

Trinity College Dublin  
LL.M. Dissertation 2007-8

# Linguistic Policies of Europe and Ireland

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# Introduction

Human beings have invented innumerable systems of languages since their origin a few million years ago. Some have succeeded to leave descendants until today, while others disappeared into the darkness of unknown history. Today it is estimated that humans use approximately seven thousand languages, each of which is set under distinct and unequal conditions. A very limited number of languages are spoken by millions of people, employed to disseminate information publicly, and learnt widely among non-natives. By contrast, most minor languages hold less than thousands of speakers, who cannot achieve sufficient education or necessary information through their own languages, which are going to perish at slow or rapid rate. “Strong” languages have gotten and will get even stronger by absorbing the “weaker” language communities, causing the status of minor languages to become endangered or possibly extinct. Together with the accelerating globalisation of the world in this modern era, the natural selection of languages has now intensified to the top. Krauss<sup>1</sup> predicted that 90% of present languages will become extinct in the 21<sup>st</sup> century.

Supposing that languages were mere tools for human beings to communicate with each other, the decrease of languages would be good news. There would be less linguistic barriers between nations, less additional cost for people to establish intimate relationships with others and more possibility to share the same ideals and notions. Less people would be forced to learn unfamiliar code systems to achieve cultural, economical or political communication across borders. However, languages in fact contain other values and significance. A language symbolises the nation using it; it represents the history, mentality and pride of the people. As Krauss pointed out, “[a]ny language is a supreme achievement of a uniquely human collective genius, as divine and endless a mystery as a living organism.”<sup>2</sup> A loss of a language can be equated to a loss of a culture. Rapid linguistic assimilation can cause the gravest antagonism between the nations, as history shows us.

Today, many countries have established policies, explicit or implicit, regulating the linguistic affairs within their territories. Some international treaties also provide rules where language is concerned. I am going to describe the linguistic policies of Ireland perspective from a legal viewpoint in this paper. Ireland cannot be discussed only from an Irish, since modern Ireland has been strongly influenced by the integrated European Communities, which have struggled to establish “the value of interculturalism and multilingualism<sup>3</sup>” within the region to preserve its uniqueness. Therefore, the paper consists of two parts.

In Part I, the linguistic policies of the European Communities will be described. It will include the official languages of European organisations, the linguistic rights of people to be recognised in European context, and the positive provisions to promote the linguistic diversity taken by the Communities.

In Part II, the domestic situation of the Irish language will be reviewed. The general history of the Irish language, its status in modern Irish legislation, and policies to promote the use of Irish will be described there.

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1 M Krauss, 'A Loss for Words' (1992), 11 *Earthwatch* 3.

2 *Ibid.*

3 Preamble of European Charter for Regional or Minority Languages 1992.

# Part I: Linguistic Policies in Europe

## 1. Introduction

This part will survey the legislation and policies concerning the practice, usage, promotion or prohibition of languages in the European Communities. In the introduction, we will observe the general conditions of European languages first, and then review the flow of succeeding arguments.

### 1.1. Linguistic Situation in Europe

Although the definition of a language differs depending on the author's theoretical background and political affairs<sup>4</sup>, the total number of the languages of the world is approximately estimated as around seven thousand. They are not distributed equally over the earth; in some areas nearly all of a people employ just one language and are therefore linguistically homogeneous; in others human beings are divided into innumerable small groups, each of which has its own tongue. Examples of the former situation can be seen in the USA, China and Japan. By contrast, Sub-Saharan Africa, Oceania, Central America and South America are full of languages which have very few speakers. From this viewpoint, Europe as a region can be positioned somewhere intermediately between the two poles. The number of living European languages is, according to Summer Institute of Linguistics International<sup>5</sup>, 239. Taking the population of the area into account, Europe is linguistically neither unified nor extremely diverse.

One of the most prominent features of this area is the close association of languages with sovereign States. Throughout the history of nation-state building since the 18<sup>th</sup> century, European people have widely accepted the idea that political sovereignty should be based upon the principle of national self-determination, and the notion of a national community was brought together mainly with the sense of linguistic unity. The formula of one Language – one Nation – one State has been invoked in the national integration processes of Germany and Italy as well as in independence movements, such as the one against Hapsburg rule. As the result, most European States today have primary national languages which share the same name as the State.

However, the formula has not, of course, been implemented thoroughly. A number of large linguistic groups, including Catalan, Provençal, Frisian and Breton, were merged into larger political bodies. Often State borders were lined irrelevant to the linguistic demography and created language enclaves. Consequently, almost every State holds more or less linguistic minorities. The attitude of each State toward the minority languages can be classified into three categories:

1. the State entitles the minority language(s) to the constitutional recognition equal to the primary language;
2. the State respects the minority languages(s) though the primary language takes precedence;

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4 Whether a system of signs and syntactic is recognised as an independent language or as a dialect derivative of another language is not determined by purely scientific gauge. For example, Croatian had been long regarded as a regional variation of Serbo-Croatian before the civil war. In addition, a language is not a discrete entity distinct from the neighbour languages divided along the imaginary borderlines; rather, they mutate analogously, affecting one another. See, RE Asher (eds.), *The Encyclopædia of Language and Linguistics* (Pergamon Press, Oxford 1994), Vol.2, 900 and Vol.4, 1893-1897.

5 The statistical data by SIL are available in RG Gordon (ed), *Ethnologue, Language of the World* (15<sup>th</sup> edn, SIL International, Dallas 2005).

3. the State supports only the primary language and encourages minorities to assimilate into the sole nation.

The transnationalisation of human resources in post-colonial era has made the situation even more complicated. The European cities full of job opportunities have invited labourers from all over the world, and they now have in them some colonies in which the Asian or African languages are spoken in daily conversation. It is not rare that an immigrant language has more speakers than the “indigenous” minority language. For example, there are more native speakers of Chinese Mandarin than of Scots in the United Kingdom<sup>6</sup>. The transnational immigrants are usually perceived to be absorbed into the host society so that their languages are hardly discussed in the context of official language, though they should not be ignored from the aspect of human rights.

## 1.2. Topics in This Part

This chapter will see how Europe being in the progressive integration process has struggled with the linguistic chaos. Here the word Europe means the EEC/EC/EU and their institutes and the European Court of Human Rights. In general, the expansion of Europe has influenced the linguistic customs of the people in three distinct ways. Firstly, it affects the official language speakers in each Member State. Secondly, it is also influential on the linguistic minorities; finally, it exercises the power on the Member States concerning the domestic and internal language policies. Some effects have been brought in the form of legally binding legislation or judgements, while others have been done as non-binding resolutions or action programmes. The following sections will review both of them without distinction.

The diversity of languages has two contrary significances. On one hand, a language is a blessed expression of human intelligence and therefore one of the most important elements of each culture. It is the product of continuous historical experience of the group, and the ethos of the nation is embedded in it. The Sapir-Whorf hypothesis suggests that one's view of world and behaviour are conditioned to some extent by his/her mother tongue. A language also has the “emblematic” function<sup>7</sup> by which each member of a group shows and feels loyalty to the nation; therefore it is the kernel of social identity. In short, languages have cultural value<sup>8</sup>. On the other hand, the existence of multiple languages has often been denounced as a divisive obstacle. It doubles the transaction costs of political, economic and educational communication. The difference of language sometimes fosters ethnic division or strife. Some thinkers, especially those in the State authorities, have believed that multilingualism thwarts the unity of the society and therefore should be restricted<sup>9</sup>.

It must be noted, first of all, that there has been no explicit philosophy that can be applied to the dilemma in the constitutional documents of the integrated Europe. Neither the series of EEC/EC/EU Treaties nor the European Convention on Human Rights and Fundamental Freedoms (hereafter referred as 1950 Convention) contained provisions directly establishing the rudimentary principle to coordinate the linguistic interests of individuals and nations. Rather, the attitude of Europe toward the Babel has been formed through the

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6 Gordon (n 5).

7 WG Grace, *An Essay on Language* (Hornbeam, Columbia SC 1981).

8 The Convention for the Safeguarding of the Intangible Cultural Heritage (adopted by UNESCO General Conference in 2003) included “oral traditions and expressions, including language as a vehicle of the intangible cultural heritage” in the cultural heritage to be protected. See, art 2 para 2.

9 F de Varennes, *Language, Minorities and Human Rights* (Martinus Nijhoff, the Hague 1996), 14.

accumulation of a number of separate cases and activities. I will consider it from the following three aspects.

1. The official languages of the European institutes.
2. The linguistic rights and freedoms of individuals.
3. The European actions to promote linguistic diversities.

