people, some of which are preferred and others not[(708)].

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[(703)] F. de VARENNES, *Language, minorities and Human Rights*, The Hague, Martinus Nijhoff Publishers, 1996, p.117.

[(704)] G. ALFREDSSON, A. DE ZAYAS, *Minority Rights: Protection by the United Nations, in Human Rights Law Journal,* Vol.14, 1993, pp.6-7; F. ALBANESE, *Ethnic and Linguistic Minorities in Europe, in Yearbook of European Law,* Vol.11, 1991, p.321; in *v. supra, note 703,* p.118.

[(705)] New York, the 16th of December 1966, it entered into force on the 23rd of March 1976, it has 186 State Parties, available at the website *http://treaties.un.org*, last accessed 09/02/2016.

[(706)] *v. supra, note 704.*

[(707)] *v. supra, note 703,* p.118.

[(708)] *v. supra, note 707.*

At the same time, the education provided by a Country in a distinct language from that spoken by the majority group has not to be intended as an extraordinary treatment, since a State has not to confer favours to some individuals just because they belong to a minority under the principle of non-discrimination, which, on the contrary, maintains that a Country offering learning to a group of its citizens in their mother tongue should provide this or other services to these persons avoiding discrimination[(709)]. To put it another way, this is not an unusual right because a Country is not forced to make any favour but, if it decides to take this direction, it has to make this preventing any discriminatory action. In any case, it must also be reminded that a State cannot provide education in the mother tongues of all its inhabitants and it is entitled to restrict the number of these languages[(710)]. Since the notion of non-discrimination sometimes has the added value of safeguarding the individuals belonging to linguistic minority communities, the above mentioned thoughts can be hypothesized. However, the principle of non-discrimination can produce two different results depending on the quantity of people making part of the linguistic minority group within a Country. If the number of these people is considerable, the State will finance the establishment of schools providing education in their native language but, if the minority is just made up of few people, the State will not have any incentive to establish schools which provide education in a language used by a very scant number of people[(711)]. Besides, a distinction has to be made between prevention of discrimination and protection of minorities[(712)]. The former, refers to the prevention of any behaviour in opposition to the equality desired by single individuals as well as by groups. The latter, refers to the protection of those groups different from the prevalent one which want to be treated at the same time as the majority group and differently from it to maintain their identity[(713)]. Language together with religion and race are the elements that deserve protection and the individuals belonging to the minority community have to be citizens of that Country in order to receive safeguard[(714)]. Positive acts are needed in order to safeguard minority groups, that is, to preserve they cultural and linguistic diversity[(715)]. Some experts believe that a distinction has also to be made between the notions of equality and non-discrimination on the one hand, and the special protective measures for minorities on the other hand[(716)].

In fact, the former, impose negative actions through which the regard on the basis of inequality is rejected and the latter need positive actions for instance to fund schools providing instruction in a

[(709)]F. de VARENNES, *Language, minorities and Human Rights*, The Hague, Martinus Nijhoff Publishers, 1996, p.119.
[(710)]*v. supra, note 709.*
[(711)]*v. supra, note 709.*
[(712)]*v. supra, note 708,* cit., p.119.
[(713)]*v. supra, note 709.*
[(714)]*v. supra, note 709.*
[(715)]*v. supra, note 709,* pp.119-120.
[(716)]*v. supra,* note 709, cit., p.120.

minority language[717]. However, such a distinction is considered outdated nowadays because it was based on a limited reading of the concept of non-discrimination[718]. Some scholars made a mistake in not evaluating in detail the meaning of discrimination, which refers to the existence of imbalances at the linguistic level when, for instance, disparity creates through the use of just one language in public schools, since different individuals are provided with a different service because only some people are educated in their native language[719]. When a Country adopts this discriminatory preferential treatment[720], since it cannot behave in this way, it can take a double possible action, that is or the total termination of that difference in treatment through the closing of public schools or the interruption of the treatment based on discrimination by the maintenance of a certain number of schools which provide education in a non-official language[721]. Special status or special assistance can be taken into consideration only in the case of actions exclusively addressed to minority groups and which do not implicate respective actions from the part of majority groups. Only if an unequal situation substituted to a condition of equality in past times and therefore such a status had to be re-established or if the structure created some problems in maintaining a situation of equality, the actions undertaken for minority communities should find a correspondence in the actions previously undertaken for majority groups[722]. States should adopt positive measures under the notion of equality aiming at reducing or removing those elements which can foster the continuation of a discriminatory condition or which constitute the origin of it.

Even if it could be labelled as a special treatment, a particular measure should be adopted in the case of the existence of a number of communities living within a context in which they can enjoy human rights just in an unbalanced way[723].

To sum up, the conduct of a State towards language should always be reasonable in dealing with those minority groups speaking a minority language which, even if subjected to a distinct treatment from the majority of the population given their condition, should never be the victims of any kind of discrimination[724]. However, the linguistic choice of a Country includes also some important aspects concerning the political and economic grounds. In fact, since the State has conferred to language a fundamental role in managing the entry to schools and to the world of work, with the

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[717]P. THORNBERRY, *International Law and the Right of Minorities*, Clarendon Press, Oxford, United Kingdom, 1991, pp.126-127.

[718]*v. supra, note 709,* p.120.

[719]*v. supra, note 709,* p.120.

[720]*v. supra, note 709,* cit., p.120.

[721]*v. supra, note 709,* p.120.

[722]*v. supra, note 709,* p.120.

[723]A. EIDE, *Minority Situations: In Search of Peaceful and Constructive Solutions,* in Notre Dame Law Review, Vol.66, pp. 1341-1342, in F. de VARENNES, *Language, minorities and Human Rights*, The Hague, Martinus Nijhoff Publishers, 1996, pp.120-121.

[724]*v. supra, note 709*, p.121.

consequence that the speakers of the favourite or official language have more opportunities to advance with their professional life, it involves the national political bodies in language matters[725]. This becomes evident if it is considered that the one or more languages chosen by a State regulate also the entry to the political system of a Country because this or these languages become the national language or languages of that State and represent the nation as a whole. In the case of the existence of some forces which declare themselves against the national language, a declaration against national unity exists as well[726]. It might happen that the access to political participation is limited to the speakers of the national language, which makes it nonsensical to be governed by a person who does not know the national language[727]. Therefore, this implies that the participation in political affairs and even more the role of head of State is just destined to individuals who speak the national language[728]. On the one hand, a Country is free to demand its citizens to learn a predominant language but, on the other hand, if there is a considerable number of people who speak another language, that Country cannot impose the use of that predominant language in public schools and in the exercise of political power[729]. Generally, linguistic minority communities live together in the same territorial portion of a State and speak their mother tongue with their families as well as with the other members of their community so that the use of the predominant language of the State will not be overriding there, with the consequence of making the members belonging to these groups unable to speak the national language as fluently as the native speakers[730].

Besides, even in the case in which the individuals belonging to a linguistic minority learn the predominant language, they will be the victims of a disparity in society, politics and economics because the linguistic choice made by the State demonstrates to do not take so much into consideration the State composition at the levels of society, culture and demography[731].

In addition to this, the linguistic preferences of a Country and the actions directed to prevent other languages from being spoken can constitute an effort aiming at underling that a group prevails over others. Following this line of thought, one the one hand, the fact that the State should not provide any benefit using the language spoken by a minority of individuals is understandable, but, on the other hand, other kinds of actions which deal with the private life of the individuals will rightly prove to be worthless and to represent a clear will of abolishing another group existence or

[725] *v. supra, note 724.*
[726] *v. supra, note* 724.
[727] *v. supra, note 724,* cit., p.121-122.
[728] *v. supra, note 724,* p.122.
[729] *v. supra, note 724,* p.122.
[730] *v. supra,* note 724, p.122.
[731] *v. supra, note* 724, p.122.

expression[(732)]. A State might inform with more or less intention to do that, that the one or more languages it uses to undertake its different activities coincide with the national mother tongue. Obviously, the members belonging to the majority group are subjected to a preferential treatment for which they have not the necessity to study another language and can use their native language in both private and public situations as well as in both informal and formal contexts. Moreover, they are free from the potential judgement of speaking a language different form their own in an awkward manner, whereas the members of minority communities cannot benefit from this same special regard[(733)]. In general, the linguistic tensions between different ethnic communities, which can also end up in wars in the political field, exist where linguistic rights have been neglected or rejected and obviously do not exist where such rights were respected or were the object of a compromise at the linguistic level[(734)]. If the non-discrimination notion is employed and comprehended in the right way, to those contexts in which minority groups are present, it can be used to mitigate a part of the reasons of tensions which, being of an ethnic, national or religious nature, lead to the disregard of the human rights. Moreover, the concept of non-discrimination has to be considered fundamental if the desired purpose is the guarantee of the total objectivity in the judicial field[(735)]. Language also has a leading role in in the system of communication of all the political apparatuses. Given the increased political participation of people, the improvements in the field of administration, and the building of public schools, public authorities have to deal more and more with linguistic matters[(736)]. Therefore, the majority of tensions on the linguistic ground do not find a resolution in the State retirement from the place of conflict as a functioning technique to solve conflicts of religious character in past times and different strategies of solution have to be searched for the linguistic field. In ancient times, state and church could be divided in order to solve the religious opposition, whereas in modern times a division between state and language cannot be made[(737)]. The leading role of language in in the system of communication is evident in its connection to several job and career opportunities and in the fact that the linguistic tensions imply the participation of professionals in the employment perspectives of the members of the communities taken into consideration and of their cultured elites. From this, it can be inferred that languages are not the only element of linguistic conflicts, which are also provoked by concrete

[(732)]D.L. HOROWITZ, *Ethnic Groups in Conflict,* University of California Press, Cambridge, United Kingdom, 1985, p.222, in F. de VARENNES, *Language, minorities and Human Rights*, The Hague, Martinus Nijhoff Publishers, 1996, p.122.
[(733)]J.W. TOLLEFSON, *Planning Language, Planning Inequality: Language Policy in the Community*, London, Longman, 1991, p.201, in F. de VARENNES, *Language, minorities and Human Rights*, The Hague, Martinus Nijhoff Publishers, 1996, p.123.
[(734)]*v. supra, note 731*, p.123.
[(735)]*v. supra, note 731*, cit. p.123.
[(736)]F. de VARENNES, *Language, minorities and Human Rights*, The Hague, Martinus Nijhoff Publishers, 1996, p.124.
[(737)]*v. supra*, *note 736*, p. 124.

advantages on the economic ground[(738)]. In fact, according to the important political analyst McRae, when a Country chooses the language to be used within its territory, people will bear effects of both political and economic kind. Especially in developing countries, where poor people cannot access to a complete course of public instruction, if the State adopts a linguistic policy based on a non-dominant language for a considerable portion of its inhabitants, linguistic divisions hard to be overtaken will create in the relationship between public authorities and single individuals[(739)].

As other scholars have noticed, if the individuals who do not known the chosen language by the State do not receive education in their own language, they will be penalized in their ability to compete at the economic level. Therefore, the predilection of a Country for a language can lead to its support to the economic concerns of the native-speakers of the official or predominant language[(740)].

To conclude, the right to equality and the right to non-discrimination affect questions of language as recognized at both the national and international levels. Basically, the right to non-discrimination imposes some restrictions to the State behaviour[(741)]. In fact, it has not to consider the individual features of people involved when acting, providing services, demanding people something with the aim of implementing rights or getting profits because according to the right to equality the same regulations should be effective to every person and following the same procedure[(742)].

According to the *General Comment* on non-discrimination of the Human Rights Committee of the United Nations[(743)], it is necessary to find an equilibrium between the legal objectives and interests of a State when it expresses its predilections or divides different elements implicating basic features of the individual, and the inconvenience or refusal of this on people or the favour or benefit it has just on a group of people and not on others. This means that it must be understood whether a State had a balanced or just behaviour, that is, whether it had or not a discriminatory approach[(744)].

However, at both the national and international levels, the core of the problem is not to understand the scope of this right but rather its real functioning when applied to questions of language.

Besides, it must also be reminded that the non-discrimination principle concerning language, as well as race and religion, is not universal.

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[(738)]K.D. McRae, *Conflict and Compromise in Multilingual Societies: Belgium,* Wilfrid Laurier University Press, Waterloo, Canada, 1986, pp.3-4, in F. de VARENNES, *Language, minorities and Human Rights*, The Hague, Martinus Nijhoff Publishers, 1996, p.124.

[(739)]*v. supra, note* 736.

[(740)]*v. supra, note 736,* cit., p.125.

[(741)]*v. supra, note 736,* p.125.

[(742)]*v. supra, note 736,* p.125.

[(743)]UN Human Rights Committee (HRC), CCPR *General Comment No. 18: Non-discrimination*, 10 November 1989, adopted at the Thirty-seventh Session of the Human Rights Committee, available at the website *http://www.refworld.org/docid/453883fa8.html*, last accessed 09/02/2016.

[(744)]F. de VARENNES, *Language, minorities and Human Rights*, The Hague, Martinus Nijhoff Publishers, 1996, p.126.

In fact, the banning of discrimination does not forbid to make any differentiations on the linguistic ground, but only those that once all elements had been examined, sound like lacking of reason[(745)]. At the same time, a Country cannot believe to have complete authority in the choice of the language to be used in all formal contexts because this will translate into a distinction on language bases[(746)] according to which its favourite national or official language will be enjoyed only by those people having it as their native language, and not by those people possessing a scant knowledge of it or not entitled to use their mother tongue[(747)].

Finally, it can be asserted that a national linguistic differentiation is not discriminatory only if it is right in the purposes it wants to reach, the instruments of its action and the consequences it has on less favoured persons, which in a more concrete way means that the banning of discrimination is legitimate only when a considerable number of persons suffer from a government activity or service[(748)].

### 3. The different domains of use of linguistic rights

The matter of deciding whether to have one or more official languages has always existed within all multilingual States as linguistic minorities generally want to have their native languages recognized[(749)]. In these States, the choice of the language which becomes the national official language is mainly a decision concerning politics and which depends on several elements.

For instance, the prominence of the linguistic minority communities, the role they perform in their Country of residence on the economic and political grounds and the degree of advancement of the language spoken by the minority group to make communication possible in different sectors constitutes some examples[(750)].

The first domains of the use of a minority language which can be mentioned are non-official and official situations. In the former case, the right of minority groups are neither banned nor subjected to any kind of limitation on the legal ground[(751)]. Anyway, it was also observed that the majority of governments did not support so much the use of these languages in this context. Those Countries which provided information on the issue, maintain that the members of linguistic minority communities are free to use their native language in society, in family relations, in the religious

[(745)] *v. supra, note 744,* p.126
[(746)] *v. supra, note 744,* cit., p.126.
[(747)] *v. supra, note 744.*
[(748)] *v. supra, note 744,* p.127.
[(749)] F. CAPOTORTI, *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*, UN Doc. E/CN.4/Sub.2/384/Rev.1/1991, New York, United Nations, 1991, p.75.
[(750)] *v. supra, note 749,* p.76.
[(751)] *v. supra, note 749,* pp.76-77.

field as well as in trade[752]. In the second case, the official situations refer to the contexts in which the language of the linguistic minority groups is used by the national organs which own the executive, legislative and the administrative powers. In accordance to this, a distinction has to be made between different countries because in some of them, official situations see a great use of the languages spoken by the linguistic minority communities while in other countries these languages are spoken in a limited number of situations[753]. In the States where the languages spoken by the minorities are official, these languages have more opportunities to be used in the government executive and legislative activities. So, for example in the case of Switzerland where three languages are spoken, that is, German, Italian and French, being all official, they enjoy the same kind of condition at the legislative level, even though they are considered differently in their concrete use. In fact, the Swiss body of laws presents all three languages but French and German are more favoured than Italian in simultaneous translations and in the legal instruments of the Federal Assembly[754]. In the majority of cases of the developing countries, even though the languages spoken by the minority groups are not official, they are recognized by the State legislative and executive organs[755].

Another domain of use of a minority language is in the interaction of linguistic minority communities with administrative authorities[756]. The constitutional framework, bilateral agreements or legislation recognize this right to the minorities in a number of countries and, government funds to translate documents, the work of interpreters as well as of other people who speak well the language of the minority community, are the main means to exercise that right. Moreover, it must be noticed that not all the languages of the minority groups of the same State have that right guaranteed[757]. For example, the German and Danish Constitutions provide the right for their respective minority groups to use their native language with the administrative authorities and before the courts[758]. On the contrary, the Swiss Constitution provides only the use of the language of the majority when dealing with authoritative forces because the notion of territoriality from the point of view of the language is taken into consideration[759]. As far as the government employees are concerned, it is considered that they can speak their mother tongue for domestic questions, even if they are demanded to be proficient in two of the official language.

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[752]F. CAPOTORTI, *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*, UN Doc. E/CN.4/Sub.2/384/Rev.1/1991, New York, United Nations, 1991, p.77.
[753]*v. supra, note 752.*
[754]*v. supra, note 752.*
[755]*v. supra, note 752*, p.78.
[756]*v. supra, note 755,* cit. p.78.
[757]*v. supra, note 755.*
[758]*v. supra, note 755.*
[759]*v. supra, note 755.*

Under the jurisprudence of Iraq, all the people living in the region of Kurdistan are allowed to speak their language during the legal actions of the government[760]. Finland, from its point of view, grants to its minorities the right to use just one of their native languages and only in the portions of the territory where they live. Besides, they are provided the right to use their language in their relations with administrative authorities which must also issue certificates the minority communities might require in that language[761]. In the Italian context, the minority groups which speak French and reside in the Valley of Aosta are allowed to use it when dealing with the political, judicial and administrative authorities. In Trieste, the members of the Slovenian linguistic minority can speak in their native language when they interact with judicial and administrative authorities, having so a common destiny with the members belonging to the German linguistic minority which resides in Bolzano[762]. German, Slovene and Croat are all three languages which enjoy an official status within the Austrian territory, where, under the State Constitution, the Slovene and Croat linguistic minority communities are entitled to use their mother tongues in their relations with the authorities of the administrative field[763]. Moreover, all the governments of this federal State demand the administrative authorities, through legal instructions, to use the Slovenian in dealing with the members of the Slovene linguistic minority. In particular, they are asked to hire interpreters and other experts in the translation of important documents using the funds of the government in all the cases they have some contacts with the individuals of the Slovene group[764]. The federal authorities must also be willing to receive requests in the Slovene language. The same is also true for that area of the Austrian State where the Croatian linguistic minority lives; in fact, also there the members of this minority are free to speak their mother tongue with the authorities[765]. There is not the existence of specific regulations on this matter in the Swedish context where, anyway, a 1965 project of the government which is still effective today, mandates that the authorities present in that territory must offer a translation of information that has to be communicated into several of the total languages of its linguistic minority communities as well as of those of immigrants[766].

The individuals belonging to the Swedish minority group can have access to many documents in their native language especially those concerning the world of work. If the authorities were receiving letters written in one of the minority languages, they should not refuse these documents following the regulations of the administration, despite the fact that the administrative language is

[760] F. CAPOTORTI, *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*, UN Doc. E/CN.4/Sub.2/384/Rev.1/1991, New York, United Nations, 1991, cit. p.78.
[761] *v. supra, note 760*, p. 78.
[762] *v. supra, note 760,* p.79.
[763] *v. supra, note 762.*
[764] *v. supra, note 762.*
[765] *v. supra, note 762.*
[766] *v. supra, note 762.*

Swedish. This is the reason why the State founded a main service of translation and interpreting in several areas of its territory[767]. The members belonging to linguistic minority groups have the right to avail themselves of interpreters when interacting with the administrative authorities as provided by the constitutional framework of Sweden. At the same time, also the authorities of the administrative field are entitled to decide if they want to elect an interpreter to be helped when they engage with the Swedish citizens who do not know the Swedish language[768]. The Yugoslavian jurisprudence provides that the individuals of minority communities are entitled to use their own language during the legal actions before the entities of the State, as well as to propose any request, to appeal in order to express dissatisfaction, and to make suggestions and solicitations. In addition, all the legal documents concerning their obligations and rights, such as judgements, as well as depositions, certificates, clarifications and confirmations, have to be granted to these persons in their native language[769]. Moreover, these individuals should have recognized the right to write various materials and to store financial and official books in their own language as well as to use it in all sort of relations with the federal bodies and entities[770].

Another domain in which linguistic minority groups might want to speak their own language is in courts proceedings[771]. As far as this specific field is concerned, the majority of State Constitutions and regulations provide this right to minorities. However, it is also true that in several cases the provisions contained in such instruments are not interested in defending these individuals; they rather recognize to every person, regardless being him a citizen of that State or a foreign citizen, the right to comprehend the language in which the legal actions are conducted[772]. Even if the exercise of such right is different in every Country, the procedure generally consists of the selection of some experts in interpreting, translation, as well as the right for these persons to choose their judges between the individuals who make part of their same linguistic community. However, it must be clarified that this last point is valid only in those States where the linguistic communities own the official status of minority groups[773]. For instance, under the body of laws in Sweden it is considered that only Swedish can be used before the tribunals but, in the case in which one of the parties implicated in the trial did not have any proficiency in the Swedish language, the hiring of an interpreter is also provided.