In the following sections, I will discuss first the policies concerning the official languages taken in European organisations such as the Community, Court of Justice and OHIM. Then I will go to the European regime for the protection of linguistic freedom from discrimination in education and employment, and of the rights to language in criminal proceedings and free expression. Finally, I will examine the affirmative actions taken by the European Communities to improve the linguistic diversity there.

## 2. Official Languages

### 2.1. Significance of Official Languages

It has always been somehow controversial to determine the official language(s) of an international organisation. The State in which the selected language is spoken by the majority would have a much greater advantage than the other States in that the linguistic familiarity would enable the State to hold the initiatives in inter-States scenarios, such as general conferences. A native speaker of the official language could find a post in the international organisation more easily than the non-natives<sup>10</sup>, which means that the government of the former State has more opportunity to influence the organisation. In addition, there are several profound questions on the choice of language.

Firstly, the democratic legitimacy and transparency should be considered. The peoples of the Member States must be well informed on the processes and the results of the organisation to guarantee democratic control, especially when the organisation is endowed with strong regulative powers. From this viewpoint, it is deduced either that the international organisation should publish all its documents in each language in the Member States or that the Member States should translate the information into the national language(s) for their peoples. In former case, the organisation must bear the vast translation cost in money, time and human resources. In latter case, the translation cost is dispersed among the States, though the validity of translation would be out of the organisation's control.

Secondly, the interchangeability between languages should be considered. A sentence in one language translated from another could have slightly different meanings however faithfully the translator has done the job. When it comes to the legal terms, the situation gets even more problematic. There is no guarantee that a word in a language indicates exactly the same conception as a word in another language. Heutiger<sup>11</sup> pointed that “[l]egal language even differs in countries having the same language” because of the distinct legal traditions and systems. If the international organisation adopts a sort of multilingualism, it inevitably has to struggle to save the coherence

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10 For example, the institutes of the United Nations usually require the job applicants to have fluency on more than two of the six official languages of the UN (Arabic, Chinese, English, French, Russian and Spanish). Furthermore, the recruitment examinations are conducted either in English or French.

11 V Heutger, 'Law and Language in the European Union' (2003), 3 *Global Jurist Topics* 1, 5.

among the multiple versions of documents.

And thirdly, the choice of official language(s) indicates the basic values of the organisation. Each language is so closely connected to the nationalism and the sense of sovereignty that the people the language of which is not admitted as one of the official language would feel being made light of by the other parties. It could further weaken the loyalty and commitment of the nation to the organisation.

## 2.2. Principal Rules for EEC / EC / EU

The first step toward an integrated Europe, the Treaty of Paris 1951 establishing the European Coal and Steel Community, took a monolingual approach. The text was “drawn up in a single original<sup>12</sup>”, and only the original French version was authentic<sup>13</sup>. The Treaty of Rome 1957 establishing the European Economic Community was drafted in French too, but then it was translated into other three major languages of the Member States (Dutch, German and Italian). The Treaty proclaimed that it was “drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic”. The treaty also provided that:

The rules governing the languages of the institutions of the Community shall, without prejudice to the provisions contained in the rules of procedure of the Court of Justice, be determined by the Council, acting unanimously<sup>14</sup>.

Implementing this duty, the EEC Council determined the rules governing the languages of the institutions at the first meeting. It was promulgated as the Regulation 1/58. The Regulation established the principles below.

1. All of the major languages in the Member States (Dutch, French, German and Italian) were recognised as the official and working languages<sup>15</sup> so that every State was represented by at least one official language. The official journals, regulations, and other documents of general application issued by EEC institutions should be published in all the four languages<sup>16</sup>.
2. Member States and persons thereof are entitled to communicate with the EEC institutions in the language they favour among the official languages, and to be replied in the same language<sup>17</sup>.

The Regulation distinguished the official language from working language, though it had no definition on these terms. The important points here can be enumerated as below. Firstly, the Regulation provided for the linguistic usage from two aspects: internal usage (the linguistic exercise within the institutions themselves) and external usage (the rights of Member States and persons concerning the communication with the institutions). Secondly, the Regulation adopted a sort of linguistic equality approach, accepting the four languages equally, although the scope of equality was limited within the equality among major languages. For example, Letzeburgesch, the national language of Luxembourg<sup>18</sup>, was not enrolled on the list.

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12 Article 100 of ECSC Treaty.

13 K Lenaerts and P Van Nuffel, *Constitutional Law of the European Union* (Sweet&Maxwell, London 1999), 380.

14 Article 217 of EEC Treaty; now Article 290 of EC Treaty.

15 Article 1 of Regulation No 1 determining the languages to be used by the European Economic Community 1958.

16 Article 4 and 5 of Regulation 1/58 (n 15).

17 Article 2 of Regulation 1/58 (n 15).

18 Loi du 24 février 1984 sur le régime des langues.

The succeeding enlargement of Europe has kept the principle of the equality among major languages of the Member States. When a State joins to the Community, the major language of the newcomer is added to the catalogue of official languages and authentic treaty texts<sup>19</sup>. It results that each of the twenty-seven Member States<sup>20</sup> is represented by at least one national language in the twenty-three EC/EU official languages<sup>21</sup>. The principle has made a paradoxical situation; some official languages are even subaltern to some minority languages. For example, Catalan, which is not an official language of EC/EU, has more than four millions speakers, while Maltese, one of the official languages, has around four hundred thousands<sup>22</sup>. Irish language had been treated exceptionally until it gained the status of an official language in January of 2007. It had not been included in the official languages, but the Irish texts of Treaties had been also regarded as authentic since the State's entrance to the Community in 1973.

### 2.3. Court of Justice

The Regulation 1/58 empowered the subsidiary institutions and the Court of Justice to stipulate rules concerning the linguistic usage<sup>23</sup>. The Rules of Procedure of the Court of Justice devoted Chapter 6 to linguistic matters. According to Article 29 thereof, each of the twenty-three EC/EU official languages can be used before the Court. The proceedings are conducted in the official language of defendants' State if the defendants are nationals of EC/EU Member States<sup>24</sup>. Otherwise the applicants have the right to choose the language. In cases of reference of interpretation on European legislation by domestic courts<sup>25</sup>, “the language of the case shall be the language of the national court or tribunal which refers the matter to the Court<sup>26</sup>.” Once the language of the case is determined, “[t]he language of the case shall in particular be used in the written and oral pleadings of the parties and in supporting documents, and also in the minutes and decisions of the Court<sup>27</sup>.” These rules regulate the linguistic exercise of input into, and output from, the Court. With the finite language skills of Judges, the discussions in the Court are performed by a few languages, mainly English and French.

### 2.4. Challenge of OHIM

The Office for Harmonisation in the Internal Market (OHIM) was established for the co-ordination in trademark matters in the Community in 1995 by the EC Council Regulation<sup>28</sup>. The Regulation guaranteed the Office “full autonomy and independence<sup>29</sup>”, and in fact it has been financially independent of the EC budget. However, it is

19 See, Acts of Accession 1972 art 155 (Denmark, Ireland and the United Kingdom); 1979 art 147 (Greece); 1985 art 397 (Portugal and Spain); 1994 art 170 (Austria, Finland and Sweden).

20 Austria, Belgium, Bulgaria, Cyprus, Czech, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Spain, Slovakia, Slovenia, Sweden and the United Kingdom.

21 Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish.

22 'Europeans and their Languages' [2006] Special Eurobarometer 243 / Wave 64.3, 7.

23 Art 6 and 7 of Regulation 1/58 (n 15).

24 Art 29, para 2(a) of Rules.

25 Art 103.

26 Art 29, para 2.

27 Art 29, para 3.

28 Council Regulation 40/94 1993 on the Community Trade Mark. The Office became operational in 1996.

29 *Ibid.*

clearly regarded as one of the EC/EU institutions, and is therefore subject to the rules in Regulation 1/58. Article 115 of the Regulation 40/94, regulating the language in which the application of trademarks registration be done, provides as followings:

1. The application for a Community trade mark shall be filed in one of the official languages of the European Community.
2. The languages of the Office shall be English, French, German, Italian and Spanish.
3. The applicant must indicate a second language which shall be a language of the Office the use of which he accepts as a possible language of proceedings for opposition, revocation or invalidity proceedings.

The working languages of OHIM are limited to just five major languages. An application for a Community trademark may be filed in any of the twenty-three official EC/EU languages, but the applicants must specify the second language from the five. This rule is arguable in that it might seem to override the principles shown in Regulation 1/58, which embodied the constitutional value of linguistic equality. In the application process, “the language regime puts nationals of Member States whose language is not one of the working languages of the Office in a significantly less favourable position compared to nationals of Member States where the language is one of the languages of the Office<sup>30</sup>.” In *Kik v. OHIM*<sup>31</sup>, the Court of Justice refused such assertion, judging that “[n]or can the second paragraph of Article 248 of the Treaty, as amended by the Treaty of Amsterdam, or the Court's case-law on the interpretation of Community law be relied on in support of a possible principle of equality of languages<sup>32</sup>.”