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[767]F. CAPOTORTI, *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*, UN Doc. E/CN.4/Sub.2/384/Rev.1/1991, New York, United Nations, 1991, p.79.
[768]*v. supra, note 767.*
[769]*v. supra, note 767.*
[770]*v. supra, note 767.*
[771]*v. supra, note 767,* p.80.
[772]*Study of Equality in the Administration of Justice,* United Nations publication, Sales No. E.71.XIV.3, United Nations document E/CN.4/Sub.2/296/Rev.1, New York, United Nations, 1972, pp.176-177, paras. 72-73, *v. supra, note 767,* p.80.
[773]*v. supra, note 771.*

This means that this kind of experts are very frequently involved in such processes[(774)]. Under the Fijian legislation, the use of the English language is provided before the tribunals but it is also recognized that if an individual implicated in court proceedings does not have any proficiency in the language used in the testimony, in his physical presence, he has the right to have an interpreter who works in order to make him understand it. In the same way, also the right to have a translation is provided when the object in question are written documents[(775)]. The Finnish Constitution recognizes the right to the members belonging to the Swedish linguistic minority residing in the Finnish parts of town, to appeal the tribunals and to access to important material through the means of their mother tongue and not at their expenses[(776)]. Both the Constitution and other laws provide the right to the use of their own language to Romanian linguistic minorities in tribunals throughout the trial. In addition, whenever indispensable, these individuals are entitled to have all the proceedings material translated into their mother tongue and to be supported by an expert in interpreting. Finally, also the right to have some proficient people in the minority language of the case available is provided to the members of the minority and the State authorities and organizations are responsible for the hiring of them[(777)]. Also in the case of Austria, in those portions of the territory inhabited by the Slovenian linguistic minority communities, they must be guaranteed the right to speak before the tribunals as well as to make formal requests in their language. Whenever a minority member, despite knowing both Slovenian and German decided to use the Slovenian language in dealing with the courts, the legal action would take place in both these languages and availing themselves of interpreters in case of help[(778)]. The written accounts of the lawsuit also have to be written in both languages and if the request made to the judge were of declaring the verdict in the German language, it also had to be offered in Slovenian. This is also valid in the case of written sentences. However, whenever the members of the minority language file a petition to the court of appeal, only the German language can be used to draft this document and the its written account[(779)]. With respect to Italy, the German linguistic minority group living in Bolzano is entitled to use the German language when appealing the tribunals. The same is true for the Quechua linguistic minority of Peru, whose members have the right to be submitted to trials conducted in their own language if proved they do not understand any other language[(780)].

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[(774)]F. CAPOTORTI, *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*, UN Doc. E/CN.4/Sub.2/384/Rev.1/1991, New York, United Nations, 1991, p.80.
[(775)]*v. supra, note 774.*
[(776)]*v. supra, note 774.*
[(777)]*v. supra, note 774*, p.81.
[(778)]*v. supra, note 777.*
[(779)]*v. supra, note 777.*
[(780)]F. CAPOTORTI, *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*, UN Doc. E/CN.4/Sub.2/384/Rev.1/1991, New York, United Nations, 1991, p.81.

As far as the use of the language of linguistic minorities to identify the different geographic places is concerned, the available cases were provided just by few States[781]. However, the breach of this right would involve the violation of the freedom of expression as well as Article 27 of the *International Covenant on Civil and Political Rights*[782]. A considerable number of towns in the North of Sweden are named only in the Finnish and Lapp languages. With respect to Denmark, in the district inhabited by the German linguistic minority, the different places can only be named using the Danish language[783]. The Austrian constitutional charter, as well as its legislation and agreements tackle the matter of topography. According to these documents, in the provinces of the Country where the Croat or Slovene linguistic minority groups live, these languages have to be recognized an official status as well as for German. Therefore, these provinces will bear the names of their places in one of these three possible languages[784]. However, the legal measure providing this was not implemented by the 1972 Austrian rule responsible for this, as it was contrasted by a considerable portion of the population speaking the majority language[785]. In the case of Iraq, the regions where the linguistic minority communities live, the names of the places belong to the Kurdish or the Assyrian languages[786]. The same also happens in the area of Bolzano, in Italy, where in the parts inhabited by the German linguistic minority communities, the topography uses both the German and the Italian languages[787]. In the North of Norway, the effective legislation about the names of places to appear on the maps of that territory provides that where the Lappish minority community is present and it does not know other languages, the names written in that language should appear in the maps. Instead, in the case in which that minority group speaks also Norwegian, the maps will only contain the Norwegian name of the different places, unless the place in question is described very well by the Lappish name. In such a case, the map will also bear the name written in Lappish[788].

Another field in which the language of a minority community can be used is that of the mass media such as newspapers, radio and television. The majority of Countries agree on the fact that in theory and in accordance with the rules in force, the members belonging to the linguistic minorities are entitled to publish books, newspapers and periodicals in their language[789], otherwise a breach of

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[781] *v. supra, note 780,* p.82.

[782] New York, the 16th of December 1966, it entered into force on the 23rd of March 1976, it has 186 State Parties, available at the website *http://treaties.un.org*, last accessed 09/02/2016.

[783] *v. supra, note 781.*

[784] *v. supra, note 781.*

[785] *v. supra, note 781.*

[786] *v. supra, note 781.*

[787] *v. supra, note 781.*

[788] *v. supra, note 781.*

[789] F. CAPOTORTI, *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*, UN Doc. E/CN.4/Sub.2/384/Rev.1/1991, New York, United Nations, 1991, pp.82-83.

the right to freedom of expression would be made[790]. For instance, the Austrian Slovene minority publishes magazines on culture every week and several books including periodicals addressed to the young people through its two publishing houses[791]. The minority communities living in Malaysia and Sri Lanka publish several newspapers in a number of their own languages and also the Maori linguistic minority residing in New Zealand publishes bilingual magazines concerning issues that it finds fascinating through its Department of Affaires[792]. Many newspapers are written in several of the total languages spoken by the minority communities in the Pakistani context, whereas the newspapers can be found printed in all the minority languages in the Yugoslavian situation[793].

Two are the main Norwegian newspapers and they are both printed in some of their parts in the national official language and in other parts in Lappish[794]. In poorer countries such as Nigeria, the linguistic minority groups have received financial aid by the organizations of the most important universities in order to publish material in their native languages[795]. The Swedish government, from its point of view, gives a special subsidy to the linguistic minority groups to allow them to publish a periodical in the Lappish language[796]. The majority of the States have tried to enable the members belonging to their linguistic minorities to listen to and to watch radio and television programmes in their native language, even when such individuals were not described as needing particular rights and even if through the use of different means within the different Countries[797].

In some States, every linguistic minority community can benefit from an independent system of broadcasting, whereas in those Countries in which there is just a single system of broadcasting, some hours of the day or the week have to be addressed to programmes in the languages spoken by the minority groups[798]. For instance, the Swedish broadcasting system usually broadcasts programmes in the Lappish and Finnish languages as well as the Danish system with regard to the German linguistic minority residing within its territory[799]. Having Switzerland three official languages, they all three are reflected in a respective number of broadcasting systems of the same importance.

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[790] F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, p.12.
[791] *v. supra, note 789.*
[792] *v. supra, note 789,* p.82.
[793] *v. supra, note 792.*
[794] *v. supra, note 792.*
[795] *v. supra, note 789*, p.83.
[796] *v. supra, note 795,* cit., p.83.
[797] *v. supra, note 795.*
[798] *v. supra, note 796.*
[799] F. CAPOTORTI, *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*, UN Doc. E/CN.4/Sub.2/384/Rev.1/1991, New York, United Nations, 1991, p.83.

Radio and television programmes are broadcasted in English and in the native languages of the more considerable linguistic communities belonging to the Fiji archipelago[(800)]. The Austrian broadcasting system provides a radio programme in the Slovenian language, but the same cannot be said for the programmes on television, even though many members belonging to this minority community complained a lot to achieve this result[(801)]. News are normally broadcasted in the language of the Maori linguistic minority in the New Zealand media system and also Hungary broadcasts programmes in the minority languages of the Slovakian, Serbo-Croatian and German linguistic minority communities[(802)]. The Lappish language is used to give the news in Norway, but its use is very limited on TV. In the 1960s, the Broadcasting Service in Iraq established a specific section dedicated to the programmes produced in the language of the Kurdish minority and ten years later a television station in Kurdish was settled. Pakistan broadcasts its radio and TV programs in twenty-two different languages[(803)]. In those areas of the American territory where Spanish linguistic minority groups reside, the programmes of both television and radio are broadcasted through Spanish stations[(804)]. Also the French linguistic minority group which lives in Canada, can watch television and listen to the radio in its own language, as it is official within that territory. The other Canadian minority languages, among which Italian, German and Polish can be mentioned, are more and more used in radio broadcasts[(805)]. The British Broadcasting Corporation in the United Kingdom provides news, concerts and Masses in the language of the Welsh and Gaelic linguistic minority communities[(806)]. The Yugoslavian broadcasting system provides radio programmes in the languages of all the linguistic minority groups living there and programmes on television in just three of them[(807)].

A relevant domain in which minority languages can be used is the educational system.

This is particularly important for those States where a variety of linguistic and ethnic groups coexist because there the use of their several languages in schools constitutes a key method to understand to what extent these communities are able to enhance and keep their peculiar features, customs and culture[(808)]. Whether the linguistic minorities cannot receive education in their own languages, they will see their ability of survival at risk as a whole community since language constitutes a basic aspect of their cultural identity.

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[(800)] *v. supra, note 799.*
[(801)] *v. supra, note 799.*
[(802)] *v. supra, note 799.*
[(803)] *v. supra, note 799.*
[(804)] v. supra, note 799.
[(805)] *v. supra, note 799.*
[(806)] *v. supra, note 799.*
[(807)] *v. supra, note 799.*
[(808)] F. CAPOTORTI, *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*, UN Doc. E/CN.4/Sub.2/384/Rev.1/1991, New York, United Nations, 1991, p.84.

However, the use of the native language of the minority communities at school can be obstructed by some complexities in practice such as , for instance, the scarcity of the vocabulary of this language, the lack of the materials necessary to give lessons, such as books or others reading materials[(809)]. Another problem is constituted by the variety of languages spoken within the same place of a Country in the sense that it might be complicated to provide instruction in every native language in those cases in which the linguistic minority groups are too small. Therefore, just one single language will be chosen to educate even if it is not the mother tongue of a number of the total students[(810)]. The same problem also exists in those States where more languages are spoken, as the Countries can be short of the necessary persons and instruments to provide instruction in all the native languages[(811)]. Since some teachers have studied in a second language, they find it difficult to learn to educate in the native language. As a consequence, the scarcity of appropriately trained teachers can also be a complication[(812)]. Furthermore, the use of the languages of the minority groups in education is made hard by the persons who believe that instruction in the mother tongue is not convenient for them. In this case, it is up to the specialists in teaching and learning to explain to these people that such an educational choice will take its advantages in the long term and that in any case they are free to choose the language of instruction for their children[(813)].

Finally, in those context in which a lingua franca is widespread, it could be used to educate in schools in place of the mother tongue. An example of such a situation is present in some Eastern portions of Africa where Swahili is the lingua franca[(814)]. However, one of the major reasons for the difficulty of providing instruction in a minority language is given by the necessary solutions to be found by governments as well as by the additional costs they have to bear, which both depends on the situation States experience from the economic point of view[(815)]. Generally, all countries have to recognize to the members belonging to linguistic minority communities the right to use their own language to communicate and correspond in the private sphere[(816)]. In the case in which they fail to do so, they will commit a violation of several rights such as the right to freedom of expression, the right to private life, the right to non-discrimination as well as the individual right to avail himself or herself of his or her own language in order to communicate with the other persons making part of their same community, as provided by Article 27 of the *International Covenant on Civil and*

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[(809)] *v. supra, note 808.*
[(810)] *v. supra, note 808.*
[(811)] *v. supra, note 808.*
[(812)] *v. supra, note 808.*
[(813)] v. supra, note 808, cit., p.84.
[(814)] *v. supra, note 808.*
[(815)] *v. supra, note 808.*
[(816)] F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, p.10.

*Political Rights*[817]. Anyway, it must also be underlined that despite such a right can be legitimately restricted on the basis of the character of the freedom taken into consideration in the different situations, this cannot be made to the extent of completely banning the use of a minority language to communicate and correspond in the private context under both International law and European Union law[818]. The individuals of a linguistic minority have also to be entitled to perform privately or publicly plays, music and other cultural activities in their own language. If not, also in this case the violation of the rights to non-discrimination, to freedom of expression, as well as Article 27 of the *International Covenant* mentioned above occurs[819]. Not only the different Countries should respect this right, but they should also encourage this kind of expressions. The right of the minority members to name or surname in their own language is recognized in both European Union law and in the international human rights framework as being included in the right to private and family life. Moreover, the *International Covenant* recognizes this as one of the rights belonging to the ethnic and linguistic minority groups in its Article 27[820]. Other agreements at the regional and international levels dealing with the minority matter also recognize this right to linguistic minorities together with the right to have their names and surnames legally acknowledged[821]. The individuals making part of linguistic minority communities are entitled to display to the public inscriptions, posters and signs which are an expression of their private life in their own language and, in accordance with International law, this right is contained in the right to freedom of expression and especially in the right to linguistic expression in private activities[822]. Therefore, minorities members are entitled to choose the language they want to use in their activities of private expression as can be seen in the display of posters and signs dealing with politics, culture or trade[823].

Besides, minorities can also use script in the private sphere, being it part of language and also this right falls within the scope of the essential right to freedom of expression[824].

Finally, the last domain of use of the linguistic rights of minority groups which can be mentioned is that of civil rituals and marriage.

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[817]New York, the 16th of December 1966, it entered into force on the 23rd of March 1976, it has 186 State Parties, available at the website http://treaties.un.org, last accessed 09/02/2016; F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, cit., p.10.

[818]*v. supra, note 816.*

[819]*v. supra, note 816.*

[820]*v. supra, note 816,* p.11.

[821]*v. supra, note 820.*

[822]*Ballantyne, Davidson and McIntyre v. Canada,* UN Human Rights Committee Communications Nos. 359/1989 and 385/1989, 31 March 1993, in F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, cit., p.12.

[823]F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, p.12.

[824]F. de VARENNES, *Language, minorities and Human Rights*, The Hague, Martinus Nijhoff Publishers, 1996, p.105, in F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, p.12.

In fact, it is recognized on the international ground that States cannot neglect to persons belonging to linguistic minority groups the right to use their own language during the ceremony of marriage and other civil ceremonies because otherwise the rights to private and family life, to freedom of expression, as well as the right of minorities to use their native language with the other members of their community would be infringed[(825)].

## 4. Legal documents dealing with the linguistic rights of linguistic minorities

As already noticed in the second chapter of the present work, the International law documents concerning human rights reserve a really reduced space to linguistic rights in general and therefore also to those of linguistic minority groups[(826)]. An usual explanation for this resides in the centrality of States as subjects of International law. In fact, since they believe that the solidity and homogeneity within them can be intimidated by the linguistic minority defence, a considerable number of Countries generally refuse the reality of minority groups within their territory or their commitment to the safeguard of these particular communities[(827)]. This number of Countries, which also includes those which strongly sustain the theory of the nation-state, considers that the linguistic rights of linguistic minorities defence will lead to the result of the multiplication and keeping of linguistic minority communities as different communities from the rest of the national population[(828)]. Another possible reason for the scant attention given to the rights of these persons is the well-established discussion on how a minority or a national minority can be correctly defined as well as on the consideration or not of the rights of minority communities as collective rights[(829)]. Differently from other social categories such as children or women, for which specific provisions of defence within the overall implementation of human rights were elaborated, for minorities, the advancement in the formulation of rights has been slower. This explains why several instruments have been drafted on the rights of the former mentioned categories since a quite long time, while the documents on the rights of minority groups just date back to the last few years[(830)].

It can be maintained that the majority of States support tolerance on the ground of language but not promotion as they oppose to intolerance and discrimination with regard to these special groups in order to reduce the probability of tensions within the national boundaries which could bear some

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[(825)] *v. supra, note 823,* p.15.

[(826)] X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.13.

[(827)] *v. supra, note 826.*

[(828)] *v. supra, note 826.*

[(829)] *v. supra, note 823*, p.4.

[(830)] F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, p.3.

consequences on the condition of other Countries and on safety on the global scale, but they do not foster so much the implementation of such rights[(831)].

As far as International law instruments concerning the linguistic rights of linguistic minorities are concerned, they can be distinguished between soft and hard law instruments, especially in those documents which lack of a lawful character. For instance, the *Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities*[(832)] of 1992 and the *Oslo Recommendations Regarding the Linguistic Rights of National Minorities*[(833)] of 1998 belong to soft law and therefore do not have a binding nature[(834)]. In addition to the already mentioned *International Covenant on Civil and Political Rights*[(835)], which dedicates Article 27 to the issue of the linguistic rights of linguistic minority groups, the 1992 *European Charter for Regional or Minority Languages*[(836)], the 1995 *Framework Convention for the Protection of National Minorities*[(837)] and the *Convention on the Rights of the Child*[(838)] of 1989, are other essential documents dealing with this matter[(839)].

Anyway, Article 27 of *ICCPR* has many inconclusive aspects such as, for instance, the nature of the rights of linguistic minorities to their culture, religion and language which is not clarified[(840)].

In fact, it remains vague whether they are just negative and therefore deal with the ban of interference[(841)] or whether they provide the duty for Countries to undertake positive action towards the individuals belonging to such groups[(842)].

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[(831)]L. MÄLKSOO, *Language Rights in International Law: Why the Phoenix is Still in the Ashes?*, 12 *Florida Journal of International Law*, 2000, pp.435-440, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.13.

[(832)]adopted on the 18th of December 1992 by the resolution A/RES/47/135 of the UN General Assembly, available at the website http://www.un.org/documents/instruments/docs_en.asp?type=declarat, last accessed 09/02/2016.

[(833)]The *Oslo Recommendations regarding the linguistic rights of national minorities* and explanatory note, The Hague, Foundation on Inter-Ethnic Relations, February 1998.

[(834)]X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, pp.7-8.

[(835)]New York, the 16th of December 1966, it entered into force on the 23rd of March 1976, it has 186 State Parties, available at the website http://treaties.un.org, last accessed 09/02/2016.

[(836)]Strasbourg, the 25th of June 1992, it entered into force on the 1st of March 1998, it has 25 State Parties, available at the website http://www.coe.int/t/dq4/education/minlang/aboutcharter/default_en.asp, last accessed 09/02/2016.

[(837)]Strasbourg, the 1st of February 1995, it entered into force on the 1st of February 1998, it has 39 State Parties, available at the website http://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/157, last accessed 09/02/2016.

[(838)]New York, the 20th of November 1989, it entered into force on the 2nd September 1990, it has 139 State Parties, available at the website https://treaties.un.org, last accessed 09/02/2016.

[(839)]G.EXTRA, K.YAGMUR, *Language rights perspectives,* in G.EXTRA, K.YAGMUR (eds.), *Urban Multilingualism in Europe: Immigrant Minority Languages at Home and School,* Clevedon, the United Kingdom, Multilingual Matters Ltd., 2004, pp.73-92.

[(840)]X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.9.

[(841)]F. de VARENNES, *Language, Minorities and Human Rights,* The Hague, Martinus Nijhoff Publishers, 1996, pp.151-157; C.TOMUSCHAT, *protection of Minorities under Article 27 CCPR,* in R.BERNARD, W.K.GECK, G.JAENICKE, and

Furthermore, the same scholars who believe in the second interpretation of this Article, are aware of the fact that Countries do not have any duty to implement any particular provision or action[(843)]. This is the reason why Article 27 is accused of weakness, that is, because it grants States freedom to choose the procedure through which it can be implemented. However, this does not mean that it is deprived of any effect, it simply wants to indicate that the responsibility to define the methods for its observation belongs to States, which is something very common in the discipline of International Law[(844)]. The *Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities*[(845)] declares already in its Preamble 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[(846)]', disagreeing in this way with the spread but wrong idea that where minority communities are present, Countries face more controversies, as suggested by the Preambles of many other documents[(847)]. Article 4 of the *Declaration* has two paragraphs dealing with language provisions[(848)]. The second, which declares that the members of minority communities have the right to receive instruction in their own language, to develop it and also that it is a States responsibility to provide these people with the instruments that make this possible[(849)]. However, this paragraph is so unclear that it does nor prescribe any effective duty for States and, with regard to the third paragraph, the tricks are even more because it maintains that 'States should

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H.STEINBERGER (eds.), *Völkerrecht als Rechtsordnung, Internationale Gerichtsbarkeit, Menschenrechte,* 1983, pp.949, 970, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.9.

(842)General Comment 23 of the UN Human Rights Committee Fiftieth session, 1994, para. 6.2; P.THORNBERRY, *International Law and the Rights of Minorities,* Clarendon Press, Oxford, 1991, pp.141-247; P.THORNBERRY, *The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analysis, Observations, and an Update,* in A.PHILLIPS and A.ROSAS (eds.), *Universal Minority Rights,* Abo Academy University Institute for Human Rights, Abo, Finland, 1995, pp. 13, 24; R.DUNBAR, *Minority Language Rights in International Law,* 50 International and Comparative Law Quarterly, 2001, pp.90-120, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.9.

(843)P.THORNBERRY, *International Law and the Rights of Minorities*, Clarendon Press, Oxford, 1991, p.387, in X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.9.

(844)*v. supra, note 840*, p.10.

(845)adopted on the 18th of December 1992 by the resolution A/RES/47/135 of the UN General Assembly, available at the website http://www.un.org/documents/instruments/docs_en.asp?type=declarat, last accessed 09/02/2016.

(846)T. SKUTNABB-KANGAS, R. PHILLIPSON, M. RANUT, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination*, Berlin – New York, Mouton de Gruyter, 1995, cit., p.96.

(847)*v. supra, note 846,* p.96.

(848)P. de GUCHTENEIRE, M. KOENIG, *The Human Rights of Linguistic Minorities and Language Policies, in International Journal on Multicultural Societies*, Vol.3, No.2, 2001, http://unesdoc.unesco.org/images/0014/001457/145796e.pdf, p.93.

(849)*v. supra, note 832.*

take appropriate measures so that, wherever possible, persons belonging to minorities have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue[(850)]'.

The *Declaration* takes into consideration Article 27 of the *International Covenant on Civil and Political Rights*[(851)], it better clarifies its meaning and, in some of its Articles, it also overtakes it[(852)]. This can be asserted because Article 2(1) of the *Declaration*, stating that 'Persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination[(853)]', is the simple development of a new formula of the aforementioned Article 27, while Article 1(1) identifies the right of the minority communities to their identity on the ground of language in an evident way which in Article 27 of the *International Covenant* is only implied[(854)]. Even though the *Declaration* includes a number of provisions that are more developed than those that can be found in Article 27 of the *International Covenant*, generally they are not very well definite[(855)]. Moreover, since they are expressed carefully, States maintain that they are able to obey them[(856)]. In fact, countries can benefit from a major power to decide given that the enunciated sentences are 'wherever possible' and 'adequate opportunities', as well as the fact that the verb 'should' is used instead of 'shall'[(857)]. Article 2(b) of the *Convention on the Elimination of Discrimination in Education*[(858)] elaborated in 1960 by *UNESCO* recognizes that Countries can accept the creation and then the preservation of detached schools or approaches of instruction for linguistic reasons in some situations but, at the same time, that this does not imply

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[(850)]Article 4(3) of the *Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities*, *vedi supra, note 832.*

[(851)]*v. supra, note 835.*

[(852)]I.SCHULTE-TENCKHOFF, I.ANSBACH, *Les Minorités en Droit International*, in A. FENET et al., ed., *Le Droit et les Minorités : Analyses et Textes*, Brussels, Bruylant, 1995, p.66.

[(853)]Article 2(1) of the *Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities*, *vedi supra,* note 832.

[(854)]F. DE VARENNES, *Language, Minorities and Human Rights,* The Hague, Kluwer, 1996, p.149, P. THORNBERRY, *International Law and the Rights of Minorities,* Oxford, Clarendon Press, 1991, p.141.

[(855)]A. EIDE, *Comprehensive Examination of the Thematic Issues Relating to Racism, Xenophobia, Minorities and Migrant Workers – Working Paper for the UN Working Group on Minorities,* UN Doc. E/CN.4/Sub.2/1996/30, 1996, p.7.

[(856)]F. BENOIT-ROHMER, *The Minority Question in Europe: Towards a Coherent System of Protection of National Minorities,* Strasbourg, Council of Europe, 1996, p.23.

[(857)]S. KARAGIANNIS, *La Protection de Langues Minoritaires au titre de l'Article 27 du Pacte International relatif aux Droits Civils et Politiques,* in Revue Trimestrielle de Droits de l'Homme, 1994, p. 218, in P. de GUCHTENEIRE, M. KOENIG, *The Human Rights of Linguistic Minorities and Language Policies, in International Journal on Multicultural Societies*, Vol.3, No.2, 2001, *http://unesdoc.unesco.org/images/0014/001457/145796e.pdf*, cit., p.94.

[(858)]Paris, the 14th of December 1960, it entered into force on the 22nd of May 1962, it has 101 State Parties, available at the website *http://portal.unesco.org/en/ev.php-URL_ID=12025&URL_DO=DO_TOPIC&URL_SECTION=-471.html*, last accessed 09/02/2016.

any obligation to do so[859]. However, Article 5(1)(c) recognizes to the State Parties the right to let the individual who makes part of linguistic minorities the foundation and preservation of schools of their own where instruction can be given in their native language[860]. With respect to the *Convention on the Rights of the Child*[861], Articles 29 and 30 deal with the matter of the linguistic rights of this particular category of people by highlighting that 'even though a child is a minority member, he or she is entitled to speak his or her native language because this is included in the right to observe his or her values, language and cultural identity[862]'. The *European Charter for Regional or Minority Languages*[863] in six of its Articles, that is, from Article 8 to Article 13, recognizes, defends and fosters the European languages bearing a minority status in those fields such as 'education, judicial authorities, administrative and public services, media, cultural activities, and socio-economic life[864]'. The possibility of choosing the minority languages to be comprehended is left to each Country and, besides, a specific Committee has been created with the task of keeping in force the Articles of this instrument every three years[865]. Since 1995, the *Charter* was accompanied by the *Framework Convention for the Protection of National Minorities*[866] which in its Articles 5 and 6 deals with the right of national minority groups to safeguard their mother tongue and to be treated with respect and tolerance independently from the language of their use respectively. The latter provision makes also reference to the prohibition of linguistic discrimination[867]. Despite being the first instrument on the international ground between more than two Countries to provide an overall system of safeguard of minority groups[868] and bearing a binding nature on the legal ground, it has uncertain provisions and several means of escape[869].

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[859]P. de GUCHTENEIRE, M. KOENIG, *The Human Rights of Linguistic Minorities and Language Policies, in International Journal on Multicultural Societies*, Vol.3, No.2, 2001, http://unesdoc.unesco.org/images/0014/001457/145796e.pdf, cit., p.94.

[860]Article 5(1)(c) of the *UNESCO Convention on the Elimination of Discrimination in Education*, *v. supra, note 858.*

[861]*v. supra, note 838.*

[862]Articles 29 and 30 of the *Convention on the Rights of the Child*, *v. supra, note 838.*

[863]Strasbourg, the 25th of June 1992, it entered into force on the 1st of March 1998, it has 25 State Parties, available at the website http://www.coe.int/t/dg4/education/minlang/aboutcharter/default_en.asp, last accessed 09/02/2016.

[864]*v. supra, note 839,* G.EXTRA, K.YAGMUR, *Language rights perspectives,* in G.EXTRA, K.YAGMUR (eds.), *Urban Multilingualism in Europe: Immigrant Minority Languages at Home and School,* Clevedon, the United Kingdom, Multilingual Matters Ltd., 2004, cit., p.80.

[865]*v. supra, note 839,* G.EXTRA, K.YAGMUR, *Language rights perspectives,* in G.EXTRA, K.YAGMUR (eds.), *Urban Multilingualism in Europe: Immigrant Minority Languages at Home and School,* Clevedon, the United Kingdom, Multilingual Matters Ltd., 2004, cit. p.80

[866]Strasbourg, the 1st of February 1995, it entered into force on the 1st of February 1998, it has 39 State Parties, available at the website http://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/157, last accessed 09/02/2016.

[867]Articles 5 and 6 of the *Framework Convention for the Protection of National Minorities*, *v. supra, note 866.*

[868]F. BENOIT-ROHMER, *Le Conseil de l'Europe et les Minorités Nationales,* in K. MALFLIET, R.LAENEN, ed., *Minority Policy in Central and Eastern Europe : The Link between Domestic Policy, Foreign Policy and European Integration,* Louvain, KULeuven, 1998, p.145.

[869]H.KLEBES, *The Council of Europe's Framework Convention for the Protection of National Minorities,* 1995, pp.93-94.

In the *Convention*, Articles 10 and 14 are relevant as far as linguistic rights are concerned.

The former, implicates that 'States have to guarantee to the members of national minority groups the right to use their native language when appealing to the authorities of administration in the case the members demand to do this and whenever this demand is recognized as a necessity[(870)]'. However, despite this provision may seem apparently strong, in reality is not, due to the use of sentences such as 'where such a request responds to a real need' and 'as far as possible'[(871)].

The same can be said with regard to the latter, which recites that 'The Parties undertake to recognize that every person belonging to a national minority has the right to learn his or her minority language' at paragraph 1 and, at paragraph 2, that 'In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is a sufficient demand, the Parties shall endeavour to ensure, as far as possible, and within the framework of their educational system, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in the minority language[(872)]'. As it can be inferred, also in this case the formulation is very careful and it does not provide any requirement for States to undertake any action on the right to learn the language of the minority community[(873)]. Above all, the right to provide education in a minority language is formulated with hesitation as if the purpose was that of making understand that Countries have only to foster this service instead of really implementing it[(874)]. Even in the case of Article 14(2), uncertain sentences such as 'as far as possible' and 'within the framework of their education system' are used and can be abused by States and contribute to undermine the whole *Convention*[(875)]. The State Parties have to analyse the context in which the *Framework Convention* can be adopted considering the effective situation in which they verse since the concept of 'national minority' is not specified. As it was thought that Countries could try to apply this instrument just to a number of communities and not to all of them, the system has been criticized[(876)].

The *Framework Convention* is made up of thirty-two Articles distributed in five sections which grant some relevant rights to the members belonging to minority groups such as the right to freedom

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[(870)]Article 10 par.2 of the *Framework Convention for the Protection of National Minorities*, *v. supra note 866;* H.KLEBES, *The Council of Europe's Framework Convention for the Protection of National Minorities,* 1995, p.95.

[(871)]P. de GUCHTENEIRE, M. KOENIG, *The Human Rights of Linguistic Minorities and Language Policies, in International Journal on Multicultural Societies*, Vol.3, No.2, 2001, http://unesdoc.unesco.org/images/0014/001457/145796e.pdf, cit., p.95.

[(872)]Article 14(1), (2) of the *Framework Convention for the Protection of National Minorities*, *v. supra, note 866.*

[(873)]*v. supra, note 871,* p.95.

[(874)]A.FENET, *Europe et les Minorités,* in A.FENET et al. (eds)., Le Droit et les Minorités: Analyses et Textes, Brussels, Bruylant, 1995, cit. p.180.

[(875)]P. de GUCHTENEIRE, M. KOENIG, *The Human Rights of Linguistic Minorities and Language Policies, in International Journal on Multicultural Societies*, Vol.3, No.2, 2001, http://unesdoc.unesco.org/images/0014/001457/145796e.pdf, cit., p.95.

[(876)]F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, pp.151-152.

of expression and association, the right to an equal treatment, the right to use topography in the language of the minority community, the right to take part in cultural, social and economic life and the ban of compelled integration[877]. Both the *European Charter for Regional or Minority Languages* and the *Framework Convention for the Protection of National Minorities* were elaborated by the Council of Europe and provide the most developed degree of protection of the minority communities which can be found at the international level[878].

The fact that the *European Charter* has a cultural character is made clear from the Preamble which states that the preservation and progression of the European heritage finds a support whether the European languages bearing a minority status are safeguarded[879]. At the same time, it makes also clear that the document does not deal with linguistic minority groups but with the maintenance and enhancement of regional or minority languages. In fact, it does not provide any right, neither individual nor collective, for the members belonging to linguistic regional or minority groups but it focuses on the cultural aspect as well as on the use of these languages by their speakers in the different situations[880]. However, according to Schumann, it indirectly deals with the safeguard of linguistic minority communities and of the members belonging to them[881]. The *Charter* presents a double scheme of protection. In its Second part, it defines the purposes which should animate the regulations, actions and principles of States and among them there are the understanding of the prosperity of the languages of minority groups from the cultural point of view, the necessity of political measures aiming at fostering the languages of minority communities for their defence, and the supply of the suitable methods to educate and study the languages of the minority communities at all the educational levels[882]. The States purposes comprehend the prohibition of discrimination when it does not provide any justification, the positive action towards comprehension between all the linguistic communities living within the same territory and the take into account of the auspices and requirements of the individuals who use a minority language[883].

In the Third part, all the aforementioned actions of the Second part are translated into concrete instructions concerning particular sectors[884]. In this way, the different Countries are able to personalise their duties to the different circumstance in which these languages find themselves.

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[877] *v. supra, note 876,* p.152.

[878] X. ARZOZ, *The Nature of Language Rights*, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzoz.pdf., in JEMIE, 6, European Centre for Minority Issues, 2007, p.15.

[879] *v. supra, note 878, p. 15.*

[880] *v. supra, note 878,* cit., pp.15-16.

[881] K.SCHUMANN, *The Role of the Council of Europe,* in H.MIALL, (ed.), Minority Rights in Europe: The Scope for a Transnational Regime, London, Pinter, 1994, p.93.

[882] F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, p.150.

[883] *v. supra, note 882,* p.150.

[884] *v. supra, note 882,* p.150.

Therefore, the State enjoys freedom of deciding what of the Articles provided by the *Charter* it wants to take into consideration to be applied to every minority language that is spoken within its boundaries[(885)]. With respect to this, the promotion of the use of minority languages in the public domain should be fostered through suitable provisions in the sectors of instruction, of legal actions in the fields of administration and crime by the judicial authorities, of the services dealing with the public and administration, and in the social, economic, and cultural life including the media[(886)].

The *Charter* supplies a consideration of several aspects, among which the awareness of the continuous change in the conditions of languages which makes it impossible to evaluate them using always the same standard as well as the awareness of the fact that the present instrument is based on assimilation instead of marginalization since it is a representation of the principles of the Council of Europe. Also the consideration of the fact that this document is the expression of an evolutionary procedure without a final outcome emerges, as well as the fact that the necessity of minority languages will be perceived by a greater number of individuals through the actions of assessment and observance which allow a major interaction between Countries and between Countries and the Council of Europe[(887)]. A system of control is provided in the *Charter* to guarantee the monitoring of the implementation of the tasks of each Country. Moreover, each ratifying State is responsible for the drafting of a periodical report the following year of the *Charter* entry into force, where the provisions and actions they have undertaken to execute their duties are declared. Each Country has also to publish some periodical reports every three years which clarify the stage of advancement of the circumstances[(888)].

Finally, it must also be reminded that he following year of the *Charter* adoption, an additional protocol was proposed by the Parliamentary Assembly through a Recommendation and it should contain some overall notions such as the ban of discrimination, the preservation of the identity of persons on the ground of religion, race, culture and language, their equality before the courts and the impossibility of changing the structure of the population of the area within a State where the minority group resides as this would provoke a damage to that group[(889)].

Besides, the additional protocol should also contain a number of important individual rights for minority groups, such as, for instance, the right to establish their own political parties and

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[(885)] *v. supra, note 882,* p.150.

[(886)] *v. supra, note 882,* cit., p.150.

[(887)] R. ARQUINT, *International Conference on the European Charter for Regional or Minority Languages,* No.1, pp.18-19, in F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, p.150.

[(888)] *v. supra, note 882,* p.151.

[(889)] Parliamentary Assembly Recommendation 1201 of 1993 on an additional protocol on the rights of national minorities to the *European Charter for Regional or Minority Languages*, Assembly debate on 1 February 1993, 22nd Sitting, in F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, cit., p.148.

entities[890]. Also the provision according to which the members of a linguistic minority community should be accorded a special status or should benefit from their own authorities in those areas where the minority community constitutes the most considerable portion of the whole population is included in the protocol[891]. The additional document also prescribes the right to freedom in the use of their native language both in the private and public spheres as well as both in oral and written communication for these individuals[892]. The use of their own language in the field involving both sound and vision, in printing and in the system of instruction is also included to that right.
In particular, with regard to the last of the aforementioned sectors, the reference was to the right of these persons to be instructed in their own language [893].

## 5. The *OSCE* contribution to the protection of linguistic minorities

The *Organization for Security and Co-operation in Europe (OSCE)*[894] is certainly one of the most important representative of linguistic rights of linguistic minority communities.
Since the main interests of this *Organization* are peace and security, the method it avails itself with towards the difference on the ground of language and with a special regard to the linguistic rights of minority groups, has followed the line of the defence against conflict[895]. In fact, it opposes to the political events which occurred within its area in quite recent history such as the process of the State development after the dissolution of the Soviet Union and the intimidations to security and peace within its area as a consequence of the re-emergence of nationalism[896].
The *OSCE* has two central tasks concerning the linguistic rights of the individuals belonging to linguistic minorities, that is, the negotiation, formulation and elaboration of several important instruments for the linguistic rights of these people and the establishment of the *High Commissioner*

[890]F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, cit., p.148.
[891]*v. supra, note 890,* p.148.
[892]*v. supra, note 891.*
[893]*v. supra, note 890*, pp.148-149.
[894]It deals with several matters concerning security such as national minorities, human rights, arms control, democratization, confidence-and security-building measures, policing strategies, counter-terrorism, economic and environmental activities through its multidisciplinary method. It has 57 State Parties whose political decisions are taken by consensus but are not binding on the legal ground, cit., available at the website http://www.osce.org/, last accessed 09/02/2016.
[895]M. KOENIG, P. de GUCHTENEIRE, (edited by), *Democracy and human rights in multicultural societies*, Paris : UNESCO; Aldershot ; Burlington, VT : Ashgate, 2007, p.10.
[896]P. de GUCHTENEIRE, M. KOENIG, *The Human Rights of Linguistic Minorities and Language Policies, in International Journal on Multicultural Societies*, Vol.3, No.2, 2001, http://unesdoc.unesco.org/images/0014/001457/145796e.pdf, p.99.

*on National Minorities*[(897)] who has to deal with the linguistic rights matter whether possible tensions on the peace and security of States can emerge[(898)]. Moreover, having the *Organization* a comprehensive approach towards security, in the sense that it identifies the relations existing between the security matters on politics and war, the wellness in the fields of environment and economics, and the observance of human rights, the safeguard of the rights of those individuals who are part of minority communities, and especially of their linguistic rights, is one of its pivotal interests. In accordance with the line of thought of such an institution, there is also the request made to the different Countries to collaborate in the context of societies characterized by a democratic regime and open-mindedness, laissez-fair in economy, and a strong commitment to the rights of the individual, which goes under the definition of 'cooperative security'[(899)].

Since the beginning of its establishment, all the *OSCE* State Parties have spontaneously recognized the rights of each individual as an interest common to all the Countries that decided to participate in it instead of involving just the national deals of a single State[(900)]. At the same time, all the participants feel themselves obligated on the legal ground to take into consideration also the applicable regulations provided by International Law on the aforementioned issue, in addition to the clearly stated engagements of the institution[(901)]. Since the assignment of norms and traditions is not considered, the *OSCE Organization* is present and works on the basis of the opinion of the majority at the time of actions to be taken[(902)]. Furthermore, the effort of the *OSCE* takes into consideration cooperation as well as those interests that the majority of States share, extending in this way to the concrete and normative Countries concerns[(903)]. In several States belonging to this institution, the major number of contrasts arose by the debates on the use of languages and on the linguistic rights of the individuals making part of linguistic minority groups[(904)].

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[(897)]He or she has to tackle a situation when believes that anxieties dealing with national minorities are present and could escalate into a conflict. The main task of this entity consists in the identification and attention to the reasons of tensions and conflicts based on ethnicity; in particular, the attention for the short-term provocations of tension between different ethnic groups or war and long-term structural troubles. In the case in which a State Party is not respecting its engagements at the level of politics or international laws, the High Commissioner will give its sustain through the supply of recommendations and analysis. The High Commissioner also undertakes collective projects aiming at reaching sustainability by a growth in responsibility at the local level, and so it offers its structural sustain. The HCNM also publishes Recommendations and Guidelines on different topics in order to inform about shared challenges and favoured method, cit., available at the website *http://www.osce.org/hcnm*, last accessed 09/02/2016.

[(898)]F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, p.244.

[(899)]M. KOENIG, P. de GUCHTENEIRE, (edited by), *Democracy and human rights in multicultural societies*, Paris : UNESCO; Aldershot ; Burlington, VT : Ashgate, 2007, p.127.

[(900)]*v. supra, note 899.*

[(901)]*v. supra, note 899.*

[(902)]*v. supra, note 899.*

[(903)]*v. supra, note 899.*

[(904)]*v. supra, note 899,* pp.127-128.

Given that the *OSCE* has the primary purpose of avoiding tensions in those contexts where matters on the minority status are concerned, it was justified its 1992 choice of involving the *High Commissioner on National Minorities (HCNM*)[(905)] together with the *OSCE* organisms in several circumstances which menaced the stability of a number of areas within Central and Eastern Europe as well as of the former Soviet Union[(906)]. The first engagement of the *HCNM* since its establishment concentrated on the context where the members of national or ethnic communities were the major portion of the total population in a Country but the minor portion in another Country, generally a neighbouring one, and in this way representing a possible reason for anxieties between Countries which characterized a great part of the history in Europe[(907)].

Although the historic context and the causes of conflicts can change, the condition of the native language and the way in which the use of language can be regulated constitute some disputed aspects that have the trend of increasing the contrast between the Parties involved[(908)].

The reason why language matters are so important partly depends on the purpose which language has from the symbolic point of view and on its essential role in the concept of identity to be intended as both the element which allows the single person to the recognition of themselves as well as the central aspect for the cultural identity of a number of Countries, bearing so a collective dimension[(909)]. Even though in a situation deprived of the political element national identity from the point of view of the notion of ethnicity might receive less attention, whether individual or collective identity is subjected to some kind of danger, a greater regard is provided to it[(910)].

The identity of individuals is menaced when an effective or supposed intimidation to the exercise of language such as, for instance, the presence of too little circumstances where a language can be studied or used in both the private and public domains occurs and in such a situation those persons would have the legitimate right to respond in a protective and powerful manner[(911)].

As a consequence, given the complicated situation created by language matters in their connection to the concept of identity, it can be easily understood that conflicts are more incentivized to explode[(912)]. In addition to its relationship with identity, language also represents a means through which society can be organized in the sense that the decisions of the different Countries on the ground of language, and most of all in the governmental concerns, affect the possibility of obtaining

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(905) *v. supra, note 897.*

(906) *v. supra, note 899,* cit., p.128.

(907) *The Oslo Recommendations regarding the linguistic rights of national minorities and explanatory note*, The Hague, Foundation on Inter-Ethnic Relations, February 1998, p.1.

(908) *v. supra, note 899,* p.128.

(909) M. KOENIG, P. de GUCHTENEIRE, (edited by), *Democracy and human rights in multicultural societies*, Paris : UNESCO; Aldershot ; Burlington, VT : Ashgate, 2007, p.128.

(910) *v. supra, note 909.*

(911) *v. supra, note 909.*

(912) *v. supra, note 909.*

some relevant services and can be an instrument or a barrier to the process of assimilation within the social context[913]. When single individuals or entire groups realize that they were not involved in public possibilities or circumstances, such as the acquirement of a fair part of the total amount of the resources owned by a Country due to the absence of their proficiency in the national or official language, a number of difficulties emerge[914]. The access to job opportunities and to public services provides an example of the circumstances for the emergence of conflicts, and besides in a number of Countries language can also regulate the attendance at national life and therefore State assimilation since through the means of the prerequisites at linguistic level and the procedure of naturalization it controls the citizenship acquirement[915].

The *OSCE* and in particular the *HCNM*[916] do not aim at dealing with identity issues intrinsically. In fact, despite the fact that identity matters support the understanding of the situation in which a conflict can arise, the core of the problem is *HCNM* experience.

Since a minority group might be interested in the defence of identity, generally its interest concerns some specific questions. As a consequence, the *HCNM* does not focus on the vague notion of identity, but it tries to provide an answer to the Parties that disagree with each other on these questions[917]. States have the possibility to outline their own interests personally by considering particular considerable political, governmental and legal issues[918]. The *HCNM* deals with the matters concerning minority groups independently, cooperatively, and impartially[919]. Even though without a function of supervision, the *HCNM* makes use of the instruments adopted by the every Country at the global level. Moreover, all the *OSCE* participating States have to obey to the duties on human rights and the rights of minority groups proclaimed by the United Nations and to the provisions of the Council of Europe[920]. It is commonly recognized that democratic Countries are responsible for enabling people to have freedom for the preservation and development of their identity according to a 'social agreement' through which the legitimacy and support to a Country

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[913] J.PACKER, *The Protection of Minority Language Rights through the Work of OSCE Institutions,* in Snezana Trifunovska (ed.), 2001, *Minority Rights in Europe: European Minorities and Languages, The Hague T.M.C. Asser Press*, p.258, in *v. supra, note 909.*

[914] *v. supra, note 909.*

[915] *v. supra, note 909.*

[916] *v. supra, note 897.*

[917] *v. supra, note 909.*

[918] W. KEMP, *Quiet Diplomacy in Action: the OSCE High Commissioner on National Minorities,* The Hague/Boston/London: Kluwer Law International, 2001, p.119, in P. de GUCHTENEIRE, M. KOENIG, *The Human Rights of Linguistic Minorities and Language Policies, in International Journal on Multicultural Societies*, Vol.3, No.2, 2001, http://unesdoc.unesco.org/images/0014/001457/145796e.pdf.