## 2.5. European Parliament

As the European Parliament is a stage of democratic debate, it is required that its members, directly elected by various nations, are free to express themselves without distinction of language and to comprehend others' discussions. Article 168 of Rules of Procedure guarantees explicitly that “[a]ll Members shall have the right to speak in Parliament in the official language of their choice.<sup>33</sup>” Speeches in the Parliament “shall be simultaneously interpreted into the other official languages and into any other language the Bureau may consider necessary.<sup>34</sup>” The documents are prepared in official languages, and interpretation service should be given in committees and delegation meetings.

Furthermore, Parliament has expanded its scope of linguistic protection outside the EC/EU official languages. The main issues are Spanish minority languages: Catalan, Galician and Basque. In 1990 the European Parliament adopted a Resolution<sup>35</sup> which recommended the Council and Commission to take appropriate measures to improve the status of Catalan language in the EC/EU institutions, including the publication and

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30 *Kik*[2003] (n 31), para 53.

31 This case was firstly litigated before the Court of First Instance of ECJ as Case T-120/99 *Kik v. Office for Harmonisation in the Internal Market* [2001], ECR II-2235. Then the applicant appealed to ECJ as Case C-361/01P, *Kik v. OHIM* [2003], ECR I-8283.

32 *Kik* [2003], para 87.

33 Art 168, para 2 of Rules of Procedure of the European Parliament.

34 *Ibid.*

35 Resolution of the European Parliament A3-169/90, OJEC-C19 [1991].



dissemination of EC information in Catalan. In December 2005, the Committee of Regions made an agreement with Spanish ambassador approving the use of Spanish regional languages in an EU institution.

## 2.6. Court of Human Rights

The European Court of Human Rights is an independent institution of the EC/EU framework, and the Council Regulation 1/58 does not have binding power on it. According to the Rule of Court, English and French are the official languages<sup>36</sup> of the Court. Decisions and judgements of the Court shall be given in both official languages<sup>37</sup>. The right of parties to be assisted by interpreters is also guaranteed<sup>38</sup>.

## 3. Language and Human Rights

The history of international human rights in modern sense can be traced back to 1919, when the Covenant of League of Nations and Minority Treaties appeared in the world community<sup>39</sup>. From the outset, the right to language was an indispensable part of human rights; for example, the Treaty of Poland, one of the Minority Treaties, stated that:

No restriction shall be imposed on the free use by any Polish national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings. Notwithstanding any establishment by the Polish Government of an official language, adequate facilities shall be given to Polish nationals or non-Polish nationals of non-Polish speech for the use of their language, either orally or in writing before the courts<sup>40</sup>.

In connection with human rights, language can be analysed from several aspects. Firstly, it is an element of identity for which no discrimination should be allowed. Article 2 of the Universal Declaration of Human Rights<sup>41</sup> provided that “[e]veryone is entitled to all rights and freedoms [...] without distinction of any kind, such as race, colour, sex, language[...].” This rule, the equality without distinction of language, is the fundamental principle and supports other concrete rights. Secondly, language is critically significant in litigation before courts. It is nothing but Kafkaesque terror to be tried in a language of little knowledge. It is a fundamental basis of fair trial to provide the charged with the assistance of an interpreter<sup>42</sup>. Thirdly, the freedom of expression contains in it the freedom of language choice<sup>43</sup>. Everyone is entitled to express his/her view in the language of his/her choice. In the following sections, each aspect will be reviewed.

### 3.1. Equality and Non-Discrimination

Article 14 of the 1950 Convention prohibited “discrimination on any ground such as sex, race, colour, language

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36 Art 34, para 1.

37 Art 57 and 76.

38 Art 34, para 6.

39 I Brownlie, *Principles of Public International Law* (7th edn, OUP, Oxford 2003), 530-531. Also see, J Rehman, *Conceptual Analysis of the Rights of Minorities* (Kluwer, the Hague 2000), 37-45.

40 Art 7 of Treaty between the Allies and Poland (concluded 28<sup>th</sup> June 1919).

41 General Assembly Resolution 217 A (III) (adopted 10<sup>th</sup> December 1948).

42 Art 14 of International Covenant on Civil and Political Rights 1966.

43 Cf, *Ford v. Attorney General of Quebec* [2000], 120 SCC 2446.

[...] or other status”, similarly as other international human rights instruments<sup>44</sup>. However, it is distinct from others in that the prohibition “has effect solely in relation to ‘the enjoyment of the rights and freedom’”<sup>45</sup> enshrined in the Convention. The requirement of equality is not by itself an independent claim, but rather it complements other rights and freedoms. Later on, the provision was amended by the Protocol No. 12 of 2000, and the scope was expanded to “[t]he enjoyment of any right set forth by law.”

### 3.1.1. *Equality in Education*

The “case relating to certain aspects of the laws on the use of languages in education in Belgium” (Belgian Linguistic Case<sup>46</sup>) was argued over the application of Article 14 on a linguistic affair. Belgium has been well known for multilingual character; the country is divided four linguistic regions<sup>47</sup> and three linguistic communities<sup>48</sup>, each of which enjoys high autonomy in cultural matters within the region. The applicants of this case were French (Walloon) speaking nationals of Belgium and wanted their children to be educated in that language. But since they lived in the Dutch (Flemish) region, the children were to be educated in Flemish. The applicants insisted that such measures would constitute a violation of Article 14 of the Convention and Article 2 of Protocol No.1 to the Convention (the right to education), making frequent reference to the Convention against Discrimination in Education<sup>49</sup>. The Court held in the final judgement that:

Article 14 does not prohibit distinctions in treatment which are founded on an objective assessment of essentially different factual circumstances and which, being based on the public interest strike a fair balance between the protection of the interests of the community and respect for the rights and freedoms safeguarded by the Convention.

In examining whether the legal provisions which have been attacked satisfy these criteria, the Court finds that their purpose is to achieve linguistic unity within the two large regions of Belgium in which a large majority of the population speaks only one of the two national languages. This legislation makes scarcely viable schools in which teaching is conducted solely in the national language that is not that of the majority of the inhabitants of the region. In other words, it tends to prevent, in the Dutch-unilingual region, the establishment or maintenance of schools which teach only in French. Such a measure cannot be considered arbitrary. To begin with, it is based on the objective element which the region constitutes. Furthermore it is based on a public interest, namely, to ensure that all schools dependent on the State and existing in a unilingual region conduct their teaching in the language which is essentially that of the region<sup>50</sup>.

And thereupon the Court dismissed the appeal. In the Court’s view, “the Court cannot attribute to Article 14, when read in conjunction with Article 2 of the Protocol, a meaning which would secure to everyone within the

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44 Art 2, para 1 of International Covenant on Civil and Political Rights; Art 1, para 1 of American Convention on Human Rights; Art 2 of African Charter on Human and Peoples’ Rights.

45 *Abdulaziz v. UK* (1985) 7 EHRR 471, para 71.

46 Integrated six appeals against Belgium brought before the European Human Rights Commission, then European Court of Human Rights. The final judgement: 1 EHRR 252 (1968).

47 Art 3b of Belgian Constitution; Walloon, Flemish, German and the bilingual area of Brussels-Capital.

48 Art 3c, *ibid*.

49 Adopted in 14<sup>th</sup> December 1960 in the General Assembly of UNESCO.

50 Para 7 of the final judgement (n 46).

jurisdiction of a contracting party to education conducted in a language of his own choice.<sup>51</sup>” Such rights would lead to an absurd result, “for it would be open to anyone to claim any language of instruction in any of the territories of the contracting parties<sup>52</sup>”. Article 2 of the Protocol requires State to ensure the education “in conformity of [parents’] religious and philosophical convictions”, but the obligation does not cover the linguistic preference. However, it should be noted that the Court did not give the State a free hand to decide the educational medium. It examined precisely the arbitrariness<sup>53</sup> of the policy, namely the proportionality in the measure and legitimacy in the aim.