[919] *The Oslo Recommendations regarding the linguistic rights of national minorities and explanatory note*, The Hague, Foundation on Inter-Ethnic Relations, February 1998, p.1.

[920] *v. supra, note 919,* p.2.

for enjoying the same freedom is addressed to other people[(921)]. The State has therefore the purpose of guaranteeing the same treatment based on equality to everybody, which can be achieved by adopting a strategy as much unbiased as possible, in contrast to a total policy of non-intervention.
In such a way, every Country will be able to face the different demands of claimant Parties with a special regard for those concerning cultural and identity questions[(922)]. Since each Country has to make decisions concerning the language to be used  for example in schools, tribunals and in the exercise of political power, it cannot be completely neutral from the point of view of culture and it is for this reason that a control is required in order to contain cultural particularism[(923)].
As at the end of the Cold War, Europe was the setting of the emergence of new States as well as of the reaffirmation of their sovereignty and in several context this saw the return of different ethnic groups, the *OSCE* had a special concern with linguistic diversity matters and with diversity in more general terms. This explains why still today an essential aim it pursues is diversity assimilation, which refers to the coexistence of several identities while advancing towards the enhancement of social integration[(924)]. In order to do this, the social structure should be based on multiculturalism and pluralism, instead of integration, and it should consider the prohibition of discrimination notion. However, this creates a worry about the possible State dissolution[(925)]. Anyway, the *OSCE*, and the *High Commissioner on National Minorities* in particular, believe in the opposite asserting that if a minority group is given the chance to fully build its own identity, its loyalty to the State is more probable if compared to that of a minority who saw the refusal of its identity[(926)]. In accordance with the *OSCE* aim of diversity assimilation, each Country has the obligation of searching for integration by considering the concepts of non-discrimination and equality as a guide by equalizing duties and concerns taking into consideration the regard for the individual dignity and rights, with a special attention for the rights to association and to freedom of expression[(927)]. According to De Varennes, different elements have to be considered in order to decide whether a Country has a prejudiced

[(921)] *v. supra, note 909,* p.129.
[(922)] J.H.CARENS, *Culture, Citizenship, and Community: a Contextual Exploration of Justice as Evenhandedness,* Oxford, New York, Oxford University Press, 2000, p. 12, in M. KOENIG, P. de GUCHTENEIRE, (edited by), *Democracy and human rights in multicultural societies*, Paris : UNESCO; Aldershot ; Burlington, VT : Ashgate, 2007, p.129.
[(923)] *v. supra, note 922,* cit., p.11, in M. KOENIG, P. de GUCHTENEIRE, (edited by), *Democracy and human rights in multicultural societies*, Paris : UNESCO; Aldershot ; Burlington, VT : Ashgate, 2007, p.129.
[(924)] M. KOENIG, P. de GUCHTENEIRE, (edited by), *Democracy and human rights in multicultural societies*, Paris : UNESCO; Aldershot ; Burlington, VT : Ashgate, 2007, cit., p.129.
[(925)] *v. supra, note 924,* p.129.
[(926)] M. VAN DER STOEL, *The Protection of Minorities in the OSCE Region,* address at a Seminar at the OSCE Parliamentary Assembly, 12 April 2000, Antalya, in Wolfgang Zellner and Falk Lange (eds.), 2001, *Peace and Stability through Human and Minority Rights; Speeches by the OSCE High Commissioner on National Minorities,* Baden-Baden, Nomos Verlagsgesellschaft, cit., p.209, in M. KOENIG, P. de GUCHTENEIRE, (edited by), *Democracy and human rights in multicultural societies*, Paris : UNESCO; Aldershot ; Burlington, VT : Ashgate, 2007, cit., p.129.
[(927)] *v. supra, note 924,* p.129.

predilection on the language ground, such as, for instance, its situation from the points of view of culture, history and demography, because every State presents a different background[(928)].

Moreover, States are obliged to provide suitable conditions to foster identity through positive actions so as to enable the members belonging to minority communities to develop and benefit from their rights and in order to do so the Country measures in education play a central role[(929)].

On the one hand, some actions are necessary to sustain the members of linguistic minority groups, but, on the other hand, such actions should neither encroach on the rights of the rest of the population nor threaten the national unity[(930)]. As a consequence, in the participating States to the *OSCE* in which language has been a reason for conflict, until the *High Commissioner on National Minorities* is conscious of the repressions of the past times, the attempts to maintain and encourage the language spoken by the majority of the population have to find an equilibrium with the actions aiming at the preservation and development of the native languages of the individuals belonging to minority groups[(931)]. The *HCNM* has also the task of reminding these persons that, making they part of a major population, they have both some concerns and requirements to become proficient in the national or official language. In fact, the knowledge of the language of the State encourages unity within a Country and also favours the assimilation of the linguistic minority communities in the social context and their enjoyment of public services[(932)]. For instance, in the situation of the Baltic States, the proficiency in the national language is necessary to the acquirement of citizenship, whereas in the States of the former Soviet Union, once self-determination was reached, it was necessary to provide the possibility of instruction in the language of the State to minority members as they probably would have not any understanding of it[(933)]. This is the reason why a number of training programmes have been promoted by the *HCNM* with the purpose of allowing persons to use the language of the State to respect the effective regulation or for their advantage[(934)].

The safeguard of the languages of the minority groups as well as their identification from the point of view of law, determine the way in which the *OSCE* States interact with each other.

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[(928)]F. de VARENNES, *Derechos Humanos y Lengua: La Situación especial de los Pueblos Indígenas, contribution to XI Congreso*, Instituto Indigenista Interamericano Managua, Nicaragua, 22-26 November 1993, p.8, in M. KOENIG, P. de GUCHTENEIRE, (edited by), *Democracy and human rights in multicultural societies*, Paris : UNESCO; Aldershot ; Burlington, VT : Ashgate, 2007, p.129.

[(929)]A. EIDE, *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities: An Overview, International Journal on Minority and Group Rights,* No.6, p. 322, in M. KOENIG, P. de GUCHTENEIRE, (edited by), *Democracy and human rights in multicultural societies*, Paris : UNESCO; Aldershot ; Burlington, VT : Ashgate, 2007, p.129.

[(930)]M. KOENIG, P. de GUCHTENEIRE, (edited by), *Democracy and human rights in multicultural societies*, Paris : UNESCO; Aldershot ; Burlington, VT : Ashgate, 2007, p.130.

[(931)]*v. supra, note 930.*

[(932)]*v. supra, note 930.*

[(933)]*v. supra, note 930.*

[(934)]*v. supra, note 930.*

In the context of these States, many of them which arose after the independence, had the possibility of choosing between several official languages and they aimed at the recovery of the language used by the most substantial portion of the population as well as at its emergence as the only official language of that Country[(935)]. A distinction has to be made between Countries as a number of them do not provide other languages than the one which the State favours, while other Countries do provide the languages of the minority communities in their judicial systems. Anyway, as equality is not concretely assured by protection, the instruments of the *OSCE* clarify the necessity of the real application of the Organization engagements[(936)]. However, even if Constitutions provide some kind of defence, if the laws concerning language are not established or applied, linguistic minority group can feel doubtful about the subject and the scope of their rights, which increases worries and the possibility of conflicts[(937)]. The *High Commissioner on National Minorities* supported a number of experts having fame at the global level for their employment within the *OSCE* area in the draft of two groups of general recommendations in order to pursue the wider scope of giving help to executors of laws in the establishment and adoption of effective regulations concerning the matters of linguistic rights and of instruction in a minority language[(938)].

*The Oslo Recommendations Regarding the Linguistic Rights of National Minorities* of 1998[(939)] and *The Hague Recommendations Regarding the Education Rights of National Minorities* of 1996[(940)] were elaborated on the premise of the experience of the *High Commissioner* about the scant evidence in the substance of those instruments dealing with the defence of minority groups in the light of which different explanations and contradictions in their implementation were possible and with the purpose of representing a guide for Countries to search for an arrangement concerning the members belonging to the minority communities living within their territory in the fields of language and instruction, in accordance with the mood of the other documents making part of the international legal framework[(941)]. In this sense, the *Recommendations* constitute a scholar explanation of lawful requirements bearing a binding character and of engagements related to

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[(935)] *v. supra, note 930*, p.131.
[(936)] *v. supra, note 930,* p. 131.
[(937)] *v. supra, note 930,* p.131.
[(938)] P. de GUCHTENEIRE, M. KOENIG, *The Human Rights of Linguistic Minorities and Language Policies, in International Journal on Multicultural Societies*, Vol.3, No.2, 2001, http://unesdoc.unesco.org/images/0014/001457/145796e.pdf, p.105.
[(939)] The *Oslo Recommendations regarding the linguistic rights of national minorities and explanatory note*, The Hague, Foundation on Inter-Ethnic Relations, February 1998.
[(940)] *The Hague Recommendations Regarding the Education Rights of National Minorities and explanatory note,* The Hague, the 1st of October 1998, available at the website http://www.osce.org/hcnm/32180?download=true, last accessed 09/02/2016.
[(941)] *v. supra, note 938,* p. 105.

politics[(942)]. They both aim at being taken into consideration not just in the *OSCE* area and at building a definite system to improve principles and regulations for their own particular circumstances on the grounds of language and culture[(943)]. The *High Commissioner* abundantly sustained the *Recommendations* and made it possible to access them in more than one single language, they became well-known and were the topic of many workshops under the guidance of the *High Commissioner*, were a central element of the Permanent Council debates as well as of the Summit meeting of the *OSCE* organization which took place in Istanbul in 1999[(944)].

According to *the Oslo Recommendations*, 'Persons belonging to national minorities have the right to use their personal names in their own language according to their own traditions and linguistic systems[(945)]'.

The same is true for the religious context, since, as stated in Article 4, 'In professing and practicing his or her own religion individually or in community with others, every person shall be entitled to use the language(s) of his or her choice[(946)]'. This same right is also applied to the field of community life and non-governmental organizations as stated in Article 6. In accordance to it, 'All persons, including persons belonging to national minorities, have the right to establish and manage their own non-governmental organizations, associations and institutions. These entities may use the language(s) of their choosing[(947)]'. Moreover, 'persons belonging to national minorities have the right to establish and maintain their own minority language media and to access to broadcast time in their own language on publicly funded media[(948)]'. Finally, also within the context of economic life, 'the right to operate private enterprises in the language or languages of their choice' is recognized to the persons belonging to national minorities[(949)]. Besides, it is also recognized for the State the right to demand, in the case in which the proof of a collective attractiveness is evident, the supplementary use of the official language or languages of the State, 'such as in interests relating to the protection of workers or consumers, or in dealings between the enterprise and governmental authorities[(950)]'. The *Oslo Recommendations* remind that since the effective parameters concerning the rights of the members belonging to minority

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[(942)] *v. supra, note 938,* p.106.

[(943)] P. de GUCHTENEIRE, M. KOENIG, *The Human Rights of Linguistic Minorities and Language Policies, in International Journal on Multicultural Societies*, Vol.3, No.2, 2001, http://unesdoc.unesco.org/images/0014/001457/145796e.pdf, p.106.

[(944)] J.PACKER, *The Protection of Minority Language Rights through the Work of OSCE Institutions,* in S. TRIFUNOVSKA (ed.), 2001, *Minority Rights in Europe: European Minorities and Languages*, The Hague: T.M.C. Asser Press, p.262, in P. de GUCHTENEIRE, M. KOENIG, *The Human Rights of Linguistic Minorities and Language Policies, in International Journal on Multicultural Societies*, Vol.3, No.2, 2001, http://unesdoc.unesco.org/images/0014/001457/145796e.pdf, p.106.

[(945)] Article 1 of *the Oslo Recommendations regarding the linguistic rights of national minorities and explanatory note*, The Hague, Foundation on Inter-Ethnic Relations, February 1998, *v. supra, note 939.*

[(946)] Article 4 of *the Oslo Recommendations, vedi supra, note 939.*

[(947)] Article 6 of *the Oslo Recommendations, vedi supra, note 939.*

[(948)] Article 8 of *the Oslo Recommendations, vedi supra, note 939.*

[(949)] Article 12 of *the Oslo Recommendations, vedi supra, note 939.*

[(950)] Article 12 of *the Oslo Recommendations, vedi supra, note 939.*

groups are included within the human rights framework, in the preparation phase to them, it was assumed the conformity of Countries to the other duties on human rights, on equality and freedom from discrimination, freedom of assembly and of association, freedom of expression, in particular for individuals of minorities[(951)]. Moreover, the *Oslo Recommendations* seek to make clear the scope of the rights of the members belonging to minorities which can be applied in those situations providing the presence of the *HCNM* through the use of a direct language[(952)].

The document is divided into subtitles which refer to the matters concerning language which find a correspondence in the practical use and it was drafted under the auspices of the elaboration of regulations aiming at the real application of the linguistic rights of the individuals who make part of linguistic minorities[(953)].

Finally, it is also worth noting that despite the *Oslo Recommendations* make reference to the use of language by the individuals of linguistic minority communities, their core as well as the global instruments which the *Recommendations* consider as a model for their development, could possibly be adopted for other kinds of minority groups[(954)]. In this sense, this document wants to be an elucidation of the framework of rights which already exists without limiting in any way the human rights of any individual or number of individuals[(955)].

It was already before the elaboration of the two *Recommendations* that the *OSCE* started to consider human rights a lawful theme of interaction and interest for all the Countries participating to the Conference which defined the establishment of the Organization and in particular the document that sanctioned the establishment of the *OSCE*, that is, the *Helsinki Final Act* of 1975[(956)], which brought to a conclusion an untouchable theme in the interplay between the East and the West[(957)].

Since that moment, in fact, the *Organization* started to deal with the linguistic rights of the individuals being part of minority groups and an evidence of this is proved by the draft of several documents, of which the *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe* of 1990[(958)] constitutes a relevant example.

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[(951)]The *Oslo Recommendations regarding the linguistic rights of national minorities and explanatory note*, The Hague, Foundation on Inter-Ethnic Relations, February 1998, p.3.
[(952)]*v. supra, note 939,* p.4.
[(953)]*v. supra, note 939,* p.4.
[(954)]*v. supra, note 939,* p.4.
[(955)]*v. supra, note 939,* p.4.
[(956)]Helsinki, the 1st of August 1975, available at the website *https://www.osce.org/mc/39501?download=true*, last accessed 09/02/2016.
[(957)]F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, p.244.
[(958)]*The Copenhagen Document*, the 29th of June 1990, available at the website *http://www.osce.org/odihr/elections/14304?download=true*, last accessed 09/02/2016.

It involves the most complete collection of multilateral norms on the rights of minority groups that existed at that time and it deals with matters such as the use of the native language in different fields and in education and the principle of prohibition of discrimination[(959)].

Since the *Copenhagen Document* was adopted by the Countries participating to the *OSCE* by consensus, it has a legal and political meaning despite being not a treaty[(960)]. It had some effects on both the regional and international grounds as on the occasion of the Meeting of the Heads of State of the Council of Europe held in Vienna in 1993, it was decided to translate the engagements provided by this *Document* into some requirements bearing a binding character, which then led to the adoption of the 1994 *Framework Convention for the Protection of National Minorities* as an outcome[(961)].

On the international ground, the *Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities*[(962)] was partly conditioned by the *Copenhagen Document*, which also played a part in determining the formulation of the same *Oslo Recommendations*[(963)].

The laws on the linguistic rights of the States participating to the *OSCE* were the subject of a survey in the context of the mandate of the *High Commissioner* to avoid tensions and taking advice of a number of Countries[(964)]. The purpose of the survey was to offer to the different States several possibilities to satisfy their engagements on this matter as well as to make Countries more aware of the relevance of this question and the prospects of defence of linguistic rights as a guarantee of peace, stability and rights of the individual[(965)]. When in December 1996, the *High Commissioner* prepared a form for the Ministers for Foreign Affairs of the States participating to the *OSCE*, four essential aspects of linguistic rights were taken into consideration. They referred to the conditions of the languages spoken within each Country, the range of the rights and the chances for the individuals of minority groups to speak their own language in their interaction with State

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[(959)]A.EIDE, *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities: An Overview, International Journal on Minority and Group Rights,* Vol.6. 1999, No.3, p.319, in F. de VARENNES, *Minority rights in Europe : European minorities and languages,* The Hague, T.M.C. Asser press, 2001, pp.244-245.

[(960)]F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, p.245.

[(961)]*v. supra, note 960.*

[(962)]adopted on the 18th of December 1992 by the resolution A/RES/47/135 of the UN General Assembly, available at the website *http://www.un.org/documents/instruments/docs_en.asp?type=declarat*, last accessed 09/02/2016.

[(963)]A.EIDE, *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities: An Overview, International Journal on Minority and Group Rights,* Vol.6. 1999, No.3, pp.319-320, in F. de VARENNES, *Minority rights in Europe : European minorities and languages,* The Hague, T.M.C. Asser press, 2001, p.245.

[(964)]F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, p.250.

[(965)]*v. supra, note 964.*

authorities, the position of the languages of minorities in instruction, and finally, the possibility for the members of minority groups to have communications media in their mother tongue[(966)].

That form resulted in the publication of the *Report on the Linguistic Rights of Persons Belonging to National Minorities in the OSCE Area* in 1999[(967)] which deals with the actions that Countries should take in accordance with the linguistic rights of this specific category of persons.

Among this, the relevance of a system based on regulations for the safeguard of linguistic rights in the path towards the complete application of international rules emerged, as well as the necessity of States to preserve relations with the individuals of minority groups so as to communicate with them[(968)]. In respect of the report, in a number of Countries there is the presence of some strategies in order to verify these requirements whereas in others such strategies are not present and so States do not know the necessities of the minority communities because these do not have any relation with their relative authorities.

The report also underlines that a number of State should become more acquainted with the subject of the norms dealing with the linguistic rights of the individuals belonging to minorities at the global level[(969)].

## 6. Cases of the *European Court of Human Rights* dealing with linguistic rights

Since in the majority of cases linguistic rights are denied to the members of minority groups, talking about linguistic rights mostly refers to the linguistic rights of linguistic minorities. In fact, the right to express in the language of one's choice is included in the right of everybody to participate in cultural life, as stated in the *International Covenant on Economic, Social and Cultural Rights*[(970)] in Article 15 (1). Given that the members of minorities have the right to maintain, foster, and develop their culture of origin, as well as their language, this concept is especially relevant for them[(971)].

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[(966)] *v. supra, note 964.*

[(967)] adopted on the 1st of March 1999, available at the website *http://www.osce.org/hcnm/42060*, last accessed 09/02/2016.

[(968)] *v. supra, note 964,* p.250.

[(969)] F. de VARENNES, *Minority rights in Europe : European minorities and languages*, The Hague, T.M.C. Asser press, 2001, p.251.

[(970)] New York, the 16th of December 1966, entered into force on the 3rd of January 1976, it has 176 State parties, available at the website *http://treaties.un.org*, last accessed 09/02/2016.

[(971)] *Cultural rights in in the case-law of the European Court of Human Rights*, Research Division, in Council of Europe - European Court of Human Rights, January 2011, *http://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf.*, p.13.

Also the *European Court of Human Rights* has faced the issue of linguistic rights, with a special attention for those of foreign citizens and of members of minority groups, on the basis of the rights provided by the *European Convention on Human Rights*[(972)].

A number of Cases has therefore been presented by the Court and the following have all been selected between the most recent ones.

First of all, Article 8 of the *Convention* which concerns 'the right to respect for private and family life[(973)]', also includes the writing of forenames and surnames in the minority language[(974)].

Since the lack of a shared ground on this matter at the European level, and the presence of several aspects concerning history, culture, language and religion which are different in every State, the same Court has dealt with this issue just in few Cases.

One of them is *Mentzen v. Latvia* of December 2004[(975)] concerning a modification in the spelling of the claimant's surname. The claimant of the present case is a Latvian woman born in 1972 who was living in Belgrade, Serbia and Montenegro, at the time of the facts.

In 1998 she married a German man, Mr. Mentzen, in Germany and in the certificate of their marriage she was given the surname of her husband. When the following year she requested to have a new passport with her new surname in place of the passport she had when she was nubile to the Nationality and Migration service of the Latvian Ministry, she underlined that her surname had to be transcribed rightly. But, when the office granted the woman her new Latvian passport, her surname was changed in Mencena instead of remaining Mentzen, and the change had been made according to an effective regulation on the 'transcription of forenames and surnames in documents[(976)]', which had to be realized following the written forms of the Latvian language used in literature as well, as much as possible tracing the manner in which they were pronounced in their language of origin. However, the claimant did not accept the changed spelling of her surname stating that 'the phonetic transcription and grammatical adaptation of her surname had violated her right to respect for her family life[(977)]' provided by Article 8 of the *European Convention on Human Rights*[(978)].

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[(972)] Rome, the 4th of November 1950, it entered into force on the 3rd September 1953, it has 47 State Parties, available at the website *http://www.coe.int/en/web/conventions*, last accessed 09/02/2016.

[(973)] Article 8 of the *European Convention on Human Rights*, *vedi supra, note 972.*

[(974)] *v. supra, note 971.*

[(975)] *Mentzen v. Latvia,* no. 71074/01, ECHU 2004-XII, 07/12/2004, available at the website *http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-70407&filename=001-70407.pdf*, last access 09/02/2016, in *v. supra, note 971.*

[(976)] *Mentzen v. Latvia,* no. 71074/01, ECHU 2004-XII, 07/12/2004, available at the website *http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-70407&filename=001-70407.pdf*, cit., p. 2, last access 09/02/2016.

[(977)] *vedi supra, note 976.*

[(978)] Rome, the 4th of November 1950, it entered into force on the 3rd September 1953, it has 47 State Parties, available at the website *http://www.coe.int/en/web/conventions*, last accessed 09/02/2016.

But, the Departmental Head rejected her claim of correcting the surname, maintaining that it remained written in its previous form in a page of the issued document. At this point, Mrs. Mentzen prosecuted her claim against the Nationality and Migration Service at the Riga Court of First Instance, which refused it with a 2000 judgement stating that the change in the spelling of the surname had been made in the respect for the applicable laws on the passport of the citizen of Latvia as well as for the regulation on the transcription and identification of forenames and surnames in documents. However, the applicant rejected the judgement declaring that the modification of her surname contrasted with Article 8 of the *ECHR*, and made hard to recognize her husband and her as making part of the same family as their documents bore two different surnames. The Supreme Court of Cassation also rejected the woman's claim in 2001.

In December 2001, the Constitutional Court, on the one hand recognised that, since surnames make part of one person's private life, it was in favour of Mrs. Mentzen observation that 'the Latvianisation of her surname affected her emotionally[(979)]'. On the other hand, it also believed that the fact was legitimized by the will of defending the Latvian language as the official language of the State as well as its democratic system, and it defined inconsistent the woman assertion of the transformation of her surname. The Court concluded that it was a case of adaptation of the surname to the Latvian grammar and not a case of a translation into Latvian[(980)]. From the Government point of view, the modification of Mrs. Mentzen surname had been realized following the applicable regulation. Moreover, it underlined that the Latvian language had been recognised as an official language only in recent times and that it avoided its extinction under the Soviet system thanks to the Latvian citizens effort in encouraging their language use. According to the Government, the use of a surname in passports and in the whole social sphere cannot be separated. Therefore, the maintenance of Mentzen surname would mean to go against Latvian grammar and phonetics and the transcription of her surname had been motivated by 'a pressing social need[(981)]'. The claimant, from her point of view, sustained the Government's observation that what had been done followed the effective regulations but disagreed on the point that it was justified by a social and democratic need. The Court was aware of the fact that the use of the surname Mencena in formal situations created some complications to the claimant but, however, not to the extent of hindering private life. Another important point to be mentioned is that even using the surname Mencena, Mrs. Mentzen could continue to benefit from the political, social, and economic rights provided by the Constitution of her State of origin and to travel to other States.

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[(979)] *vedi supra, note 976,* cit., p.4.

[(980)] *Mentzen v. Latvia,* no. 71074/01, ECHU 2004-XII, 07/12/2004, available at the website *http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-70407&filename=001-70407.pdf*, p.5.

[(981)] *v. supra, note 980,* cit., p. 20, last access 09/02/2016.

Finally, on 7 December 2004 the Constitutional Court unanimously rejected the claim as clearly unfounded[(982)].

The *European Convention on Human Rights* does not provide the right to have access to information in the chosen language, nor the right to linguistic freedom, nor that to use a specific language with public authorities. Besides, it grants freedom to States to decide how they want to use their one or more official languages in official documents aiming at linguistic homogeneity[(983)].

The Case *Güzel Erdagöz v. Turkey* of October 2008[(984)] is about the denial to correct the written form of a forename in the births, marriages and deaths registry. The claimant of the case is a Turkish woman of the Kurdish minority group born in 1930. In September 2001, she wanted to receive some benefits but, since the written form of her forename in the registry of births was Güzel, her demand was rejected because she presented as Gözel, despite saying that she was always called Gözel by her family and friends. She therefore appealed to the Court of First Instance in order to have the spelling of her forename modified but her claim was rejected.

Even the Court of Cassation expressed in the same way declaring that the form Gözel the woman had always used did not enter in the Turkish dictionary because it was regional [(985)].

The Court recognized the Case as belonging to the field of Articles 8 and 14 of the *European Convention on Human Rights* respectively concerning the respect for private and family life and prohibition of discrimination[(986)]. The claimant maintained that since her Kurdish forename had been subjected to a 'turkicisation', she was discriminated on the linguistic ground as well as a member of the Kurdish minority living in Turkey[(987)]. Since the acceptation of the applicant's claim would have not weaken the social order nor public interests, its denial could not be considered a need of a democratic system. Moreover, the refusal of Mrs. Gözel claim by the domestic Courts was not founded on a pertinent consideration nor on evident regulations. Therefore, the Court of Cassation recognized it a case of violation of Article 8 toward the applicant and it unanimously decided to grant her the amount of 3,000 euros for the lack of pecuniary damage and general expenditures in the final judgement of 21 October 2008[(988)].

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[(982)] *v. supra, note 981,* p. 31.

[(983)] *Cultural rights in in the case-law of the European Court of Human Rights*, Research Division, in Council of Europe - European Court of Human Rights, January 2011, http://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf., p.13.

[(984)] *Güzel Erdagöz v. Turkey,* no. 37483/02, 21 October 2008, available at the website http://caselaw.echr.globe24h.com/0/0/turkey/2008/10/21/guzel-erdagoz-v-turkey-1902-37483-02.shtml, last access 09/02/2016.

[(985)] *v. supra, note 984,* p.1.

[(986)] *v. supra, note 984.*

[(987)] *v. supra, note 984,* p.1.

[(988)] *v. supra, note 984,* p.2, last access 09/02/2016.

Linguistic rights making reference to Article 8 of the *ECHR*, also concern the right of prisoners to correspond freely in their language[(989)]. A Case related to this issue is that of *Mehmet Nuri Özen and Others v. Turkey* dated to January 2011[(990)] with final judgement in April of the same year[(991)].

The claimants of this Case were ten Turkish citizens with Kurdish mother tongue who, in different episodes during 2008, declared they had all be the victims of a discrimination of the right to respect their correspondence against Turkey as stated in Articles 8 and 14 of the *ECHR* [(992)].

The Turkish authorities were also accused of dependence and partiality, of the adoption of reserved legal actions and of the unjustified decisions of the domestic Courts by many claimants.

All the applicants, who found themselves in high-security prisons, wrote letters that were not sent by the prison authorities because they had not been written in Turkish[(993)].

The claimants therefore appealed to national Courts in order to claim the right to have their letters sent by prison authorities but without any success. The Disciplinary Council applied the regulation about the execution of sentences and preventive measures[(994)] at the prison in January 2008, with the aim of examining a letter written in Kurdish by Mehmet Nuri Özen to another prisoner. Firstly, the claimant was reminded that he should write in the Turkish language, then he was warned by the Council that it had been unable to verify the non-detrimental nature of the letter, as required by the Prison Regulations, given the lack of competent translators, and that, as a consequence, he saw his letter returning. Mehmet Nuri Özen opposed to this and both the prison judge and the Assize Court also rejected the decision against his claim respectively in January and February 2008[(995)].

All the Cases concerning the other Turkish claimants presented the same circumstances of Mehmet Nuri Özen Case. In some of these Cases the prisoners wanted to send their letters to a relative such as their mothers, fathers or sisters, rather than to other prisoners but, in all these Cases, the Assize Court sided against the decision of rejecting the sending of letters maintaining that there were neither procedural defects nor errors of law[(996)]. The Court, recognizing the facts and circumstances of the different Cases all alike, decided to connect them and to identify the violation of the right to

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[(989)]*Cultural rights in in the case-law of the European Court of Human Rights*, Research Division, in Council of Europe - European Court of Human Rights, January 2011, *http://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf.*, p.14.

[(990)]*v. supra, note 989.*

[(991)]*Mehmet Nuri Özen and Others v. Turkey,* nos. 15672/08, 24462/08, 27559/08, 28302/08, 28312/08, 34823/08, 40738/08, 41124/08, 43197/08, 51938/08, 58170/08, 11 January 2011 (not final), available at the website *http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-102711*, last access 09/02/2016.

[(992)]*v. supra, note 991,* cit., p.1.

[(993)]*v. supra, note 991,* p.2.

[(994)]*v. supra, note 991,* cit., p.2.

[(995)]*v. supra, note 991,* p.2.

[(996)]*v. supra, note 991,* pp.5-7.

freedom of correspondence (Article 8 of the *ECHR*)[997] which states that '1. Everyone has the right to respect for…his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety…the prevention of disorder or crime…or for the protection of the rights and freedoms of others[998]'. But, the Turkish Government disagreed with the Court position maintaining that there had not been any Case of meddling with this right because the denial of dispatching the letters was based on the lack of their translation and not on their substance. Moreover, according to the Government, since the *European Convention on Human Rights* did not provide any State duty to pay for the translation of prisoners' letters, the Country was not obligate to comply with this[999]. The claimants, from their point of view, believed that prisoners cannot be forbidden from writing to their relatives in a language different from Turkish, even though they recognized that for the protection of prison security and the prevention of crime there was the need of minding letters. Besides, they made reference to the fact that the oral communication in a language different from Turkish was authorized by the law and so that it was allowed to speak Kurdish in prison. As previously stated, the Assize Court unanimously recognized in all the Cases the occurred violation of Article 8 of the *ECHR* on its judgement of 11 January 2011 and final judgement of 11 April of the same year, on the basis that there were no legal foundations for rejecting the sending of prisoner's letters written in Kurdish [1000].

Article 10 of the *ECHR* on the right to freedom of expression might also refer to linguistic rights as witnessed by the Case *Ulusoy and Others v. Turkey* of May 2007[1001] in which the Court considered the prohibition of producing a play in the Kurdish language in local buildings a violation of this right[1002]. In this Case the claimants were all actors of an acting company who wanted to perform a play in Kurdish and were denied the authorization by the Regional Governor's Office[1003]. Therefore, the acting group appealed to the Administrative Court in order to demand a reconsideration of the refusal it had received. But, the Court was informed by the Governor's Office that since the actors were prosecuted for giving support to the Kurdish Workers' Party, such a play could overturn the public order.

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[997] *v. supra, note 991,* p.8.
[998] *v. supra, note 991,* cit., p.8.
[999] *v. supra, note 991,* p.9.
[1000] *v. supra, note 991,* pp. 1, 12.
[1001] *Ulusoy and Others v. Turkey*, no.34797/03, 3 May 2007, available at the website http://caselaw.echr.globe24h.com/0/0/turkey/2007/05/03/ulusoy-and-others-v-turkey-2723-34797-03.shtml, last access 09/02/2016.
[1002] *Cultural rights in in the case-law of the European Court of Human Rights*, Research Division, in Council of Europe - European Court of Human Rights, January 2011, http://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf., p.14.
[1003] *v. supra, note 1001,* p.1.

The Turkish legislation recognized the right to freedom of expression as well as the fact that the violation of this right had happened before the staging of the play in local buildings. The Regional Governor's Office denied the actors to perform that play because, considering it dangerous, it wanted to prevent eventual terrorism, brutality, offence and confusion and also because it just applied the law in effect. The Administrative Court recognized that, since the play would have been staged in Kurdish and a number of actors had been involved in criminal activities against the Country integrity, the denial could be approved on the bases that it was true that the staging of the play could be a cause of ethnic separatism[(1004)]. However, actually, the play had already been staged at a theatre festival without any problem and there had not been any proof of the fact that such play could be a cause of social disorder or undermine democracy before. Therefore, the Governor's office denial based on national law could not be seen a necessity for a democratic system and there were not legal bases to legitimize the prohibition of staging that play. Finally, considered that all, the Turkish Supreme Administrative Court unanimously recognized the violation of Article 10 of the *Convention* and in its final judgement of 3 May 2007 it declared the grant of 1,000 euros for non-pecuniary offence to every claimant[(1005)].

Linguistic rights also deal with the educational field, which is considered in Article 2 of the *First Additional* Protocol[(1006)] *to the European Convention on Human Rights* and states that 'The right to education cannot be denied to anyone. The State, in the exercise of the functions it assumes in education and teaching, must respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions[(1007)]'.

The Case *İrfan Temel and Others v. Turkey* provides an example of the violation of this Article[(1008)]. In the present Case the claimants were eighteen Turkish students of a Turkish University who applied to the Court against their Country in August 2002. In various occasions in 2001 and 2002 the claimants demanded their University to have optional classes of Kurdish language and, as a consequence of this, the Administrative Board of the University decided to suspend its eighteen students for two terms on 18 January 2002 [(1009)]. The Court of First Instance was then asked by the claimants to suspend and, at a later stage, to abolish the decision of the University but it refused to do so for the lack of conditions in national regulations.

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[(1004)] *v. supra, note 1001,* cit.,p.1.

[(1005)] *v. supra, note 1001*, pp.1-2.

[(1006)] *Additional Protocol No.1 to the European Convention of Human Rights*, it was adopted on the 20th of March 1952 by the Council of Europe (COE), it entered into force on the 18th of May 1954, it has 47 State parties, available to the website http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/009, last access 09/02/2016.

[(1007)] Article 2 of the *Additional Protocol No.1 to the European Convention of Human Rights*, *v. supra, note 1006.*

[(1008)] *İrfan Temel and Others v. Turkey,* no.36458/02, 3 March 2009, (final 3 June 2009), available at the website http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-91532, last access 09/02/2016.

[(1009)] *v. supra, note 1008,* p.2.

In October of the same year, the Administrative Court dismissed the Case since it became aware of the fact that the University Rector's Office had been informed by the Governor's Office about the new activities of the Kurdish Workers' Party towards social disorder, which also comprehended the request of receiving education in the Turkish language. In December 2003, the decisions were suppressed by the Supreme Administrative Court and therefore the Case was remitted to the Court of First Instance[1010]. The Supreme Administrative Court was followed by the Administrative Court which abolished the sanctions imposed to the claimants observing that according to the Turkish Constitution it was possible for citizens to appeal the public authorities for questions of their interest. Besides, it also recognized that providing citizens with education would have enabled them to become more complete persons and so that the claimants' request for optional Kurdish classes cannot be considered an action towards a convergence based on language, religion or race[1011].

The claimants, from their point of view, denounced the sanction they had received for demanding optional Kurdish classes to their University, explaining that such sanction made them victims of the violation of their right to expression and freedom of thought, with reference to Articles 7, 9 and 10 of the *ECHR* as well as to Article 2 of its First Protocol[1012]. For the Court, the Articles that had been violated were just Article 10 of the Convention and Article 2 of Protocol 1 and the suspension of the claimants from the University had to be intended a limitation to their right to education[1013]. Moreover, the period of suspension was not proportionate to the circumstances of the Case.

In accordance with Article 41 of the *ECHR* concerning the reparations to the victim, every claimant requested 5,000 euros for pecuniary damage which, in this particular case, referred to the living expenses students had to face given the protraction of their studies. In addition, each applicant also claimed 10,000 euros for non-pecuniary damage. At this point, the Government found these sums excessive. Since the Court did not perceive any connection between the refusal to the right of education, the violation, and the pecuniary damage, it decided to dismiss the application. In any case, believing that the claimants might have been subjected to some kind of disappointment, the Court considered fair to grant a compensation of 1,500 euros to every claimant[1014]. Finally, after unanimously declaring the occurred violation of Article 2 of Protocol No.1 of *ECHR*, the Court maintained on its 3 March 2009 judgement that the Turkish State had to grant 1,500 euros to every applicant, which was then confirmed in the final judgement of 3 June of the same year[1015].

[1010] *v. supra, note 1008,* p.3.
[1011] *v. supra, note 1008 ,* p.3.
[1012] *v. supra, note 1008,* p.5.
[1013] *v. supra, note 1008,* p.8.
[1014] *v. supra, note 1008,* p. 10.
[1015] *v. supra, note 1008,* pp. 1,11.

Courts have also dealt with claims of linguistic rights in situations concerning politics and institutions[1016]. In particular, the 2010 *Birk-Levy v. France* Case[1017] dealt with the use of a regional language in parliamentary assemblies of the Region[1018]. The claimant of the present Case was born and was still living in French Polynesia at the time of the fact. Sabrina Birk-Levy won the elections for the Assembly of French Polynesia two times, respectively in 2003 and 2005, becoming one of its members. The High Commissioner of the Republic in French Polynesia together with the «Conseil d'Etat» demanded a legal revision in 2005 through which the reference about the possibility of appealing to the Assembly in one of the Polynesian languages, such as Tahitian, or in French as stated in its regulations, had to be eliminated[1019]. The Assembly defended itself maintaining that expressing in the language they were more familiar with enabled its members to a better participation in democracy. Besides, it underlined that its French Polynesian members had used the Tahitian language since the beginning of its establishment in 1945. But, the «Conseil d'Etat» opposed to that statement declaring that it objected to the Institutional Act on the independent status of French Polynesia in a judgement of March 2006[1020], which recognized the official character of the French language in French Polynesia as well as its compulsoriness, especially for public institutions[1021]. Sabrina Birk-Levy asserted that the members of the Assembly of French Polynesia were banned to use Tahitian and that therefore all Polynesians which were accustomed to use Tahitian daily became victims of discrimination since they were obliged to the use of the French language in the Assembly. She stated all this making reference to Articles 10, 11 and 14 of the *European Convention on Human Rights*, dealing respectively with the right to freedom of expression, the right to freedom of assembly and association, and the right to prohibition of discrimination[1022]. The *European Court of Human Rights* received the claim in September 2006 and reminded that the *Convention* did not provide neither an evident right to freedom in the linguistic field nor the right for the members of the Assembly to speak the language of their choice, leaving so to each Country the responsibility for the normal functioning of its entities.

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[1016] *Cultural rights in in the case-law of the European Court of Human Rights*, Research Division, in Council of Europe - European Court of Human Rights, January 2011, *http://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf.*, p.15.

[1017] *Birk-Levy v. France*, no.39426/06, 21 September 2010, available at the website *http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-3293129-3676248&filename=003-3293129-3676248.pdf*, last access 09/02/2016.

[1018] *v. supra, note 1006* , pp.15-16.

[1019] *v. supra, note 1017,* p.1.

[1020] Section 57 of the Institutional Act of 27 February 2004 on the autonomous status of French Polynesia, *http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-3293129-3676248&filename=003-3293129-3676248.pdf*, cit., p.1.

[1021] *v. supra, note 1017,* cit., p.1.

[1022] *v. supra, note 1017,* cit., p.1.

Furthermore, there was not any duty for the Court to express itself about a member's choice of his language of work, which depended on elements concerning history and politics which were different for every State[(1023)].French Polynesia was autonomous with its own Assembly being an overseas community. The Court also reiterated that the Institutional Act on the status of French Polynesia considered the Tahitian an essential element of cultural identity but, at the same time, recognized the official character of the French language in that State. In addition to this, it observed that both private and public institutions had the obligation to use French. Therefore, since Mrs. Birk-Levy's claim did not make part neither of the judicial power of the Court nor of the *Convention* extent, it was dismissed as well as the references the claimant made to the aforementioned Articles[(1024)]. The Court made this decision on 21 September 2010.

## 7. Linguistic rights in the Spanish context

Given that the western Countries still depend a lot on national identities based on a specific language, the current linguistic policies face the adjustment of diversity based on language as one of their most relevant and hard duties[(1025)]. Being the place of a number of linguistic minority communities bearing a relevant weight, Spain presents a case which is worth to be examined[(1026)]. Despite the fact that Castilian is the language bearing the official status within the Spanish boundaries, one fourth of the total population does not have this language as their mother tongue[(1027)]. Anyway, the central government continues in its effort to represent Spain as a Country where just one single language is used in both the political and communicative fields[(1028)].

The negative consequences of the dictatorship of Francisco Franco, which lasted from 1939 to 1975[(1029)], are still present nowadays in the linguistic behaviour of the members of the Spanish linguistic minorities and it is still believed that authority in Spain can be contrasted through the use of language as an instrument of unity of the identity of a specific territorial area. As a consequence, it is possible to assist to the simultaneous growth of nationalism and power with the growth of the

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[(1023)] *v. supra, note 1017,* p.2.

[(1024)] *v. supra, note 1017,*p.2.

[(1025)] N. NAGY, *Linguistic Diversity and Language Rights in Spain, https://eu-researchprojects.eu/time/people/article-qgn-translating-to-communicate-with.pdf,* p.1.

[(1026)] E.J.RUIZ VIEYTEZ, *New Minoritites and linguisitc diversity: Some reflections from the oanish and Basque perspectives,* in JEMIE, No.2, 2007, pp. 1, 6, in *v. supra, note 1025*, p.1.

[(1027)] E.K. KEEFE, *Area Handbook for Spain, Ethnic Groups and Languages,* Chapter 5, pp.119-123*,* available at the website *http://home.heinonline.org*, last accessed 09/02/2016.

[(1028)] J.BURGUEÑO, *El mapa escondido: Las lenguas de España*, in Boletín de la A.G.E., No.34, 2002, p.172, in *v. supra, note 1025*, p.2.

[(1029)] available at the website *http://www.storiaxxisecolo.it/antifascismo/Guerraspagna7.htm*, last accessed 09/02/2016.

people who speak minority languages such as Galician, Basque and Catalan[1030]. This is the reason why, despite the fact that the Spanish Constitution provides the recognition of different autonomous communities, the Country has not yet finished to fight against the matter of linguistic minority groups residing within its territory[1031].

During the whole period of the Middle Ages, in the Iberian Peninsula respect was observed towards its linguistic mosaic, as proved by the fact that despite Castilian was identified as the language of the central political power as well as of formal communications since the territorial unification of the State in 1492 as a will of the Catholic Kings, there were not any obstacles to the use of other languages[1032]. However, after 1492, the main concern of the Spanish Kings dealt with the restoration of the State on the religious ground and, at the same time, with its territorial growth abroad. In this way, when the official national language arrived to the Americas, which was characterized by a homogenisation from the linguistic point of view, the territorial unification as well as the State unity from the point of view of culture and politics moved to the background[1033].

Anyway, the circumstances changed completely when Spain lost its colonies in the American territory because the linguistic prevalence of the Castilian language contrasted with the other languages spoken within Spanish boundaries due to the centralization to which Spain was subjected from the political point of view that involved a nationalistic pressure[1034].

The nineteenth century, being characterized by many civil wars made Spain a precarious Country from the legal point of view. The same is also true for the following century, the twentieth, when the nationalist push against the State will towards centralization created a considerable scission in the social life as well as to the dictatorship of Miguel Primo de Rivera from 1923 to 1929 that finally flew into the Spanish civil war which lasted from 1936 to 1939[1035].

The dictatorship of Franco was characterized by a period of authoritarianism on the linguistic matter because it relied on the centralization and monolingualism[1036] in the light of which the abolishment of the autonomous communities was achieved together with the division of the national territory into eight areas in which the political representatives of the central executive branch were

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[1030] J.G. BOSTROM, *Which way for Catalan and Galician?,* The University of Montana, Missoula, 2006, p.2, available at the website http://etd.lib.umt.edu/theses/available/etd-03212007-110729/unrestricted/BostromJay.pdf, last accessed 09/02/2016, in v. supra, note 1025, p.2.