### 3.1.2. *Equality in Employment*

Another interesting material concerning the linguistic equality is *Groener*<sup>54</sup> in 1989. The plaintiff, a national of Netherlands, was refused by the Irish Minister for Education the application to a permanent full-time post as an art teacher in a college for the reason that she had not passed the Irish language examination (Cead-Teastas Gaelige<sup>55</sup>). The main point here was whether the policy of the Irish State to support and foster the position of the Irish language as the first official language constituted the violation of the freedom of movement for workers enshrined in Article 48 of the EEC Treaty of 1957 and the Council Regulation 1612/68 of 1968. The European Court of Justice held that:

The EEC Treaty does not prohibit the adoption of a policy for the protection and promotion of a language of a Member State which is both the national language and the first official language. However, the implementation of such a policy must not encroach upon a fundamental freedom such as that of the free movement of workers. Therefore, the requirements deriving from measures intended to implement such a policy must not in any circumstances be disproportionate in relation to the aim pursued and the manner in which they are applied must not bring about discrimination against nationals of other Member States.

The importance of education for the implementation of such a policy must be recognised. Teachers have an essential role to play, not only through the teaching which they provide but also by their participation in the daily life of the school and the privileged relationship which they have with their pupils. In those circumstances, it is not unreasonable to require them to have some knowledge of the first national language.

It follows that the requirement imposed on teachers to have an adequate knowledge of such a language must, provided that the level of knowledge required is not disproportionate in relation to the objective pursued, be regarded as a condition corresponding to the knowledge required by reason of the nature of the post to be filled within the meaning of the last subparagraph of Article 3(1) of

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51 1 Yearbook 858.

52 *Ibid.*

53 Para 4, *ibid.*

54 Case 387/87, *Groener v. Minister of Education and City of Dublin Vocational Educational Committee* [1989], ECR 3987.

55 In Memorandum V7 of 1974, it was provided that the competent committee may not appoint a person to a permanent full-time post in certain areas of teaching unless the person has Cead-Teastas Gaelige or equivalent qualification to it. Also in Circular Letter 28/79 of 1979, the Minister stated that preference must be given to suitably qualified candidates who hold Cead-Teastas Gaelige for the posts of Lecturer and Assistant Lecturer.

And therefore the Court accepted the Minister's measure as compatible with the EEC Treaty. Strictly speaking, this case was litigated not for human rights but for EEC. However, ECJ clearly stated that the requirements of linguistic knowledge for a public post was justifiable, provided that it was done as a part of a policy for the promotion of the national language and that the requirement is applied in a proportionate and non-discriminatory manner. In this context, "non-discriminatory" means that (1) the requirements are imposed on everyone without distinction of nationality, (2) it does not matter where the linguistic knowledge has been acquired, and (3) applicants should have an opportunity to retake the examination when they again try for a post<sup>57</sup>. The ECJ reaffirmed its position in *Haim*<sup>58</sup>, where the legality of the requirement for a dentist to have sufficient linguistic skill was discussed.

### 3.2. Language before Courts

In criminal proceedings, the right to language affects directly and gravely the interests of the defendants. Firstly, it is an established principle of due process of law that "[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him<sup>59</sup>". It also entails that such information should be given in a manner he/she understands, including linguistic condition. Some States guarantee explicitly the linguistic requirement in their constitutions<sup>60</sup>. Secondly, the principle of information-in-his-own-language should be applied also to the prosecution<sup>61</sup>. And thirdly, the choice of language in which the proceeding is conducted is critically important for all the parties. Nobody could express his/her ideas better than in their mother tongue, even when he/she is a well trained multilingual. Therefore the concept of fair trial implies that everyone should have access to the trial conversation without distinction of proficiency in the given language. Thereupon such rights as the free assistance of an interpreter can be deduced<sup>62</sup>. The 1950 Convention ensured all these principles in Articles 5 and 6.

#### 3.2.1. Notification in Own Language

The typical situation concerning the language of notification can be seen in *Bronzicek*<sup>63</sup>. The applicant was a German national and charged by Italian prosecutor for a criminal offence he had allegedly committed in Italy. He received letters written in Italian that demanded him to provide an address for service in Italy, but he could not understand. He requested the authority to send the letter in the language he could understand, but the Italian side did not reply to it. The Italian court concluded that he did not wish to provide the address and declared in his absence that the accused should be lodged at the criminal registry. Six years later, the applicant learned he had the criminal record and issued the application to the European Court of Human Rights on the basis of Article 6 of the

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<sup>56</sup> *Groener* (n 54), paras. 19-21.

<sup>57</sup> Para 23, *ibid.*

<sup>58</sup> *Haim v. Kassenzahnärztliche Vereinigung Nordrhein*, ECJ 4<sup>th</sup> July 2000.

<sup>59</sup> Art 9, para 2 of ICCPR.

<sup>60</sup> See, for example, Art 21 of Estonian Constitution: "Any person who is deprived of his or her liberty shall be informed promptly, in a language and manner he or she understands, of the reason for the arrest, and of his or her rights, and shall be given the opportunity to notify his or her immediate family of the arrest[...]"

<sup>61</sup> Art 14, para 3(a) of ICCPR.

<sup>62</sup> Para 3 (f), *ibid.*

<sup>63</sup> *Bronzicek v. Italy* (1989) ECHR Series A no.167.

1950 Convention.

The Court unanimously admitted that the measure taken by the Italian court constituted a violation of Article 6 of the 1950 Convention, which enshrined the right of the criminally charged “to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him.”<sup>64</sup> According to the European Court, Italian judicial authorities should have taken steps to comply with his request to receive the notification in his mother tongue or in one of the official languages of the United Nations, unless they were sure that he actually had sufficient knowledge of Italian to understand the purport of the charges brought against him.

### 3.2.2. *Free Assistance of Interpreter*

Article 6, Paragraph 3(e) of the 1950 Convention guarantees the right to free assistance of an interpreter in a criminal proceeding. In *Luedicke, Belkacem and Koç*<sup>65</sup>, the interpretation of the word “free” was argued before the European Court. The applicants (British/Algerian/Turkish nationals, respectively) were charged before the German courts with various criminal offences. Since they were not sufficiently familiar with German language, they were provided with the assistance of interpreters. Finally, they were sentenced guilty and ordered to pay the costs, including the interpretation costs.

The German government insisted that Article 6 of the 1950 Convention required more than literal interpretation. According to it, the provision was designed to ensure that persons accused of a criminal offence had a fair trial; once they were convicted by a final and binding judgement, there was no longer any trial whose fairness had to be guaranteed. Consequently, it asserted, there was no objection to recovering the interpretation expenses from an accused after his conviction.

However, the European Court refused to accept such interpretation. In the Court’s view, the provision of Article 6 of the 1950 Convention should be read as that it affirmed the linguistic equality in a fair trial. It constitutes an infringement of the equality principle to impose on the accused the expense of the interpretation.

Another informative case is *Kamasinski*<sup>66</sup>. The applicant was a citizen of the USA and arrested in Austria. Since he did not have an adequate knowledge of the official language of the local court, i.e. German language, the court provided him with an interpretation service during the pre-trial investigation, then appointed an English-speaking lawyer for him. However, he did not have all items of written evidence or official documents translated into the language he understands. The point here is whether the right to translation covers all information in the proceeding, written or oral.

The European Court held that Article 6, Paragraph 3(e) did not apply only to oral statements made at the trial hearing but also to documentary material, though it did not require written translation of all items of written evidence and official documents, including the judgement. The assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself. In this case, the Court considered that the measures taken by the Austrian authorities had been sufficient and therefore did not give rise to any violation

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64 Article 6, Paragraph 3(a) of the 1950 Convention.

65 *Luedicke, Belkacem and Koç v. Germany* (1978), ECHR Series A no 126.

66 *Kamasinski v. Austria* (1989) ECHR Series A no.168.

of the 1950 Convention.

### 3.2.3. *Right to Use a Specific Language before Court*

The case of *Isop*<sup>67</sup> illustrates the choice of language before the judiciary. The applicant was an Austrian citizen of Slovene origin. He issued a complaint to the District Court of Rosseg, Carinthia against another person for (alleged) defamation. It was drafted in Slovene language. The court rejected the complaint on the ground that as it was not qualified to deal with complaints in Slovene language, for the State Act of 1959 had authorised the use of the language only in specifically mentioned areas in Carinthia, which did not include Rosseg. The applicant alleged that it denied him a fair hearing within the meaning of Article 6 of the 1950 Convention, and also that, in the light of Article 14 of the same Convention, he was deprived of the procedural rights by reason of a discrimination on the ground of language. Additionally he invoked the provisions of Imperial Constitution of 1867, the Peace Treaty of St. Germain-en-Laye of 1919, and the State Treaty of 1955, all of which guaranteed explicitly the right of minorities to their languages<sup>68</sup>. The European Commission of Human Rights concluded the case was inadmissible, because:

Whereas the Applicant's lawyer drew the Applicant's attention to the risks which, in view of the above legislation [Act of 1959] and jurisprudence, he exposed himself in insisting upon the use of Slovene language;

Whereas the Applicant with the assistance of his lawyer had sufficient linguistic knowledge to permit him to lodge his complaint in the German language;

Whereas it follows that the refusals by the Courts [...] do not constitute a violation of the Applicant's rights under Article 6, paragraph 1 that he should be given a fair hearing;

Whereas in regard to the complaint that the said refusal constituted a violation of Article 14 of the Convention, it is to be observed that that Article, by its express terms, forbids discrimination only with regard to the enjoyment of the rights and freedoms guaranteed in the Convention; and whereas the Commission has already held above that such right is not violated in the present case; whereas it follows that Article 14 of the Convention has no application in the circumstances of the present case;<sup>69</sup>

In short, the Commission regarded the voluntary elements of the applicant's behaviour as decisive, and did not involve itself in the profound delimitation of the right to language before courts.