[1031] *v. supra, note 1025,* p.2.

[1032] *v. supra, note 1031.*

[1033] *v. supra, note 1031.*

[1034] H.-J. TRENZ, *Reconciling Diversity and Unity: Language Minorities and European Integration,* in Ethnicities, No.7, 2007, p.170, in *v. supra, note 1025*, p.3.

[1035] C.E. EHRLICH, *Ethno-cultural Minorities and Federal Constitutionalism: Is Spain Instructive?,* In Illinois University Law Journal, No.24, 1999-2000, pp. 302-303, in *v. supra, note 1025*, p.3.

[1036] *v. supra, note 1031,* cit., p.3.

responsible for the exercise of power[1037]. In the fields of the media, the administration and instruction, as well as in daily life, the use of the three minority languages of the State was banned. As a consequence, activist nationalism of a politicized and institutionalized kind surged due to the abolition of linguistic minority groups[1038]. The first Spanish region which deserves to be analysed from the point of view of its linguistic history is that of Catalonia, which dates back to the Middle Ages and the early modern period its prosperity in commerce within the Mediterranean area[1039].

During the Middle Ages it became an influential region of the Kingdom of Aragon which constituted as an empire in the Mediterranean Sea made up of four districts, that is, Valencia, Aragon, Catalonia, and the Balearic Islands, all with legislative bodies and systems of political power of their own[1040]. However, in the sixteenth century when the Kingdom became part of the monarchic regime of Spain, it was assigned a political peripheral location immediately and then, the Catalan region preserved its independence on the political ground under the domination of the Hapsburgs[1041]. On the occasion of the War of Spanish Succession[1042], to which Spain participated as an ally of Great Britain and against the dynasty of the Bourbons which finally won it, it lost its old organizational documents concerning the cultural and political sectors with the consequence of the prohibition of the Catalan language in the public sphere[1043]. In any case, this did not prevent the region from living the phase of general improvement and economic development which characterized the eighteenth century and which, given its protraction until the nineteenth century, enabled Catalonia to symbolize the 'Factory of Spain'[1044]. When the people belonging to the political, industrial and intellectual circles started to express their discontent for the scant possibility they had to participate in internal politics in the final part of the nineteenth century, nationalism arose and despite the fact that the four Catalan regional committees had the permission to establish a shared office in the region in 1914, military dictatorship eliminated it in 1923[1045].

The Second Spanish Republic of 1931 granted independence to the Catalan region but it was short-lived as its own self-government was suppressed by Francisco Franco in 1939 and it was not

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[1037] *v. supra, note 1031,* p.3.

[1038] N. NAGY, *Linguistic Diversity and Language Rights in Spain, https://eu-researchprojects.eu/time/people/article-qqn-translating-to-communicate-with.pdf,* p.3.

[1039] *v. supra, note 1038.*

[1040] *v. supra, note 1038.*

[1041] *v. supra, note 1040.*

[1042] 1700-1714, available at the website *Treccani, la cultura italiana, enciclopedia, dizionario di storia 2011*, *http://www.treccani.it/enciclopedia/successione-spagnola-guerra-di_(Dizionario-di-Storia)/*, last accessed 09/02/2016.

[1043] *v. supra, note 1040.*

[1044] *v. supra, note 1040,* cit., p.3.

[1045] *v. supra, note 1040,* pp.3-4.

replaced until the democratic turn of Spain which coincided with the adoption of the 1978 Constitution[1046].

Also the Basque Country, which is located in the area of the Western Pyrenees between Spain and France, gives its contribution to the linguistic diversity present in the Spanish territory. It is made up of seven regions, of which four belong to Spain and three to France[1047]. Although the population of this Spanish region has a long history, since its language does not relate in any way to the other Indo-European languages, how the Basque ethnic group and language originated is unknown still nowadays. What is evident is that the people belonging to this Country had always had a unique identity, despite the Basque population did not constitute a united institution at the political level until its assimilation into the Spanish territory[1048].

In the Middle Ages, a structure of traditional regional rules was established in this Country and a similar structure had already been created in the tenth century when the Basque Country made part of the Kingdom of Navarra and a number of regional ruling organizations based on the equality of their representatives from the point of view of law were established[1049].

In the middle of the twelfth century, the common jurisprudence of the courts, that had born as an oral practice, was put into writing in the Basque territory and in 1512, when Castile tried to dominate the Basque zones, the Basque population was entitled to self-government if it demonstrated its political support to the monarchy of Spain. After the Third Carlist War[1050], the year of 1876 saw the suppression of the written laws[1051]. Nationalism arose at the end of the nineteenth century and it made various efforts to create an independent governing body during the 1930s, which was finally established in 1936 by the sections of the Republic, in their wish of enjoying the military support of the Basque population[1052]. When in 1939 Francisco Franco came to power, the Basque system of political power was expelled from Spain[1053].

As a reaction to the dictatorship established by Franco, the ETA[1054], the militant organization of the Basque Country which is still operative, emerged in 1959[1055].

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[1046] P. PUIG I SCOTINI, *Exercising self-determination without jeopardizing the rights of others: the Catalan model*, in St. Thomas Law Review, No.14, 2001-2002, pp.399-400, in *v. supra, note 1025*, p.4.

[1047] *v. supra, note 1040,* p.4.

[1048] L. MURPHY, *EU Membership and an Independent Basque State,* in Pace International Law Review, No.19, 2007, p.337, in *v. supra, note 1025,* cit., p.4.

[1049] N. NAGY, *Linguistic Diversity and Language Rights in Spain, https://eu-researchprojects.eu/time/people/article-ggn-translating-to-communicate-with.pdf,* p.4.

[1050] 1872-1876, Historia de España, Las guerras carlistas, available at the website *https://sites.google.com/site/historiadeespaa/selectividad/cuestiones/las-guerras-carlistas,* last accessed 09/02/2016.

[1051] M.S. CARTER, *Ethnic Minority Groups and Self-Determination: The Case of the Basque,* in Columbia Journal of Law and Social Problems, No.20, 1986, pp.66-70, in *v. supra, note 1049.*

[1052] *v. supra, note 1049.*

[1053] *v. supra, note 1051,* pp.70-73, in *v. supra, note 1049*.

[1054] *Euskadi Ta Askatasuna,* Basque Homeland and Freedom, in *v. supra, note 1049*, cit., note 18, p.4.

Since the ancient times, the Galician population, which has Celtic origins and resides in the North-West of Spain, presented a uniformity at the cultural level[(1056)]. The Galician region was historically made up of a number of autonomous Countries based on old military structures from the political point of view and subjected to a King who ruled the whole area[(1057)]. Galicia was the first Spanish region that came to light when the Roman Empire dissolved and its Kingdom was established in 411. Then, in the final period of the sixth century, it was submitted to the Visigoth jurisprudence[(1058)]. In 711 the Moors conquered Galicia which was reconquered by Alfonso I of Asturias after a little time. From that moment, the Kingdom took the name of Kingdom of Asturias and it preserved such a denomination until the tenth century when it changed it for the name of Kingdom of Léon, which started to constitute a part of Castile in 1037[(1059)]. Galicia enjoyed some brief phases of autonomy and it became definitively part of the Castile Crown under which the different kingdoms were subjected to the regulations of the same King in 1230[(1060)].

This moment declared the beginning of the epoch in which the central government ruled the region of Galicia. During the nineteenth century nationalism surged in that region and in 1936 Galicia gained its independence when the Second Republic[(1061)] was proclaimed[(1062)].

From the linguistic point of view, the Galician language was abolished together with the regional independence during the years of the exercise of Franco's power, and the same occurred in the other Spanish linguistic minority communities[(1063)]. As stated above, in 1978 Spain made its democratic turn by adopting the Constitution which declared the end of the previous epoch of dictatorial regime[(1064)]. In order to understand the linguistic mosaic present in the Spanish territory, the regional aspect has to be taken into account and also the other way around. For this reason, the Spanish Constitution relates the linguistic minority groups matter to the questions of the administrative organization of the territory and the governmental devolution[(1065)].

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[(1055)]L. MURPHY, *EU Membership and an Independent Basque State,* in Pace International Law Review, No.19, 2007, pp.338-340, in *v. supra, note 1049.*

[(1056)]*v. supra, note 1049.*

[(1057)]*v. supra, note 1049.*

[(1058)]*v. supra, note 1049.*

[(1059)]*v. supra, note 1049,* pp.4-5.

[(1060)]V. RISCO, *Historía de Galicia,* Editorial Galaxia, Vigo, 1952, pp.15-120, in [(1060)]*v. supra, note 1049,* p.5.

[(1061)]1931-1939, Don Quijote Spanish Language Learning, available at the webiste *http://www.donquijote.org/cultura/espana/historia/la-segunda-republica-espanola*, last accessed 09/02/2016.

[(1062)]N. NAGY, *Linguistic Diversity and Language Rights in Spain, https://eu-researchprojects.eu/time/people/article-qqn-translating-to-communicate-with.pdf,* p.5.

[(1063)]*v. supra, note 1062.*

[(1064)]*v. supra, note 1062.*

[(1065)]*v. supra, note 1062.*

In accordance with the political system of Spain which is called *Estado de las Autonomías*[(1066)], seventeen independent communities, which maintain a considerable part of autonomy in several sectors, administer the power together with the central governement. The Spanish system can be defined a decentralized regional-state model which resemble to a federal State in the fact that the independent regions have different abilities[(1067)]. The degree of autonomy of each community is not expressed by the Constitution of the Country, but, within the Constitutional system, each of them is enabled to establish the substance of its independence as well as the eventual restrictions to it [(1068)].
In respect of Articles 143 and 144 of the Spanish Constitution, the possiblity to constitute autonomous communities is conceded to both regions having shared culture, history and economy, as well as to those regions whose regional condition was historically recognized. Moreover, some degree of autonomy can be also bestowed to the portions of the Spanish territory that do not present the aforementioned parameters by the parliament of Spain in the case in which it has an advantage in doing this[(1069)]. Two possible methods to reach the autonomous status are provided under the Constitution in accordance with the parliamentary legislation[(1070)]. The former, prescribes that only the powers established by Article 148 can be conferred to the independent communities and that five years have to pass before widening them. For the latter, the powers wanted by the autonomous community can be granted to it instantly, with the only exception for those abilities reserved to the State[(1071)]. The different Spanish regions were identified by the Constitution more than formed and, as a consequence, it admitted they had the right to be autonomous. However, any right to independence in the meaning of sovereignty is refused because the focus is entirely on the cohesion of the Spanish nation[(1072)], as reiterated by Article 2 of the Spanish Constitution, 'The Consitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards; it recognizes and guatantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all[(1073)]'. However, it is already at the beginning of the document that is possible to find the real reference to the national jurisprudence on the ground of languauge, in fact, from the Preamble, it is maintained that the State is willing to safeguard its

[(1066)] *v. supra, note 1062,* cit., p.5.
[(1067)] *v. supra, note 1062,* cit., p.5.
[(1068)] *v. supra, note 1062.*
[(1069)] *v. supra, note 1062.*
[(1070)] *v. supra, note 1062.*
[(1071)] A. ABAD I NINET, *Rodés Mateu, Adria: Spain's Multinational Constitution: a Lost Opportunity?,* in Constitutionla Forum constitutionnel, No.1, 2008, p.18, in *v. supra, note 1062.*
[(1072)] C.E. EHRLICH, *Ethno-cultural Minorities and Federal Constitutionalism: Is Spain Instructive?,* In Illinois University Law Journal, No.24, 1999-2000, pp. 306-309, in *v. supra, note 1062.*
[(1073)] Article 2 of the 1978 Spanish Constitution, available at the website http://www.senado.es/constitu_i/indices/consti_ing.pdf, last accessed 09/02/2016, in *v. supra, note 1062,* cit., p.6.

population to exercise their customs and culture, languages and institutions and human rights[(1074)]. Then, it is in Article 3 where we can find a list of the obligations and rights related to the linguistic wealth which characterizes the Spanish territory. In the first paragraph of this Article it is stated that all the Spanish citizens have both the obligation to know and the right to use Castilian as it is the official national language. A distinction between Castilian and the regional languages is therefore made and it refers to the fact that the Spanish people are obliged to study only the Castilian language but they are not obliged to study the other official languages. The same concept was also reiterated by the Constitutional Court which declared in a judgement that Article 3 ban to prescribe the obligation of studying the languages different from Castilian[(1075)]. In the second paragraph, it is maintained that, with respect to their judicial system, the official status is also recognized to the other Spanish languages in the different autonomous communities, which refers to the identification of the existence of a co-officiality in those regions where another language more than Castilian is used[(1076)]. Besides, it leaves to the autonomous communities the right to govern a part of the matter of language, obviously in the respect of the Constitutional text. For instance, one of the right that the autonomous communities can control is the development of research and culture as well as the education in the language of the autonomous community[(1077)]. Finally, it also deserves to be reminded that the Constitutional text does not provide a basic linguistic right for the members belonging to linguistic minority groups, because it only refers to the obligation for the authorities[(1078)]. The third paragraph perceives the linguistic variety of Spain as a cultural heritage which should be respected and defended in a special way[(1079)] and, in accordance with the reasoning of the Preamble, it wants to serve as a model of reference for the Spanish authorities to elaborate positive methods aiming at the preservation of the State linguistic range[(1080)]. From the adoption of the Constitutional text, the linguistic system established in Spain can be defined 'of a mixed kind'[(1081)] in the sense that without taking into consideration the precedence of the territorial language, it neither completely focuses on the territory; nor completely individual, as it does not broaden the personal exercise of linguistic rights which derives from the fact of being a citizen of an

[(1074)]Preamble to the Spanish Constitution of 1978, in *v. supra, note 1062,* cit., p.6.
[(1075)]R.J. KASHA, *Education Under Catalonia's Law of Linguistic Normalization: Spanish Constitutionalism and International Human Rights Law,* in Columbia Journal of Transnational Law, No.34, 1996, pp.659-660, in *v. supra, note 1062,* p.6.
[(1076)]N. NAGY, *Linguistic Diversity and Language Rights in Spain, https://eu-researchprojects.eu/time/people/article-qqn-translating-to-communicate-with.pdf,* cit., p.6.
[(1077)]*v. supra, note 1076,* cit., p.6.
[(1078)]G. RUIZ-RICO RUIZ, *Los derechos de las minorías religiosas, lingüísticas y étnicas en el orenamiento constitucional español*, in Revista del Estudios Políticos, Nueva Época, No.91, 1996, pp.116-117, in *v. supra, note 1076*, cit., p.6.
[(1079)]Article 3 of the Spanish Constitution, *vedi supra, note 1074.*
[(1080)]*v. supra, note 1076,* p.6.
[(1081)]*v. supra, note 1076.*

independent community where two or more languages are spoken, to all the people who strive for the same right independently from the region in which they reside[1082]. In Spain, the recovery of the languages spoken by the minority communities in the public sphere in order to confer them the same status of Castilian, is defined 'linguistic normalization'[1083]. According to this notion, these languages are underprivileged and for this public entities have the task to improve their condition in both the public and private domains. This explains why the laws at the regional level do not concentrate purely on the progress of the co-officiality condition, but also to the definition of actions that enhance and safeguard the use of the language of a region so as to resolve the existing disparity[1084]. As it can be ascertained by the Spanish Constitution and by the Statutes of Autonomy, of the total seventeen autonomous communities of Spain, six of them, that is Catalonia, Navarra, Galicia, Valencia, the Balearic Islands, and the Basque Country present a co-official language specific for each region[1085].

Now, a brief examination of the linguistic situation present in Catalonia, the Basque Country and Galicia will be tackled. First of law, as far as Catalonia is concerned, it must be stated that the Catalan language is spoken in Catalonia, Valencia, Andorra, the Balearic Islands, some zones of Aragon, in the French commune of Roussillon, as well as by many people living in the Americas and, in addition to this, it had always boasted the fame of its literature[1086]. Even when in the 16th century this Spanish region was annexed to the monarchy of the State, its own language continued to constitute a mother tongue and the language of education within the religious context[1087].

In the 19th century, the region lived a return of its literature which lasted until the 1960s, which was when the ambitions of the region started to be encouraged[1088]. Through the analysis of the survey of the use of language in Catalonia conducted in 2008, it is possible to evince that almost the totality of the Catalan population is able to understand the Catalan language, although this percentage is reduced to little more than half of the population if the people who can understand it in a perfect way is taken into consideration[1089]. Also more than half of the population maintains that it is able to speak the language, but, the percentage falls to less than half when a maximum degree of knowledge is asked.

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[1082] *v. supra, note 1076,* pp.6-7.
[1083] *v. supra, note 1076,* p.7.
[1084] *v. supra, note 1078,* cit., p.122, in *v. supra, note 1076*, p.7.
[1085] R.J. KASHA, *Education Under Catalonia's Law of Linguistic Normalization: Spanish Constitutionalism and International Human Rights Law,* in Columbia Journal of Transnational Law, No.34, 1996, p.659, in *v. supra, note 1076,* cit.,p.7.
[1086] *v. supra, note 1076,* cit., p.7.
[1087] *v. supra, note 1076,* p.7.
[1088] E.K. KEEFE, *Area Handbook for Spain,* Ch.5, Ethnic Groups and Languages, pp.123-124, in *v. supra, note 1076,* p.7.
[1089] N. NAGY, *Linguistic Diversity and Language Rights in Spain, https://eu-researchprojects.eu/time/people/article-ggn-translating-to-communicate-with.pdf*, p.7.

Considered that the Catalan teenagers constitute the first generation which received a complete instruction in this language, it can be easily understood why they are the most proficient part of the population[(1090)]. With respect to the Constitution, the Catalan language is considered official and the people residing in that region have the right to use it under the Autonomy Statute of Catalonia[(1091)]. The laws of language contained in the Statute of Autonomy were developed even more by the Law of Linguistic Normalization of 1983[(1092)] by focusing, in Article 2, on the fact that the Catalan language is a symbol of identity on the cultural ground in that region[(1093)] and that non-discrimination at the linguistic level was guaranteed[(1094)]. Article 5 provides the use of the Catalan language as the only language which can be used in in the regional administrations[(1095)] and Articles 6 and 7 provide that the documents written in that language are valid form the point of view of law[(1096)], and finally, Article 8 recognized it as the language of interaction for the Catalan citizens with their administrations[(1097)]. Article 12 states that only the toponymy of Catalan were considered legitimate within the autonomous community[(1098)]. The Articles from 14 to 20 concern the common use of Catalan in education. They state the prohibition of students division on the linguistic ground, recognize that the Catalan language is the language to be used in the context of instruction, but they also assure the Castilian language and the possibility for all students to study both the official languages after compulsory education[(1099)]. Article 21 recognizes the Catalan language as the language commonly used in the media[(1100)]. Since the Law of Linguistic Normalization was considerable problematic since the beginning, particularly in the Articles about education, it was subjected to a great number of challenges, such as that coming from the Constitutional Court of Spain[(1101)]. In fact, its decision of 1994 constituted a model for the linguistic laws of others autonomous communities having two official languages in the future[(1102)].

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[(1090)] *Language Policy Report of the Generalitat de Catalunya,* 2010, pp.240-244, in *v. supra, note 1089,* p.8.
[(1091)] *Organic Law No.4/1979,* Article 3, the 18th of December, in *v. supra, note 1089,* cit., p.8.
[(1092)] *Ley 7/1983*, de 18 de abril, de normalización lingüística en Cataluña, available at the website *http://www.parlament.cat/activitat/llei/c7_1983.doc*, last accessed 09/02/2016, in *v. supra, note 1089,* cit., p.8.
[(1093)] *v. supra, note 1089,* cit., p.8.
[(1094)] Article 2 of the Law of Linguistic Normalization of 1983, *v. supra, note 1092.*
[(1095)] Article 5 of the Law of Linguistic Normalization of 1983, *v. supra, note 1092.*
[(1096)] Article 6 and 7 of the Law of Linguistic Normalization of 1983, *v. supra, note 1092.*
[(1097)] Article 8 of the Law of Linguistic Normalization of 1983, *v. supra, note 1092.*
[(1098)] Article 12 of the Law of Linguistic Normalization of 1983, *v. supra, note 1092.*
[(1099)] Articles 14-20 of the Law of Linguistic Normalization of 1983, *v. supra, note 1092.*
[(1100)] Article 21 of the Law of Linguistic Normalization of 1983, *v. supra, note 1092.*
[(1101)] N. NAGY, *Linguistic Diversity and Language Rights in Spain, https://eu-researchprojects.eu/time/people/article-qqn-translating-to-communicate-with.pdf*, p.8.
[(1102)] Sentencia 337/94, de 23 de Diciembre, del Tribunal Constitucional, available at the website *http://www.vozbcn.com/extras/pdf/1994-337-Constitucional.pdf*, last accessed 09/02/2016, in *v. supra, note 1101,* cit., p.8.

The Articles concerning education which were subjected to challenge were Article 14.2, 14.4, 15 and 20, regarding respectively the primary education of children in their usual language[(1103)], the use of Castilian and Catalan in a fluent manner by children by the end of their studies[(1104)], the issue of diplomas only to those people who are sufficiently proficient in both languages[(1105)], and the use of Catalan as the vehicle of normal expression in schools both for internal activities, such as administration, and for external relationships[(1106)]. The critique made to the first of these Articles referred to its implication that the right to be educated in their native language was not recognized to children after primary education[(1107)]. With respect to the second Article cited above, the critique which was made was that only the obligation to study Castilian is provided under Article 3 of the Spanish Constitutional text[(1108)]. According to this, the Court distinguished between the duty for the authorities to give class in Catalan and the duty for students to learn it and finally stated that Article 14.4 does not provide any obligation to the students because it only refers to the purpose which the authorities should aim to[(1109)]. Article 15 concerns the matter of the effect that the principles contrary to the Constitution have on the control of the central government over the concession of diplomas. From the Constitutional Court point of view, that Article could be seen as not providing new necessities to release diplomas as the Catalan authorities are authorized to demand to teach the Catalan language in schools[(1110)]. Finally, Article 20 contrasted what the Constitutional Court had previously maintained, that is, that people can appeal the authorities in one of the official languages of the region, but, the Court stated that that Article only provide Catalan as the common language in administration without omitting anyway the use of the Castilian language[(1111)].