Another interesting example was given in *Guesdon*<sup>70</sup>, though it was not purely a European case but discussed on the basis of general international law by the UN Human Rights Committee. Mr. Guesdon was a French citizen of Breton identity, whose first language was Breton. He was criminally charged for the act of

<sup>67</sup> *Isop v. Austria* (App no 808/60) (1962) 5 Yearbook 108.

<sup>68</sup> Article 7(4) of the State Treaty of 1955 provided that "[i]n the administrative and judicial districts of Carinthia, Burgenland and Styria, where there are Slovene, Croat or mixed populations, the Slovene or Croat language shall be accepted as an official language in addition to German." Article 7(4) also proclaimed that "Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria shall participate in the cultural, administrative and judicial systems in these territories on equal terms with other Austrian nationals."

<sup>69</sup> *Isop* (n 67) 124.

<sup>70</sup> *Guesdon v. France* (1990), Communication No. 219/1986, UNDoc CCPR/C/39/D/219/1986.

defacing road signs, which were in French. According to the prosecutor, he painted Breton letters over the French signs in order to manifest the desire that road signs should be bilingual. In the proceeding, he and the witnesses for him wished to give testimony in Breton, which was the language used daily by most of them and in which they could most easily express themselves for the purposes of his defence. Therefore he requested the assistance of an interpreter. The court rejected the request, and since he and the witnesses were not willing to express themselves in French, it sentenced him guilty. Mr. Guesdon issued a communication to the UN Committee, claiming that the French court violated his rights to fair right, the right to have the assistance of an interpreter, the right to equal treatment and the enjoyment of minority rights such as the use of a minority language, etc. The Committee replied that:

The provision for the use of one official language court language by State parties to the Covenant does not, in the Committee's opinion, violate article 14 [of the International Covenant of Civil and Political Rights]. Nor does the requirement of a fair hearing mandate States parties to make available to a citizen whose mother tongue differs from the official court language, the service of an interpreter, if this citizen is capable of expressing himself adequately in the official language. Only if the accused or the defence witness have difficulties in understanding, or in expressing themselves in the court language, must the services of an interpreter be made available<sup>71</sup>.

The Commission took it as critical whether the accused and the witnesses were unable to address the tribunal in simple but adequate French. The notion of fair trial, according to the Commission, "does not imply that the accused be afforded the possibility to express himself in the language which he normally speaks or speaks with a maximum of ease."<sup>72</sup>

### 3.3. Free Expression and Choice of Language

Article 10 of the 1950 Convention enshrined the right to freedom of expression, also dubbed as free speech. Freedom of expression is conceived to cover the right of individuals and corporations to communicate their views, or to advertise their goods and services, in whatever language they like<sup>73</sup>. Firstly, it is hard to separate the *content* of a discourse from its *medium*. If a statement in a specific language expresses the speaker's idea most adequately, it may constitute an unjustifiable limitation of free speech to force him/her to use different terms and grammars of another language. Secondly, the choice of language reflects the speaker's cultural background and identity. Members of ethnic minorities often want to express their feelings and notions in their own tongue, and such statements may have more meaning than those told in the majority's language. Corporations use specific language in their advertisements to provoke a special sensation in the potential customers. However, States are motivated to regulate the linguistic usage of private citizens for some reasons. It is especially remarkable in the fields of mass media and global marketing.

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<sup>71</sup> Para 10.2, *ibid.*

<sup>72</sup> Para 10.3, *ibid.*

<sup>73</sup> L Green, 'Freedom of Expression and Choice of Language', in WJ Waluchow (ed.), *Free Expression* (OUP, Oxford 1994) 135.

### 3.3.1. Linguistic Regulation in Mass Media

Since mass media have been the most significant source of the sense of *Imagined Communities*, and broadcasting often have great influence on the linguistic behaviour of the receivers, Nation-States have been particularly sensitive in the treatment of language in media. The European Community, with its mandate for the establishment of the common market and the requirement that goods, services, and persons should have freedom of movement within the Community, has made effort to liberalise broadcasting media to a certain extent. However, it has also considered the cultural sovereignty of each Member State at the same time.

Community Council and Commission have published several policies in accordance with the principles set by the constitutional treaties. The Council Directive 89/552/EEC of 1989, the first comprehensive media regulation of European application, obligated Member States to take appropriate measures to ensure that “broadcasters reserve for European works [...] a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services.”<sup>74</sup> Although the Directive required that “Member States shall ensure freedom of reception and shall not restrict retransmission on their territory of television broadcasts from other Member States for reasons which fall within the fields co-ordinated by this Directive<sup>75</sup>”, States remain free to take measures to regulate media for other reasons. Restriction on media on grounds of cultural sovereignty was not prohibited by the Directive. The successive Directives 97/36/EC and 2007/65/EC amending the first Directive did not change the basic attitude.

In accordance with the Community framework, some European States take strong policies on the language use of mass media. Take French Law No. 86-1067 of 1986 on Freedom of Communication, amended by the Law No. 2000-719 in 2000, for example. Article 20-1 of it provided that:

The use of French is compulsory in all the programs and advertising messages of radio and television broadcasting organisations and services, whatever their mode of dissemination or distribution, with the exception of motion picture and radio and television productions in their original language version.

Where the broadcasts or advertising messages referred to in the first paragraph of the present Article are accompanied by translations in a foreign language, the presentation in French must be as legible, audible and intelligible as the presentation in the foreign language.

In addition, it established a quota system for music played on the radio: 40-percent quota of French language music (including 20 percent of new artists or new releases) transmitted between 6:30am and 10:30pm<sup>76</sup>. Article 28(2) bis of it stated:

The substantial proportion of musical works in the French language or performed in a regional language being used in France, which has to reach a minimum of 40 percent of French-language

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<sup>74</sup> Art 4 para 1 of Council Directive 89/552/EEC.

<sup>75</sup> Art 2, para 2, *ibid.*

<sup>76</sup> However, the aimed percentage was too high to be implemented, therefore the legislator accepted some flexibility in the number. The Ministry requires that 35 per cent of songs on radio stations targeting teenagers be of francophone origin (which includes French as well as African-French or Arab-French), while 60 per cent of songs on stations targeting seniors (aged 45 and over) be of francophone origin.



songs, with half of which at least coming from new talents or new productions, broadcast during significant listening times by all radio broadcasting services licensed by the Conseil supérieur de l'audiovisuel, for the share of its programs comprising musical entertainment.

The question here is whether such legislation, though it complies with the EEC/EC frameworks, can be justified under the 1950 Convention. In *Lentia*<sup>77</sup>, European Court of Human Rights examined the relation between the freedom of expression and the State's regulation on mass media. One of the five applicants (Arbeitsgemeinschaft Offenes Radio) planned to establish a radio station in southern Carinthia in order to broadcast, in German and Slovene, non-commercial radio programmes. It submitted an application for operating license to the Austrian authority, which was rejected because Austrian law at that time did not allow the authorities to grant private individuals or private corporations licences to set up and operate regional radio stations<sup>78</sup>. The Court held that:

As the Court has already held, the purpose of that provision is to make it clear that States are permitted to regulate by a licensing system the way in which broadcasting is organised in their territories, particularly in its technical aspects. Technical aspects are undeniably important, but the grant or refusal of a licence may also be made conditional on other considerations, including such matters as the nature and objectives of a proposed station, its potential audience at national, regional or local level, the rights and needs of a specific audience and the obligations deriving from international legal instruments.

This may lead to interferences whose aims will be legitimate under the third sentence of paragraph 1, even though they do not correspond to any of the aims set out in paragraph 2. The compatibility of such interferences with the Convention must nevertheless be assessed in the light of the other requirements of paragraph 2<sup>79</sup>.

Successively, the Court examined the legitimacy of the licensing system of Austria, and told that “the interferences in issue were disproportionate to the aim pursued and were, accordingly, not necessary in a democratic society. There has therefore been a violation of Article 10.”<sup>80</sup> To sum up, media regulations by States are subject to the limitation set in Article 10, Paragraph 2 of the 1950 Convention. They can only be justified where they correspond to a pressing need.

### 3.3.2. *Free Movements of Goods and Services*

Another tension can be found in the area of consumer protection. Article 14 of Council Directive 79/112/EEC of 1978 on labelling and presentation of foodstuffs requires Member States to prohibit the sale of such products within their territories if certain particulars “do not appear in a language easily understood by purchasers, unless other measures have been taken to ensure that the purchaser is informed.” Under this provision, each State has established guidelines for the traders concerning the language usage on their products.

In *Piageme v. Peters*<sup>81</sup>, it was argued whether Article 14 allows States to impose on traders the use of

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<sup>77</sup> *Informationverein Lentia and Others v. Austria* (1992) 36 ECHR 381.

<sup>78</sup> Later it was amended by the Law on Regional Radio Stations (No.1993/506).

<sup>79</sup> Para 32 of *Lentia* (n 77).

<sup>80</sup> Para 43, *ibid*.

<sup>81</sup> *Groupement des Producteurs, Importateurs et Agents Généraux d' Eaux Minérales Étrangères and Others v. Peeters*

specific language. Belgian Royal Decree of 13<sup>th</sup> November 1986 provided that the particulars required on the labels must at least appear in the language or languages of the linguistic region<sup>82</sup> where the foodstuffs are offered for sale. The defendant sold bottled mineral waters labelled only in French and German in Dutch regions, and plaintiffs (the association of producers, importers and agents) took it as a violation of the 1986 Decree. The defendant refuted that provisions of the Decree were incompatible with the Directive. The ECJ held that:

It follows [...] that, on the one hand, imposing a stricter obligation than the use of a language easily understood, that is to say for example the exclusive use of the language of a linguistic region and, on the other hand, failing to acknowledge the possibility of ensuring that the purchaser is informed by other measures, goes beyond the requirements of the directive. The obligation exclusively to use the language of the linguistic region constitutes a measure having equivalent effect to a quantitative restriction on imports, prohibited by Article 30 of the Treaty.

Consequently, [...] Article 30 of the EEC Treaty and Article 14 of Directive 79/112 preclude a national law from requiring the exclusive use of a specific language for the labelling of foodstuffs, without allowing for the possibility of using another language easily understood by purchasers or of ensuring that the purchaser is informed by other measures<sup>83</sup>.

The Court also confirmed that “a language easily understood” was not equivalent to the official language of the Member State or the language of the region. In this case, the principle of free movement of goods and the freedom in choice of language prevailed over the linguistic protection of the consumers. However, it was controversial whether this case law should be applied to other goods that are potentially more harmful than bottled mineral waters (e.g. medicine, financial service)<sup>84</sup>. Now, Article 16 of Council Directive 2000/13 dissolved the problem to a certain extent, proclaiming that:

Within its own territory, the Member State in which the product is marketed may, in accordance with the rules of the Treaty, stipulate that those labelling particulars shall be given in one or more languages which it shall determine from among the official languages of the Community.

#### 4. European Actions to Promote Linguistic Diversities

Originally, the integration process of Europe began as a progressive plan to establish a “common foundation for economic development” to “change the destinies of those regions which have long been devoted to the manufacture of munitions of war, of which they have been the most constant victims.”<sup>85</sup> However, as time passed, the cultural aspects of the integration process have attracted the Parties’ attention, particularly over the sensitive relationship between integration and assimilation. It was Maastricht Treaty of 1993 that brought the cultural considerations into the EC scope. Article 126 and 128 of the Treaty, now renumbered as Article 149 and 151

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*BVBA* (1991) ECR I-2971.

82 Belgium comprises four linguistic regions: the French language region, the Dutch language region, the Bilingual region of Brussels-Capital, and the German language region. See n 47.

83 Paras. 16-17 of *Piagem* (n 81).

84 JA Usher, 'Language and the European Union', in Anderson and Bort (eds), *The Frontier of Europe* (Pinter, London 1998).

85 The Declaration of 1950 by R. Shuman. *European Parliament, Selection of Texts concerning Institutional Matters of the Community for 1950 – 1982* (OOPEC, Luxembourg 1982) 47.

respectively by the Amsterdam Treaty of 1999, provided as followings:

(Article 149)

1. The Community shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.
2. Community action shall be aimed at:
  - developing the European dimension in education, particularly through the teaching and dissemination of the languages of Member States [...]

(Article 151)

1. The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.
2. Action by the Community shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:
  - improvement of the knowledge and dissemination of the culture and history of the European peoples;
  - conservation and safeguarding of cultural heritage of European significance;
  - non-commercial cultural exchanges;
  - artistic and literary creation, including in the audiovisual sector.
3. The Community and the Member States shall foster co-operation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.
4. The Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures.

In accordance with the mandate, the organisations of European Community have made certain efforts to promote linguistic diversity in Europe. Also, it should be noted that the European Parliament had actively showed its concern on the linguistic diversity prior to the inclusion the cultural aspects into binding Treaties.

#### 4.1. Initiatives in the European Parliament

Since the European Parliament is composed of the representatives directly elected by the peoples, it reflects more strongly the interests of ethnic minority groups within each State than the Commission and the Council that are destined to consider the preference of central governments at primary precedence<sup>86</sup>. In 1981, the Parliament adopted Resolution on a Community Charter of Regional Languages and Cultures and on a Charter of Rights of

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86 N. Shuibhne, *EC Law and Minority Language Policy – Culture, Citizenship and Fundamental Rights* (Kluwer, the Hague 2002) 61.

Ethnic Minorities (1<sup>st</sup> Arfë Resolution)<sup>87</sup>. This Recommendation, though not legally binding, established various values concerning the linguistic usage in every State. They include such advice as followings:

- a. In the field of education:
  - to allow and promote the teaching of regional languages and cultures in official curricula right through from nursery school to university;
  - to allow and provide for, in response to needs expressed by the population, teaching in schools of all levels and grades to be carried out in regional languages, with particular emphasis being placed on nursery schools teaching so as to ensure that the child is able to speak its mother tongue. [...]
- b. In the field of mass communications:
  - to allow and take steps to ensure access to local radio and television in a way that guarantees consistent and effective community communication and to encourage the training of specialist regional presenters;
  - to ensure that minority groups receive organisational and financial assistance for their cultural events equivalent to that received by the majority groups;
- c. In the field of public life and social affairs: [...]
  - to ensure that individuals are allowed to use their own language in the field of public life and social affairs in their dealings with official bodies and in the courts.

Half a year after the resolution was adopted, the European Bureau for Lesser Used Languages (EBLUL) was founded to conserve and promote autochthonous minority and regional languages in the EC Member States. Its missions include the co-ordination of research projects and the collection of relevant linguistic data. However, the attitudes of the Member States and the Community organisations after the first Resolution were unsatisfactory. In 1983, the Parliament adopted another Resolution on Measures in favour of Minority Languages and Cultures (2<sup>nd</sup> Arfë Resolution)<sup>88</sup>, which called on the Commission “to continue to intensify its efforts in this area”. It also required the Commission “to review all Community and national legislation and practice which discriminate against minority languages, and prepare appropriate Community instruments for ending such discrimination”, and demanded that the Council “ensure that the principles of Parliament’s resolution are respected in practice.”

And again, the Recommendation had no sufficient effect. “Regretting that [...] the Commission [had] not put forward any proposals to implement the above-mentioned resolutions which deal comprehensively with the problems of ethnic, linguistic and cultural minorities in the Community<sup>89</sup>”, the Parliament reaffirmed another Resolution on the Languages and Cultures of Regional and Ethnic Minorities in the European Community (Kujipers Resolution)<sup>90</sup> in 1987. The Resolution iterated the desirable measures in education, mass communication and public life once again, in more detailed texts. It mentioned, for example, “the development of dubbing and subtitling techniques to encourage audio-visual productions in the regional and minority languages” and official

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87 OJ C 287/106 (1984).

88 OJ C 68/103 (1983).

89 Preamble of the Kujipers Resolution, n 90.

90 Doc. A 2-150/87 (1987).

recognition of “surnames and place names expressed in a regional or minority language”. Later on, the European Parliament made two reminder resolutions in 1997<sup>91</sup> and 2001<sup>92</sup>, both of which reiterate the essence of the preceding resolutions and demand the attention of EC organisations and Member States.