As far as the legal system of Catalonia on linguistic rights is concerned, it must be noticed that it is composed of two main documents, the *Language Policy Act 1/1998* of the 7 of January[(1112)], which is a reform of the Language Normalization Act 7/1983, and the *Organic Act 6/2006* of the 19th of July[(1113)], which is a reform of the of the Statute of Autonomy. The former is broader and more detailed than the document of 1983 which it takes into consideration because there a more

[(1103)]Article 14.2 of the Law of Linguistic Normalization of 1983, *v. supra, note 1092.*
[(1104)]Article 14.4 of the Law of Linguistic Normalization of 1983, *v. supra, note 1092.*
[(1105)]Article 15 of the Law of Linguistic Normalization of 1983, *v. supra, note 1092.*
[(1106)]Article 20 of the Law of Linguistic Normalization of 1983, *v. supra, note 1092.*
[(1107)]*v. supra, note 1101*, p.9.
[(1108)]*v. supra, note 1101*, p.9.
[(1109)]*v. supra, note 1101,* p.9
[(1110)]*v. supra, note 1101,* p.9
[(1111)]R.J. KASHA, *Education Under Catalonia's Law of Linguistic Normalization: Spanish Constitutionalism and International Human Rights Law,* in Columbia Journal of Transnational Law, No.34, 1996, pp.661-669, in *v. supra, note 1101,* p.9.
[(1112)]available at the website *http://noticias.juridicas.com/base_datos/CCAA/ca-11-1998.html*, last accessed 09/02/2016, in *v. supra, note 1101,* cit., p.9.
[(1113)]available at the website *http://www.parlament-cat.net/porteso/estatut/estatut_angles_100506.pdf*, last accessed 09/02/2016, in *v. supra, note 1112.*

elaborated notion of language can be found, as well as the consideration of the fact that administration and public services are the privileged fields of use of the language[1114].

It reiterates the prohibition of discrimination from the point of view of language as well as the fact that all Catalan citizens have the right to understand, use and receive an instruction in one of the two co-official languages[1115]. It recognizes the right to express themselves in both official languages also to the employees in the public sphere[1116]. In many different context the cohesion of the Catalan language can be certified, such as in agreements of mercantile and civil kind, written texts of various nature, in the interaction with other communities in which Catalan is spoken and, in addition to this, this language also demonstrated to be projected outside the autonomous community of reference[1117]. The present *Act* makes also reference to the use of language in the media and, with respect to this, it prescribes that television, cinema and radio have the duty to broadcast in the Catalan language and that the same is valid for the private communications media[1118].

In the same way, also the *Organic Act*, if compared to the previous Statute of Autonomy, is a more careful text and focuses its attention more on Catalan. This language is depicted as the preferred language which is normally used[1119] in the public media and administration, since it is the language of the independent Spanish region, as well as the language of common use to teach and learn, as stated in Article 6[1120]. The obligation for the Catalan Generalitat to foster actions aiming at recognizing the official status of the Catalan language in the European Union is prescribed by Article 6.3 and the Occitan language is considered bearing an official status in the Catalan region under paragraph 5 of Article 6[1121].

As far as the linguistic policy of the Basque Country is concerned, it must firstly be said that the language of this Spanish region is spoken in Navarra and in the three zones which compose the Basque Autonomous Community[1122]. It is defined an isolated language by experts because it is the only language spoken in the Spanish territory which does not make part of the family of the

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[1114] N. NAGY, *Linguistic Diversity and Language Rights in Spain,* https://eu-researchprojects.eu/time/people/article-qqn-translating-to-communicate-with.pdf, p.9.

[1115] *v. supra, note 1114.*

[1116] *v. supra, note 1114.*

[1117] *v. supra, note 1114.*

[1118] A. MILIAN I MASSANA, *Comentarios en torno de la ley del Parlamento de Cataluña* 1/1998, de 7 de Enero, de política lingüística, in Revista de Administración Pública, 2002/January-April, pp.337-366, in *v. Supra, note 1114.*

[1119] *v. supra, note 1114,* cit., p.10.

[1120] Article 6 of the *Organic Act 6/2006*, *v. supra, note 1113.*

[1121] N. NAGY, *Linguistic Diversity and Language Rights in Spain,* https://eu-researchprojects.eu/time/people/article-qqn-translating-to-communicate-with.pdf, p.10.

[1122] *v. supra, note 1121.*

Romance languages[1123]. The separation of this language into several dialects and twenty-five subdialects was a consequence of the subjection of this region to several years of isolation [1124].

In the 1960s, the Language Academy of the Basque Country established a standard type of this language which is used in teaching in the majority levels of education[1125]. In 2006, the Basque Office of statistics analysed the data and it proved that more than half of the population of the Basque region know or is able to speak the Basque language, more than the previous data which dated back to 2001[1126]. On the same day of the Catalan Statute of Autonomy, also the one relative to the Basque Country was implemented bearing the name of *Organic Law 3/1979*[1127].

Its most relevant regulations on the ground of language are provided in Article 6 and refer to the identification of Euskera as the official language of the Basque Country and to the right of the citizens of this region to study and use it as well as the Castilian language[1128]. In addition to this, it is prescribed that the use of both languages and their understanding have to be assured by the institutions of the Basque Country[1129] and that language based discrimination is forbidden[1130].

The status of co-officiality for the Basque language is prescribed by the Basic law Normalizing the Use of Basque[1131], which was approved in 1982 by the parliament of the autonomous community[1132]. This language is identified as the most evident identity symbol of that community in the Preamble, which also highlights that people who have not the possibility to use it cannot in any case be discriminated[1133]. Under the First Title of the Law, the linguistic rights of the Basque population are listed, that is, the right to understand and make use of all the official languages in oral as well as written communication, the right to address to administrative authorities in one of the two official languages, the right to receive education in both the languages, the right to access to the different kind of communication media in their own language, the right to fulfil social, political and commercial activities in their language, and finally, the right to use the Basque language to express

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[1123] *v. supra, note 1121.*

[1124] *v. supra, note 1121,* cit., p.10.

[1125] E.K. KEEFE, *Area Handbook for Spain,* Ch.5, Ethnic Groups and Languages, pp.122-123, http://www.kondaira.net/eng/Euskara.html, last accessed 09/02/2016, in *v. supra, note 1121*, p.10.

[1126] *v. supra, note 1121,* cit., p.10.

[1127] available at the website http://www.basques.euskadi.net/t32-448/en/contenidos/informacion/estatuto_guernica/en_455/adjuntos/estatu_i.pdf, last accessed 09/02/2016, in *v. supra, note 1121,* p.10.

[1128] Article 6.1 of the *Organic Law 3/1979*, *v. supra, note 1127.*

[1129] Article 6.2 of the *Organic Law 3/1979*, *v. supra, note 1127.*

[1130] Article 6.3 of the *Organic Law 3/1979*, *v. supra, note 1127.*

[1131] Ley 10/1982, de 24 de noviembre, básica de normalización del uso del euskera, availble at the website http://noticias.juridicas.com/base_datos/CCAA/pv-110-1982.html, last accessed 09/02/2016, in *v. supra, note 1121,* p.11.

[1132] N. NAGY, *Linguistic Diversity and Language Rights in Spain,* https://eu-researchprojects.eu/time/people/article-qgn-translating-to-communicate-with.pdf, p.11.

[1133] Preamble to the Basic law Normalizing the Use of Basque, *v. supra, note 1131.*

themselves during various types of discussions[1134]. From its point of view, the Second Title of the Law deals with the measures that should be taken by authorities. The regulation of the use of this language in administrative circumstances is prescribed by the First Chapter, which also focuses on the encouragement for governmental and regional authorities to provide for Basque names of places within that autonomous community, as well as on the promotion of Basque people to work in the administrative field[1135]. By establishing the right of all student to receive their education in Basque and the obligation to teach also those languages which were not recognized as bearing an official status, the Second Chapter deals with the use of this language in the context of instruction[1136].

The Third and Fourth Chapters of the Law deal respectively with the use of this language in the communication media and in different social contexts[1137].

As already seen for the Catalan situation, also in the Basque Country the process of normalization occurs through the organization of education. However, Catalonia adopts a bilingual educational system, whereas the Basque Country a separatist system of language, according to which parents can decide what linguistic system should be used in their children education[1138].

The 1998 General Plan for Promoting of the Use of Euskera[1139], incorporates the latest language policy adopted by the Basque government which takes into account both policies of past times and suggestions for the future[1140]. This language policy contains a plan aiming at modernizing language through the following main means, that is, standardizing the language use, defining the right to use the language, fostering the importance of the language, growing its importance as an instrument, adopting the bilingual system, promoting the request for goods and services in this language, and concentrating on young people[1141].

The last Spanish linguistic context which will be taken into consideration is that of the autonomous community of Galicia. The language of reference is also spoken in Léon and Zamora, in Asturia, and more precisely on the West of the region[1142], and in three little zones in Extremadura[1143].

The Galician language is the product of the development undergone by Latin which was brought into the region by the Romans and this explains why it is a Roman language[1144].

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[1134] Title One of the Basic law Normalizing the Use of Basque, *v. supra, note 1131.*

[1135] Chapter One of the Basic law Normalizing the Use of Basque, *v. supra, note 1131.*

[1136] Chapter Two of the Basic law Normalizing the Use of Basque, *v. supra, note 1131.*

[1137] Chapters Three and Four of the Basic law Normalizing the Use of Basque, *v. supra, note 1131.*

[1138] *v. supra, note 1132,* p.11.

[1139] *v. supra, note 1132,* cit., p.11.

[1140] *v. supra, note 1132,* p.12.

[1141] N. NAGY, *Linguistic Diversity and Language Rights in Spain, https://eu-researchprojects.eu/time/people/article-qqn-translating-to-communicate-with.pdf*, cit., p.11.

[1142] Ley 1/1998, de 23 de marzo, de uso y promoción del bable/asturiano, available at the website http://noticias.juridicas.com/base_datos/CCAA/as-11-1998.html, last accessed 09/02/2016, in *v.supra, note 1141,* p.12.

[1143] *v. supra, note 1141,* cit., p.12.

In the 16th, 17th, and 18th century, which take the name of Dark Ages, there is not any sign of the Galician language in written texts, in fact, it was not until the 19th century that the first grammar and dictionary of the language were drafted, in conjunction with the activity for the revitalization of the culture of this region[1145]. Anyway, only in the 20th century the Galician was really stabilized[1146]. The Statistical Institute of Galicia ascertained through the 2008 data that more than half of the citizens of the region speak more the Galician language than the Castilian one, and a considerable part of them speak only the first, which means that just a little part is not proficient in Galician[1147]. More than half of the Galician citizens also understand perfectly the language[1148].

Since most speakers in Galicia are quite old, they are on the whole less if compared to those of Catalonia and the Basque Country[1149]. Also in the Statute of Autonomy of Galicia[1150] measures concerning language can be found, as already seen for the previous autonomous communities object of this study[1151]. The co-officiality of Galician and Castilian as well as the right of everyone to comprehend and use both of them is stated in the second paragraph of Article 5[1152]. The fact that Galician authorities have to guarantee the official use of both languages, to promote its use in public, cultural and informative life[1153], as well as to take the appropriate measures to assist its understanding, is prescribed in the third paragraph of the same Article. The role of the language as a symbol of identity in Galicia is underlined with more emphasis in the Preamble of the Linguistic Normalization Act of 1983[1154], than in those of Catalonia and the Basque Country[1155].

In Article 11 it is stated that the Galician authorities are responsible for fostering the practice in the use of this language for the administrative employees as well as employees of businesses operating in the public spheres[1156].

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[1144] *v. supra, note 1141,* p.12.

[1145] *v. supra, note 1141,* p.12.

[1146] available at the website http://www.xunta.es/a-lingua-gallega, last accessed 09/02/2016, in *v. supra, note 1141,* p.12.

[1147] *v. supra, note 1141,* p.12.

[1148] available at the website http://www.ige.eu/estatico/pdfs/s5/notas_prensa/com_galego_2008_es.pdf, last accessed 06/02/2106, in *v. supra note 1141,* p.12.

[1149] *v. supra, note 1141,* p.12.

[1150] Ley Orgánica 1/1981, de 6 de abril, Estatuto de Autonomía de Galicia, available at the website http://noticias.juridicas.com/base_datos/Admin/lol-1981.html, last accessed 09/02/2016, in *v. supra, note 1141,* p.12.

[1151] *v. supra, note 1141,* p.12.

[1152] Article 5.2 of the Statute of Autonomy of Galicia, *v. supra, note 1150.*

[1153] Article 5.3 of the Statute of Autonomy of Galicia, *v. supra, note 1150,* in *v. supra, note 1141,* cit., p.12.

[1154] Ley 3/1983, de 15 de junio, de normalización lingüística, available at the website http://noticias.juridicas.com/base_datos/CCAA/ga-13-1983.html, last accessed 09/02/2016, in *v. supra, note 1141,* p.12.

[1155] N. NAGY, *Linguistic Diversity and Language Rights in Spain,* https://eu-researchprojects.eu/time/people/article-ggn-translating-to-communicate-with.pdf, p.12.

[1156] Article 11 of the Statute of Autonomy of Galicia, *v. supra, note 1150.*

With respect to Article 10, a reference to the fact that geographical names are official only in the Galician language is made[(1157)]. The official use of Galician in education at all its levels is prescribed by Article 12[(1158)]. Article 13 reiterates something valid in the Catalan community as well, that is, the right for children to be instructed in their native language at primary school and the prohibition of their division in more schools on the ground of language[(1159)].

The fact that once Galician students have finished their education have to be proficient in the same way in the two official languages is declared in Article 14[(1160)]. In Article 18 a reference is made to the fact that the Galician language is recognized as the common language used in the various communications media[(1161)]. Finally, the provision of sustain to the media by the government of the autonomous community is prescribed by Article 19[(1162)]. Throughout all the period in which the Linguistic Normalization Act was put into effect, the Galician language was gradually normalized and nowadays the understanding of such language is necessary to have access to job roles in the public sector[(1163)].

To conclude, it can be stated that the situation of the autonomous communities residing in the Spanish territory demonstrates to fulfil the requests coming from the members belonging to such communities, and for this reason it represents an efficient model of 'ethnic accommodation within a multinational state[(1164)]'. The Spanish linguistic minorities faced a passionate discussion which led them to collaborate and to accept their dissimilarities but, until today they have not yet reached what can be defined a situation of 'peaceful coexistence[(1165)]'. Certainly, a relevant contribution to the new establishment of the relationships of the minority groups with the majority group was given by the strengthening of the democratic system of the Country, which also led to the constitution of a social context in which more languages were spoken. However, aggressive nationalist manifestations from the different autonomous communities continue and they are accompanied by incisive contrasts between the Spanish central government and the regions[(1166)].

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[(1157)] Article 10 of the Statute of Autonomy of Galicia, *v. supra, note 1150.*
[(1158)] Article 12 of the Statute of Autonomy of Galicia, *v. supra, note 1150.*
[(1159)] Article 13 of the Statute of Autonomy of Galicia, *v. supra, note 1150.*
[(1160)] Article 14 of the Statute of Autonomy of Galicia, *v. supra, note 1150.*
[(1161)] Article 18 of the Statute of Autonomy of Galicia, *v. supra, note 1150.*
[(1162)] Article 19 of the Statute of Autonomy of Galicia, *v. supra, note 1150.*
[(1163)] N. NAGY, *Linguistic Diversity and Language Rights in Spain, https://eu-researchprojects.eu/time/people/article-qqn-translating-to-communicate-with.pdf*, p.13.
[(1164)] J.M. PAOLETTI, *Rights and Duties of Minorities in a context of Post-Colonial Self-Determination: Basques and Catalans in Contemporary Spain,* in Buffalo Human Rights Review, No.15, 2009, p.159, in *v. supra, note 1163.*
[(1165)] H.J. TRENZ, *Reconciling Diversity and Unity: Language Minorities and European Integration,* in Ethnicities, No.7, 2007, cit., p.168, in *v. supra, note 1163.*
[(1166)] *v. supra, note 1165.*

Therefore, the struggle of linguistic minorities in Spain has not yet seen a conclusion as demonstrated by the same European Union programmes which deal with the legislation of the different regions[(1167)].

## 8. Linguistic rights in the Latin American context

For native peoples in Latin America, their diversity on the grounds of ethnicity and language has been a reason for exclusion and underdevelopment since they gained independence in the 19th century[(1168)]. In fact, actions aiming at the assimilation of the Indian peoples at the economic, social and cultural levels, constituted the basis of projects for the advancement of Indian minority groups which had the final purpose of making these peoples 'de-Indianized'[(1169)]. With respect to this, it can be understood why the presence of indigenous peoples within the boundaries of Latin American States is not identified by several of their constitutional texts.

In those Countries which take into consideration these peoples, Constitutions state the prohibition of discrimination for religious, ethnical and linguistic reasons[(1170)]. Within the legislative system of the Latin American States the provisions on the conditions of languages, those concerning basic rights in the field of education, regulations dealing with instruction for linguistic minority groups as well as minor laws concerning precise educational methods for these groups are the instruments which consider local linguistic minorities[(1171)]. For instance, the Argentinian Constitution deals with the presence of Indigenous communities residing within the national territory by defining them 'aboriginal groups[(1172)]', the Guatemalan and Panamanian constitutional texts consider the defence of the Indian peoples in one Article which is included within social and cultural rights[(1173)].

A reference to human rights which incorporates specific laws for the Indian groups is made in Chilean, Ecuadorean, and Colombian Constitutions[(1174)]. From their point of view, without making any clear mention to the native peoples, the Mexican and Peruvian constitutional texts provide economic rights to the people belonging to the agricultural sector since traditionally they were part

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[(1167)]F. MORATA, *European Integration and the Spanish State of Autonomies,* in Zeitschrift für Soziologie der Erziehung und Sozialisation, No.4, 2006, pp.519-521, in *v. supra, note 1163.*

[(1168)]R.E. HAMEL, *Linguistic rights for Amerindian peoples in Latin America,* in T. SKUTNABB-KANGAS, R. PHILLIPSON, M. RANUT, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination,* Berlin – New York, Mouton de Gruyter, 1995, p.289.

[(1169)]*v. supra, note 1168,* cit., p.289.

[(1170)]*v. supra, note 1168,*p.290.

[(1171)]*v. supra, note 1168,* p.290.

[(1172)]*v. supra, note 1168,* cit., p.290.

[(1173)]*v. supra, note 1168,* p.290.

[(1174)]*v. supra, note 1168,* p.290.

of the Indian community[1175]. In general, the presence of native peoples is considered problematic as the legal system of Latin American Countries contains two notions which contrast to each other, that is, on the one hand, formal equality before the law and, on the other hand, diversity on the legal ground when facing uneven circumstances[1176]. Although they could constitute an incentive to the establishment of a Country characterized by many different cultures, in the majority of the cases diversities on the grounds of ethnicity, language and culture are not identified as values[1177].

Most constitutional texts of the aforementioned States do not explicitly mention linguistic rights, which are implicitly considered a part of the rights on education. In accordance to educational rights, instruction has to contribute to assimilate and civilize the Castilian language[1178].

According to the Chilean and Costa Rican Constitutions, the Spanish or Castilian language is the only language bearing the official status, whereas under the Peruvian, Nicaraguan, and Ecuadorean Constitutions, the same consideration is made and, in addition to this, a special condition to the languages of native peoples is also recognized[1179]. The Quechua, Aymara, and other indigenous languages are vaguely identified as being part of the culture of the Ecuadorian State which has a quite considerable portion of the population constituted by local people[1180]. The only Latin American State where there are more people speaking the Indian language of Guaraní instead of Spanish, which is Paraguay, in any case does not recognize this native language under its constitutional text[1181]. Under the military regime which lasted until 1975, the unique effort which can be recalled throughout the whole history of Peru not to limit the linguistic rights of minority groups as well as to broaden the role of Quechua to the all Country at the levels of politics and law occurred[1182]. Aymara and Quechua enjoy the status of national and co-official languages with Spanish within the Peruvian borders today[1183].

Since Brazil and Mexico are the most populated Latin American Countries, an analysis of the linguistic legislation in force there will be now provided. As far as Mexico is concerned, having it just a tiny percentage of indigenous population, the linguistic laws concerning the Indian minority have to be related to the process of construction of the identity of the State[1184]. On the one side, this process presents the particular form of nationalism typical of those Countries characterized by homogeneity and centralization which is common to the majority of States Latin America and, on

[1175] *v. supra, note 1168,* p.290.
[1176] *v. supra, note 1168,* cit., p.290.
[1177] *v. supra, note 1168*, p.290.
[1178] *v. supra, note 1168,* pp. 290-291.
[1179] *v. supra, note 1168,* p.291.
[1180] *v. supra, note 1168,*p.291.
[1181] *v. supra, note 1168,* p.291.
[1182] *v. supra, note 1168,* p.291.
[1183] *v. supra, note 1168,* p.291.
[1184] *v. supra, note 1183.*

the other side, a fundamental contribution to the building of the identity of the State is provided by the connection to the traditional past cultures of the Mayas and Aztecs[(1185)]. The mutual dependency of two cultures and ethnicities, that is, the Western represented by Spain and that of the Indian of the New World, have constituted the identity of the State as well as its political doctrine since the 19th century[(1186)]. Since Mexico has not yet achieved a cultural assimilation, its society finds itself in difficulty in the establishment of a national union and in the definition of the limits to three different linguistic and cultural fields, as far as the regulation on the ground of language is concerned[(1187)]. First of all, before the linguistic and cultural context of Spain, with the Spanish language representing the national and native language of almost all of the total population. With respect to this, it was necessary to determine some specific laws for Mexico that had not to trace those valid in Spain[(1188)]. Secondly, before the current indigenous ethnic groups, the native languages are object of an antinomy in front of the duty of assimilation, as such languages constitute both a model and a barrier against the cohesion of the State[(1189)].

And thirdly, before the United States, as the traditions of Spain work as ties of mutual support against the entry of the English language and the consequent Northern cultural attack[(1190)].

The respect for this system allows to clarify many incongruities, such as, for instance, the fact that in Mexico the indigenous population is scarce but, at the same time very noticeable in the organisms of the government as well as in the public sphere, or the fact that Mexico had an historical fundamental role in the promotion of the laws, entities and projects of the indigenous people but, at the same time, their constitutional text was not acknowledged for a long time[(1191)]. From the legal point of view, the recognition of the Spanish language as the official language of Mexico was never achieved in its constitutional text and throughout the 19th century most of its population only used it to interact[(1192)]. The Constitution seemed not to accept the fact that the Country it represented reflected a condition of multi-ethnicity within it as, only rather recently, in 1991, Mexican native people were defined as a definite ethnic group[(1193)].