## 4.2. Council of Europe

The Council of Europe has been another active actor in the promotion of linguistic diversity in Europe. In 1992, the Council adopted the legally binding Charter for Regional or Minority Languages<sup>93</sup>. The Charter protects national and traditional minority languages spoken by the citizens of the signatory states, though it does not include dialects and languages of migrants. Its purpose is, according to the Council, to protect and promote autochthonous regional or minority languages as an endangered aspect of European cultural heritage. The Council explained in the Explanatory Report for the Charter (1992) that:

The aim is to ensure, as far as reasonably possible, the use of regional or minority languages in education and the media and to permit their use in judicial and administrative settings, economic and social life and cultural activities. Only in this way can such languages be compensated, where necessary, for unfavourable conditions in the past and preserved and developed as a living facet of Europe’s cultural identity.

Furthermore, the Council adopted the Framework Convention on the Protection of National Minorities in 1995<sup>94</sup>. It obliges the Signatories “to promote the conditions for persons belonging to national minorities to maintain their culture, and preserve the essential elements of their identity, namely religion, traditions and cultural heritage.”<sup>95</sup> It also guaranteed various rights concerning language. They include, for example, the right to use minority language<sup>96</sup>, the official recognition of names in the minority language<sup>97</sup>, and the right to education in the minority language<sup>98</sup>. The Charter and the Convention are international treaties that bind the Contracting Parties, and have been ratified by certain number of European governments.

## 5. Conclusion

As we have seen, the European Communities have idealised multilingualism as one of the core values of the region. They designate such official languages that every member is represented, and each language enjoys in principle equal status. Although a few powerful languages like English and French prevail in some cases, the Communities, the Parliament and European Council in particular, repeatedly declare the ideal of linguistic equality and the need of linguistic diversity. Any discrimination of persons based on language is explicitly prohibited, and the right to express oneself in his/her own language before court is strictly guaranteed under the European legal system. At the same time, the discretion of every member State to take necessary measures to

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91 Resolution on Linguistic and Cultural Minorities in European Community, OJ C61/94 (1994).

92 Resolution on Regional and Lesser Used Languages, OJ C177 E/334 (2001).

93 Council of Europe, ETS 148.

94 Council of Europe, ETS 157.

95 Art 5, para 1 of the Convention (n 94).

96 Art 10, *ibid.*

97 Art 11, *ibid.*

98 Art 13 and 14, *ibid.*

regulate certain linguistic usage like mass-media, education or public employment within the territory tend to be recognised widely.

With these conditions, one could regard Europe as the most advanced area concerning multilingualism. It is true that the multilingual policy is not innocent dream; for example, Calvet<sup>99</sup> pointed that the strong support of France for LINGUA project stems from both the fear against English hegemony and the ambition to revive French as an international language. However, it does not hinder for European Communities to achieve the fame.

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99 LJ Calvet, *Les Politiques Linguistiques* (Universitaires de France, Paris 1996) Chapter 5.4.

## PART II: Linguistic Policies in Ireland

### 1. Introduction

This part will show the policies and legislation taken in Ireland concerning languages, in particular from a chronological aspect. For the introduction, we will focus on the controversial situation of Irish, and then see the general structure of this part.

#### 1.1. Irelandised Irish

Today in the 21<sup>st</sup> century, the English language has spread throughout the globe. It has been employed not only as the first language of individuals in a number of States, but also as a *lingua franca* among various nationals. It is one of the six official languages of the United Nations, and has practical superiority to others. The popularity is, at least partly, the result of the historical path along which England walked in the past half millennium. English as a pidgin of Angle, Saxon, Dane and Norman French was established at the latest in 16<sup>th</sup> century, when Tindale published an Anglicised Bible<sup>100</sup>. Simultaneously England got enough power under the leadership of Henry VIII to challenge continental rivals for the colonial partition of the earth. Explorers, missionaries and colonialists from the island brought their language wherever they went and taught it to the local people. Sometimes they tried to replace the indigenous languages with English, destroying intentionally the former, in order to crush the identity of the conquered<sup>101</sup>. Among the earliest victims of the linguistic imperialism of English have been Wales and Ireland.

When Ireland recovered its autonomy in the early 20<sup>th</sup> century after nearly eight hundreds years' suppression, the linguistic condition had been irreversibly Anglicised. Beside the colonial ruling of Britain, the Great Famine during 1840's demolished linguistic communities in the rural areas in Éire, where Irish Gaelic had been preserved best. Nevertheless, it has been a necessary requirement for sovereign Éire to re-establish its own tongue in order to stabilise the identity and to resist the assimilative temptation from its influential neighbour. It is very symbolic that D. Hyde, the founder of Gaelic League, took the seat of the first President of Republic of Ireland. Since then, the people have paid great effort to revive the soul. The Irish Constitution declares "[t]he Irish language as the national language is the first official language". As we have seen in the previous part, Irish now owns the status of an official language of European Union.

However, the term *Irelandisation* has no positive meanings in socio-linguistics. This word was firstly used by J Fishman<sup>102</sup> to express one of the twofold crises for endangered languages. *Folklorisation*, on one hand, makes a language unsuitable to highly mental activities by limiting its usage within daily conversations. *Irelandisation*, on the other hand, threatens a language by slashing the intimate link between it and its users. Fishman created the term when he found that Irish Gaelic was employed in the research of astronomical physics, whereas it ceased to be a tool for everyday chat. Irish Gaelic has been, according to him, alienated from the living

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100 W Tindale (1534). Although there had been some experimentally Anglicised Bibles before him, Gutenberg's press machine made him substantially the first English Bible distributor.

101 R Phillipson, 'English linguistic imperialism, past and present', in N Miura and K Kasuya (eds), *Linguistic Imperialism* (Fujiwara Shoten, Tokyo 2000) 95.

102 J Fishman, 'Status Planning for Endangered Languages', in I Fodor and C Hagège (eds), *Language Reform: History and Future* (Buske, Hamburg 1989).

context and enshrined as a holy spell to be admired. Deification does not necessarily save a language from the extinction; often they occur at the same time. My principal point is what has been done by Irish people to manage the difficult situation in legal plane.

## 1.2. Topics in This Part

Here we will review the linguistic policies taken in Éire from a legislative point of view. Firstly I will draw roughly the historical path through which the Irish language has come to the position it is today. It will include the description from the middle age to modern era, sometimes mentioning historical statutes. The making story of modern Constitutions of Ireland will also be considered. Then we will focus upon the contemporary legal statuses of Irish and their applications to practical cases. Finally, affirmative actions for the promotion of Irish being taken in Ireland, namely education and broadcasting media, will be shown.

## 2. Historical Development

### 2.1. Old and Middle Days

#### 2.1.1. *Origin of Irish Language*

Celtic languages are a branch of Indo-European family which includes Welsh, Cornish, Breton, Manx and Irish Gaelic. They were originally spoken among the people living around Danube and Elbe. Ancient Greeks called them Keltoi, while Romans called them Celtae. They were actually not a homogeneous group but a complex body which consisted of both iron-using conquerors and European indigenous people assimilated by them.

They began to move west- and southward in the 7<sup>th</sup> century BC. The British Isles came under their control at latest in the 4<sup>th</sup> century BC. Since then, Ireland has been one of Celtic speaking areas. The bronze civilisation before the invasion left no vestige in the language. After the birth of Christ, Britannia was again conquered, firstly by the Roman Empire and then by the Anglo-Saxons. However, this time the invaders had little interest in Éire or Hibernia. Until the 5<sup>th</sup> century, Ireland had kept linguistic independence for nearly one thousand years, which made the language a fixture among people. Seanchaí and File developed highly artistic oral tradition during this period. In 461 AD, St. Pádraig brought both Catholic belief and the Latin alphabets to the island. The latter opened the possibility of written literature in Irish Gaelic. Éire suffered from the Viking invasion in the 8-9th century similarly as other European coastal areas, but the attack did not harm the integrity of Irish.

#### 2.1.2. *Anglo-Norman Conquest*

The situation changed radically in the 12<sup>th</sup> century. In 1169 Anglo-Norman lords in Wales intervened into the internal conflict in Leinster, and then they expanded the front all over the island. Under the authority of the Pope's permission, English King Henry obtained the suzerainty of Ireland in 1171. This Norman Conquest divided the island into two distinct areas: Gaelic-Ireland where Irish Gaelic kept the position and Anglo-Ireland where English gained dominance<sup>103</sup>. During the 12th and 13th centuries, British power succeeded to Anglicise eastern Ireland.

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<sup>103</sup> The king and upper nobles of England at that time employed Norman French in communication. The crack units of the British army were Walsh- and Flemish speaking bowmen. However, the vast majority of soldiers and colonists spoke old English.