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[(1185)] *v. supra, note 1183,* pp.291-292.
[(1186)] *v. supra, note 1183,* cit., p. 292.
[(1187)] L. VILLORO, *Los grandes momentos del indigenismo en México,* México, D.F., 1950, in *v. supra, note 1168,* p.292.
[(1188)] *v. supra, note 1187.*
[(1189)] *v. supra, note 1187.*
[(1190)] *v. supra, note 1187.*
[(1191)] *v. supra, note 1187.*
[(1192)] R.E. HAMEL, *Linguistic rights for Amerindian peoples in Latin America,* in T. SKUTNABB-KANGAS, R. PHILLIPSON, M. RANUT, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination,* Berlin – New York, Mouton de Gruyter, 1995, p.292.
[(1193)] *v. supra, note 1192.*

The constitutional text does not provide any specific regulation for the members of the local group because it adopted vague concepts of official parity[1194]. Differently from the legal point of view, the linguistic point of view provides a more evident attention to the rights of the members belonging to the Indian minority[1195]. In fact, since the Mexican independence, which occurred in the 19th century, two different attitudes have characterized the treatment of national native community.

On the one hand, the tendency to reach the establishment of a cohesive State through the integration of indigenous individuals as well as the elimination of their own languages; on the other hand, the tendency to achieve the establishment of a multicultural State through the defence of the indigenous languages and traditions[1196]. In 1989 the federal government of Mexico suggested to modify the constitutional text so as to acknowledge that native people should have the possibility to enjoy their own cultural rights, despite the fact that, with respect to the liberal custom, diversity on the religious or ethnic grounds had to be absolutely rejected[1197]. So, in 1990 that suggestion was presented to the Congress and validated by the House of Representatives the following year[1198].

It recognized the multiculturalism of the Mexican society which depended essentially on the existence of the native people and it prescribed that cultures, resources, customs, languages, and specific forms of social organization of these people should be safeguarded and encouraged at the same time[1199]. Finally, it provided the possibility for these individuals to appeal to national tribunals in case of need. The advanced suggestion was interpreted as a progress towards the attainment of a major legislation which defends the rights of the indigenous people[1200].

However, its subject and range were also disapproved for being too scarce with respect to the problems arising from the concession and defence of the cultural rights of native people without the simultaneous concession of also political, economic, social and educational rights to the same people[1201]. The Mexican Constitution was evaluated as unclear as it does not demonstrate to accept all the aspects of the State multiculturalism as it does not identify the independence of the Indian people[1202]. As far as linguistic rights are concerned, they cannot be restricted to individual rights such as, for instance, the right to express in one's own language, but they should include the right to communicate to the indigenous people, as an example of a collective right[1203].

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[1194] *v. supra, note 1192.*
[1195] *v. supra, note 1192,* p.293.
[1196] *v. supra, note 1192,* p.293.
[1197] *v. supra, note 1192, note* p.293.
[1198] *v. supra, note 1192,* cit., p.293.
[1199] *v. supra, note 1192,* cit., p.293.
[1200] *v. supra, note 1192,* p. 292.
[1201] *v. supra, note 1192,* p.294.
[1202] *v. supra, note 1201.*
[1203] *v. supra, note 1201,* cit., p.294.

This right comprehended the right to equality to the members of the linguistic minority group as well as the duty to implement those actions aiming at the preservation of features of the native people as an ethnic group[(1204)].

To conclude, if it is considered that Mexican politics and economy did not give traditionally so much attention to legislation, it can be easily understood why regulations on education and language are rather autonomous. Anyway, in recent times, the relevant claim of observance for the human rights framework has imposed on the Mexican political system which has undertaken a transition from centralization to democratic multiculturalism which requires consideration for linguistic and ethnic minority groups[(1205)]. From its point of view, the legal framework concerning the linguistic rights of the members belonging to the native communities in Brazil, is very different from that of Mexico[(1206)]. The Brazilian linguistic policy has been one of division and integration at the same time since the period of the colonization, with integration applied whether the indigenous people were losing the identity typical of their ethnic group[(1207)]. As a consequence, native people faced disintegration and genocide and those who succeed in their effort to survival, started successively to make part of 170 different linguistic communities[(1208)].

The indigenous people of Brazil did not benefit from the right to equality and freedom which were effective for all the other population members, and this is the reason why linguistic laws concerning Brazilian native people are characterized by protection and compassion since the 19th century[(1209)]. Therefore, the indigenous people residing in this Country are subjected to a peculiar set of rules which defends and separate them from the rest of the population at the same time[(1210)].

Numerous provisions concerning the rights of the Indian peoples are provided by the 1988 constitutional text of Brazil which is still effective today, where these individuals were defined isolated, near to assimilation, or assimilated[(1211)]. Under Article 6 of the Code of Civil Procedure, native people who demonstrate not to be assimilated are considered to have a limited ability to think and live in society[(1212)]. The 1974 peculiar set of rules provided for the Indian peoples, which falls under the label of «Estatuto de Indio»[(1213)], prescribed to the Indian peoples the right to manifestate

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(1204) *v. supra, note 1201.*

(1205) *v. supra, note 1201*, pp.294-295.

(1206) *v. supra, note 1201,* p.295.

(1207) *v. supra, note 1201*, p.295.

(1208) *v. supra, note 1201,* cit., p.295.

(1209) *v. supra, note 1201*, p.295.

(1210) R.E. HAMEL, *Linguistic rights for Amerindian peoples in Latin America,* in T. SKUTNABB-KANGAS, R. PHILLIPSON, M. RANUT, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination,* Berlin – New York, Mouton de Gruyter, 1995, p.295.

(1211) *v. supra, note 1210,* cit., p.295.

(1212) *v. supra, note 1210,* p.295.

(1213) M. CARNEIRO DA CUNHA, *Direito dos Índios*, São Paulo, Brasiliense, 1987, in *v. supra, note 1210,* p.295.

their own traditions and behaviour, to attend public schools, and to be educated in their native language. Their instruction aimed at their progressive assimilation, but without rejecting their artistic values, rites, religions, beliefs, and cultural heritage[1214]. The 1988 Constitution which represented the basis for the democratic system, showed that some important results were achieved concerning the rights of native people even if the idea of national protection was still present[1215]. The progresses dealt with the suppression of the concept of absolute integration through the recognition of the indigenous peoples as a specific and different group, a highest defence of the rights related to the national territory, and the assurance of the possibility to receive a bilingual instruction for the individuals belonging to the indigenous minority[1216]. However, it can be maintained that in general the Brazilian legal framework offers a rather scant defence of the linguistic rights of the Indian peoples[1217]. There is not any specific provision dealing with languages condition, however, the recognition of the Portuguese language as the official national language is impliedly stated[1218]. The education field is the only one which makes a clear reference to the provisions concerning native languages, as already seen for the Mexican situation[1219].

Finally, it must also be noticed that if compared to the Mexican laws, the 1988 Brazilian Constitution as well as other successive regulations, provide a more precise explanation of linguistic rights in both the educational and cultural contexts[1220].

Despite the two analysed linguistic cases of Mexico and Brazil present some differences, some points in common can be outlines as well[1221]. Even though the languages of the Indian peoples have been fundamental for the determination of the limits concerning the ethnic perspective, the matter of the language rights of the indigenous community of Latin America has generally received a little attention on the occasion of discussions of a different nature[1222]. Anyway, what can be inferred from the experience of Latin American native people is that within the overall category of the rights belonging to the individuals of minority groups, the rights concerning language are the most important, and the reason of this resides in the fact that they have a collective character[1223]. The Amerindian peoples of Latin America started to fight against the conquerors who wanted to

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[1214] R. STAVENHAGEN, *Derecho indígena y derechos humanos en América Latina,* Instituto Interamericano de Derechos Humanos, México, 1988, p.249, in *v. supra, note 1210,* p.296.

[1215] *v. supra, note 1210,* p.296.

[1216] *v. supra, note 1210,* p.296.

[1217] *v. supra, note 1210,* p.296.

[1218] *v. supra, note 1201,* p.296.

[1219] *v. supra, note 1210,* cit., p.296.

[1220] *v. supra, note 1210,* p.296.

[1221] R.E. HAMEL, *Linguistic rights for Amerindian peoples in Latin America,* in T. SKUTNABB-KANGAS, R. PHILLIPSON, M. RANUT, (edited by), *Linguistic Human Rights. Overcoming Linguistic Discrimination,* Berlin – New York, Mouton de Gruyter, 1995, p.297.

[1222] *v. supra, note 1221,* p.297.

[1223] *v. supra, note 1221,* p.297.

invade their own territory. At a later time, their struggle moved to the ground of legal claims, when the indigenous people started to demand the acquirement of colonial citizenship, which allowed them to become land owners and to benefit from the immunity from paying taxes[1224].

However, their more recent claims concerned territorial independence and authorization to conduct their life in full compliance with the observance of their own cultural inheritance and practices[1225]. As an evidence of this, they aimed at obtaining independence and self-determination, the right to decide how to conduct their life, and the right to participate to political and legal debate[1226]. Anyway, such requests undermined the legal constitution of their respective States. In fact, being this founded on the uniformity ideology, official equality was granted to all the population members, but no special condition at the law level was conceded to linguistic and ethnic communities[1227]. The most relevant claims from the Amerindian peoples focused on having their territory considered, their languages official, their religions accepted, as well as their customs related to jurisprudence and medicine[1228]. These people also highlighted the fact that since the legal framework dictated by the conquerors was more recent than their own legal framework, it could also be considered less lawful[1229]. As a consequence, a contrast exists between the legislation of States and the traditional law of the indigenous people with the core of the problem lying in that the legal system of national States does not accept the methods, uses and behaviour dealing with the law associated with the minorities demands for their political, economic, cultural and social independence[1230]. The traditional law of native people and the law of the State are seen as two emblematic linguistic models which oppose to each other and deriving from the contact between two different languages[1231]. Some cultural features which characterize the language of the Indian peoples constitute the bases from which actions in the governmental, organizational, and decisional fields originate[1232]. It can be certainly stated that in the opposition between the law of the Amerindians and that of the State a central contribution comes from both the linguistic contrast and the incomprehension between the different ethnic groups, which suggests the fundamental importance of linguistic rights[1233]. The preservation of the languages of the indigenous groups will depend on whether these communities consider their languages as being essential or secondary in

[1224] *v. supra, note 1221,* p.297.
[1225] *v. supra, note 1221,* p.297.
[1226] *v. supra, note 1221,* cit., p.297.
[1227] *v. supra, note 1221,* p.297.
[1228] *v. supra, note 1221,* cit., p.297.
[1229] *v. supra, note 1221,* cit., p.298.
[1230] *v. supra, note 1221,* p.298.
[1231] *v. supra, note 1221.*
[1232] *v. supra, note 1221.*
[1233] *v. supra, note 1221.*

the constitution of their own identity and in their operations and plans[1234]. Another important point to be noticed is that the demonstration of the fact that the connection between individual and collective rights is a problematic matter, is offered by the discussion about linguistic rights[1235].

So, for instance, the modification of the Mexican constitutional text was made under the personality concept and under the recognition that individual rights have to be enjoyed by the individuals belonging to a specific ethnic community[1236]. In these terms, although these individuals would have the possibility to access to national Courts with all the rights associated to this, such as the right to an equal treatment or the right to make use of experts in interpreting, this will be not sufficient in any case for allowing them to exercise the collective right of establishing a legal framework which reflects their own languages, convictions, and traditions. In fact, it can just provide help to find a solution to a judicial question of the individual[1237].

From this it can be understood the fundamental role which collective rights play in conceding linguistic rights to the Indian peoples[1238].

The identification of a specific legal framework for the indigenous people has to be achieved in Latin America in order to grant them the right to conduct their life in the political, economic, social and cultural contexts through the observance of the basics of their own ethnic group[1239].

In the south of Mexico, where the concentration of the indigenous population is higher, the individuals belonging to the ethnic minority have organized in order to claim more self-determination making reference to the notion of the control of government and territory[1240].

There, as in other Latin American regions with a high percentage of native population, the individuals belonging to the minority community can benefit from the right to use their own languages in the spheres of public life such as, for instance, education, health, justice, administration[1241]. If the use of the indigenous languages will be extended to more fields, their preservation and renewal will be possible as well as the procedures of expansion and planning of the language[1242]. However, as already stated, laws are not a sufficient element alone to assure that the indigenous groups will not die, for which the action of Indian movements aiming at their own survival thorough the confirmation of their linguistic minority rights is needed[1243].

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[1234] *v. supra, note 1221.*
[1235] *v. supra, note 1221.*
[1236] *v. supra, note 1221,* cit., p.298.
[1237] *v. supra, note 1221.*
[1238] *v. supra, note 1221,* cit., pp.298-299.
[1239] *v. supra, note 1221,* p.299.
[1240] *v. supra, note 1221,* p.299.
[1241] *v. supra, note 1221,* cit., p.299.
[1242] *v. supra, note 1221,* cit., pp.299-300.
[1243] *v. supra, note 1221,* p.300.

Since the most common claims coming from the ethnic movements and new matters at the global level are more and more related to each other, the international community has given its sustain to some of these movements and to their efforts[(1244)].

Finally, the Latin American Indian movements receive assistance from the same globalization processes occurring throughout the world in order to enhance their management at the international level[(1245)].

[(1244)] *v. supra, note 1221*, p.300.
[(1245)] *v. supra, note 1221,* p.300.

# Conclusions

To conclude, the present research tries to illustrate that cultural rights are rather problematic to elaborate and implement as they reflect the same complexity which also characterizes the concept of culture. In fact, when the notion of culture was broadened, that is, since it began to include the different aspects of the life of cultural communities, also International Law started to tackle these specific rights. Moreover, cultural rights cannot be separated from the question of the individual identity and their intricacy is also due to the fact that they overlap other categories of rights. It has also been explained that the typical difficulty which surrounds cultural rights emerged since the time of the elaboration of the *Universal Declaration of Human Rights*.

Evidently, the fact that since the end of the Second World War many years had to pass until the draft of some more distinctive documents dealing with cultural rights leads to an important consideration. In fact, apart from the instruments adopted by *UNESCO* with respect to cultural cooperation and participation in cultural life in the 60s and 70s, and the *International Covenant on Economic, Social and Cultural Rights* which was elaborated in the same period, it was not until the end of the twentieth century that the majority of international legal documents dealing with these rights appeared. This also proves the difficulty which lies in providing a definition of cultural rights and with respect to this, it has to be underlined that both the *Universal Declaration* and the *International Covenant* do just present respectively two Articles concerning this category of rights and do not contain any concrete indication of what it should be intended for these rights.

As it can be seen over the present research, the efforts aiming at defining this specific class of rights started in the 1990s by the scholars of the Fribourg group, who finally provided the first definition of cultural rights in the *Declaration* of 2007, which is based on an anthropological rather than on a material notion of culture. Exactly from the *Fribourg Declaration* it can be inferred that such rights cannot be separated from the identity of every person and that the free choice of one's language has to be considered a part of such an identity as well. As a consequence, the connection of such rights with linguistic rights was already revealed.

The present work aims at demonstrating that despite cultural rights were finally defined, they still remain the most overlooked category of rights within the wider family of human rights.

This suggests that they need to be investigated more, that a deeper exploration of them is necessary in order to better tackle the several challenges that the multi-cultural and multi-ethnic societies of nowadays pose.

As far as linguistic rights are concerned, the work proves that many of the points that have been examined for cultural rights can also be applied to them. First of all, the link these rights have with the identity of each person. In fact, in the case of linguistic rights, it emerges that since language constitutes an essential element of the identity of every human being, this last is respected only if also the language each individual chooses to use is respected. Secondly, also linguistic rights were recognized by the international jurisprudence quite recently, and despite the fact that throughout the 20th century they were granted an official status, their nature and extent remained vague.

Besides, it has been also highlighted that no concrete measures to protect these rights still exist because there is rather a disposition towards lenience and absence of discrimination with regard to the issue of language. Thirdly, linguistic rights are thought to be included in the wider category of human rights as well. Despite on the one hand it has to be recognized that these rights, which emerged in the European context together with the State-building process that did not bear so much the existence of linguistic minority groups as they could pose a possible threat to the linguistic majority; on the other hand, it has also to be underlined that they are receiving more attention right now by both international institutions and the doctrine than in the past, especially because they relate to the matter of immigration which inevitably leads to the formation of new linguistic communities within the boundaries of the European Countries.

Moreover, another contemporary phenomenon such as globalization menaces diversity on the ground of language as it pushes towards the establishment of the same cultural systems everywhere. The fact that the first international congress on linguistic rights took place last year is meaningful because it suggests that the reasoning about such category of rights is still open, that some efforts in order to better categorize these rights are still needed, and that they constitute an important issue in the international contemporary debate. As already seen for cultural rights, also linguistic rights have a specific instrument dealing with them, since the previous international documents did not provide a clear list of such rights, and the elaboration of it only dates back to twenty years ago.

The importance linguistic rights have as a matter worldwide is also proved by the fact that many international leading figures in the field of culture also supported their formulation and implementation.

The present research illustrates that the same treatment of the linguistic rights of linguistic minorities is not very distant in the history of International Law as well as that these rights constitute a problem for the linguistic majorities which prefer not to grant their linguistic rights to linguistic minority groups believing that this can lead to their assimilation to the Country where they live and causing so a threat to the national unity.

Therefore, it can be understood that from the linguistic majority point of view, the provision of such rights to minorities will provoke the breakup of the nation State in the end, as these groups aim at becoming independent at the political, economic, and cultural levels and at building their own State. To sum up, linguistic majorities are against cultural and linguistic diversity opposing so to the *Barcelona Declaration* and the *Girona Manifest* which, on the contrary, believe it should be respected and enhanced even more. It has been underlined that since language constitutes an essential aspect of culture, if linguistic rights are denied to linguistic minority groups, conflicts can arise and develop to such an extent that the existence of both the culture and the language of a specific group is not guaranteed anymore.

With respect to the States that have been considered in the present research, it was highlighted that generally, where languages spoken by minority communities enjoy an official status, their use in the governmental affairs is more probable. It was also illustrated that in most cases Countries concede the right to use their native language to the individuals belonging to a minority group in the majority of the spheres of social life under their Constitutional frameworks, and that whether this right is not respected, the violation of it will lead to the violation of other rights as well, such as of the right to freedom of expression, to private and family life, and to non-discrimination.

However, despite linguistic rights are guaranteed to minority communities on the constitutional ground, the present research provides evidence of the fact that in several circumstances such category of rights, as well as cultural rights, are not respected in practice, as showed by the cases presented before the *European Court of Human Rights* analysed in this work. In most of these cases, the claimants are individuals belonging to minority communities who complain about the fact that they were not allowed to use their native language in different contexts, even though the use of it was legally provided.

With respect to the linguistic situation existing in Spain, the present work underlines the disposition of the Country towards the safeguard of the different languages spoken by the minority groups which constitute its respective autonomous communities, since it recognizes a co-officiality in each one of them. Despite some differences in the educational system of the various communities can be observed, some points in common with respect to language can also be found in all of them and they refer to the identification of language as the emblem of cultural identity, to the lack of discrimination at the linguistic level, and to the right to use the minority official languages in the majority of the fields of social life. Therefore, Spain seems to be a Country which usually complies with the demands coming from the individuals belonging to its minority groups nowadays. However, this has not prevented the State from being a ground for the exercise of violence by nationalist organizations until today.

As far as the linguistic context which characterizes the Latin American area is concerned, the research demonstrates that the typical tendency of the majority of Countries is against cultural and linguistic multiplicity, as proved by the fact that most Constitutional texts of Latin American States do not contain any provision dealing with linguistic rights. Given the coexistence of a national language with a native language, these States are characterized by the presence of two different opposing linguistic systems and, with respect to this, it is suggested that they can reach a mutual respect only through the implementation of linguistic rights. In any case, Mexico and Brazil are an exception to this general propensity. In fact, the first Country recognizes equality to the members of its native communities and is in favour of adopting measures in order to maintain their ethnic and linguistic characteristics, whereas the second, which deals especially with the linguistic rights of minorities in the field of education, considers that they have the right to be instructed in both their indigenous language and in the national language.

I personally agree with the consideration that the implementation of linguistic rights is the only possible solution in order to allow the members belonging to minority communities to participate in the life of the society in which they live as well as to maintain their linguistic features fighting against radicalism and prejudice. In fact, whether a State prevents the individuals who make part of a minority group from enjoying linguistic rights, this will entail a violation of their identity as well. On the contrary, a State which grants linguistic rights, will also adopt some choices of linguistic policy which guarantee the maximum possible degree of freedom and democracy. I am in favour of the position of this last typology of State essentially because it places the human being at the centre. In addition, I think such a position conforms more with the contemporary international society which is growing in terms of multi-ethnicity and multiculturalism.

Finally, it can be understood that linguistic rights are not only a matter of concern for the doctrine, because they have an importance on the social and the moral grounds as well.

Furthermore, they do not constitute a prerogative of linguists or jurists and, since they also affect subjects such as sociology, economics and geography, they are characterized by an interdisciplinary nature.

With respect to linguistic diversity, it has to be seen as a common heritage which can foster the protection and promotion of the territory as well as lead to the prosperity of the whole community, and not as a menace to scientific and technical progress or to the governmental management of territories as it is believed sometimes. Therefore, the preservation of linguistic diversity is fundamental in order to avoid the formation of cultural and political hegemonies as well as of a uniformity on the ground of language.

The core of the problem lies in the lack of knowledge of the other, of who is different, which reduces the interest to engage with the other, to communicate. In these terms, linguistic and cultural dissimilarity puts at risk identity and it is a cause of hostility. For this reason, only the knowledge of the other and of his or her language allows the exchange which constitutes the basis for cooperation and peace.

With regard to the languages spoken by minority groups, their preservation is necessary to avoid that communities which are already isolated because of their conservation towards cultural matters radicalize their position. In order to do this, the idea of linguistic homogeneity must be overtaken and replaced by the idea that both the single individual and the community can be made up of multiple identities. Hence, a more dynamic attitude must be preferred.

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