However, Gaelic-Ireland partly recovered its strength in the 14<sup>th</sup> century. It influenced the cultural behaviour of residents in Anglo-Ireland. Not a few of them were assimilated into the Gaelic tradition. Some families even changed their names into Gaelic names<sup>104</sup>. English kings took a series of actions to prevent the assimilation process and to defend the English interests there. The first step was the well-known Statute of Kilkenny of 1366, which provided that “every Englishman do use the English language.” Its aim was the preservation of English identity in Anglo-Ireland, although it had no great effect toward that purpose. The Plantagenet needed to concentrate, rather, firstly on the continental affairs, then on the internal conflicts during the period. England had no surplus energy to control Irish colonies. In 1456, the King issued another act providing that “Irishmen dwelling in the countries of Dublin, Meath, Uriel and Kildare shall go apparelled like Englishmen.” Tudor also tried to halt the Irelandisation, and therefore proclaimed in 1492 that the administrative documents and judicial process in Waterford shall be in English.

### 2.1.3. *Religious Reform and Linguistic Oppression*

The Religious Reform in the early 16th century intensified the cultural conflict in Ireland. The Act of Supremacy of 1534 declared the English Crown to be the head of the Anglican Church. It passed Irish Parliament three years later and took effect over the island. The Act combined the British rule with Protestantism, and therefore indigenous Irishness with Catholic. In the same year, Henry VIII also promulgated the Act for the English Order, Habit, and Language. It stated that:

... And be it enacted by authority aforesaid, that every person or persons, the King’s true subjects, inhabiting this land of Ireland, or what estate, condition, or degree he or they be, or shall be, to the uttermost of their power, cunning, and knowledge, shall use and speak commonly the English tongue and language.

It should be noted, however, that his endeavour was not solely aimed at Ireland. Both Cornwall and Wales were also principal targets, with even more severity than Ireland. Henry VIII prohibited the Welsh people from having Welsh names in 1531. The Cornish people were compelled to use English in the churches since 1547, and finally Cornish got extinct in 1777 when the last speaker died. It has been the sole insular Celtic language that has perished so far.

Elizabeth I inherited and even accelerated her father’s position on that matter. She demanded that rituals in the Anglican Church in Ireland be done in English<sup>105</sup>. In 1570 she enacted a statute to establish public schools in Ireland, and the provision explicitly stated that the education in them should be performed only in English.

A series of religious conflicts among Puritans, the Anglican Church and the Catholic Church throughout the 17<sup>th</sup> century in the British Isles escalated the linguistic crises in Ireland. Assimilated Englishmen (Sean Ghail) and indigenous Gaelic people supported James II and turned against William III. The critical defeat in Battle of Boyne of 1690 entailed that Gaelic-speaking leaders lost their power decisively and the the English Crown obtained a good reason to oppress the Catholic community, which had preserved Irish language through religious

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104 For instance, *De Bargo*, the lord of Connacht, revised the family name to a Gaelic one, *MacWilliam*.

105 Act for the Uniformity of Common Prayer and Service in the Church and the Administration of the Sacraments 1560.

rituals. The Act to Restrain Foreign Education of 1695 and the Act to Prevent the Further Growth of Popery of 1704 made the English language a dominant medium both in education and religion in Ireland. Since that time, the use of Irish language has obtained an implication of antagonism against Britain and Protestantism.

## 2.2. Nationalism in Modern Ireland

### 2.2.1. *Emerging Self-Consciousness*

Stuart rulers completed the establishment of a mercantile empire in the early 18<sup>th</sup> century. The Declaration Act of 1720 provided for the superiority of Westminster to Irish parliament, depriving the latter of legislative sovereignty. This regime gave rise to three distinct axes of dissatisfaction in Ireland: nationalists opposing to the British rule, Catholics and non-Anglican Protestants resisting the monopoly of wealth and power by Anglican Englishmen (Nua Ghail), and peasants and labourers protesting against large landowners. The American Independence and French Revolution greatly influenced these movements, transforming them from merely religious and economical disputes into a national liberation. At the end of the century, the United Irishmen rose in revolt against British Empire to seek independence, though the authority suppressed it brutally, which caused Pitt the Younger to decide upon the Unionisation of 1800. The Irish nationalism revived (or created) people's attachment to Irish traditions, including the language. The Royal Irish Academy was founded in 1785 to study Irish antiquities, history and language. Henry Flood left a huge amount of money as bequest in 1791 to Trinity College for study of Irish language<sup>106</sup>.

### 2.2.2. *Cultural and Linguistic Nationalism*

The next century in Europe is known as the period of historicism, evolutionism and comparative linguistics, all of which were intertwined. Jean de Lamarck opened the epoch of evolutionism in 1809, although his explanation was refuted later in 1859 by Charles Darwin. In 1816, Franz Bopp published his book *Conjugation in Sanskrit*, in which he compared Sanskrit with German, Greek and Latin to demonstrate the close connection among them. Grimm brothers' great contribution in the collection of folklore and the publication of *German Grammar* in 1822 – 1836 let every romanticist of 19<sup>th</sup> century dream that they could trace and define the soul of every race in the verbal tradition. The Hegelian view on history that each personality is the expression of his/her national spirit competing with others spread throughout the world, so that historians identified national histories with the capitalised History itself. Diachronic development of the nation demarcated by the language became the primary element in political arguments.

Irish nationalists went along the same way. By the early 19<sup>th</sup> century, Catholic clergy had already ceased to protect the Irish language. There was only one church (Tuam) that taught Christian Doctrine in Irish<sup>107</sup>. Catholic Association of O'Connell focused solely on doctrinal equality, showing little concern for language. As time passed, however, secular thinkers began to take the active role in preserving and promoting Irish. The Ossianic Society founded in 1853 represents a weakening of the aristocratic element seen in the precedent of the Royal Irish Academy and the emergence of men who had a real interest in the living language. In 1850, the first

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106 D. Greene, 'The Founding of the Gaelic League', in S. Ó Tuama (ed), *The Gaelic League Idea* (Mercier, Cork 1972) 13.

107 *Ibid.*, 11.

commercial publication in the Irish language was made, *Cúirt an Mheán Oíche*. David Comyn took the leadership in the foundation of the Society for the Preservation of the Irish Language on St. Patrick's Day of 1877. It aimed at both encouraging a familiar use of the language by those who know how to speak and extending the usage by forming classes to teach it and by providing inexpensive textbooks. The society had a schism in 1879 to bear the Gaelic Union, where Hyde became prominent for the first time. He founded the more revolutionary Gaelic League in 1893, pursuing Irish-speaking Ireland with the ambition to replace the enemy's English with Irish<sup>108</sup>.

### 2.2.3. *Bata Scóil*

Despite the rise of linguistic nationalism, the actual condition of Irish deteriorated during the century. Potatoes spread among Irish peasants as a main source of calories during the 18<sup>th</sup> century, which brought an intensive increase of the population. The Potato Famine in 1845 – 47 crushed the farming communities in southern and western Ireland, where people were highly dependent on potatoes because of the poor soil and where Irish language was preserved in the purest form. More than million people died in the famine, another million were lost as emigrants. Even the survivors tended to abandon Irish language and to bring up their children speaking English in order to obtain more industrialised (which meant Anglicised) careers. Local people spontaneously established a kind of police system to prevent their children from uttering a word in Irish. In 1854, W Wilde reported the situation in Connemara:

The children gathered round to have a look at the stranger, and one of them, a little boy about eight years of age, addressed a short sentence in Irish to his sister, but, meeting the father's eye, he immediately cowered back, having, to all appearance, committed some heinous fault. The man called the child to him, said nothing, but drawing forth from its dress a little stick, commonly called a scoreen or tally, which was suspended by a string round the neck, put an additional notch in it with his penknife. Upon our enquiring into the cause of this proceeding, we were told that it was done to prevent the child speaking Irish; for every time he attempted to do so a new nick was put in his tally, and, when these amounted to a certain number, summary punishment was inflicted on him by the schoolmaster<sup>109</sup>.

The statistics in 1874 show that there was seventy thousand Irish-speaking people, of whom one thousand had Irish literacy. According to the classical classification by Krauss<sup>110</sup>, it was already nearly moribund.

### 2.2.4. *The Establishment of Saorstát Eireann and 1922 Constitution Act*

Ireland recovered its legislative autonomy in 1922 as Saorstát, ten years of the suspension of Government of Ireland Bill 1912. Irish statesmen anxious for the realisation of the Bill argued about the vision of an Irishmen's Ireland. The first public meeting of the Dáil held on 21<sup>st</sup> January 1919 was conducted principally in Irish, which shows that the language symbolised the passion for independence<sup>111</sup>. In June 1920, the acting prime minister, A.

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108 Hyde quoted in Mise agus an Conradh (1937) the remark of Ó Concheanainn: "Every speech we make throughout the country makes bullets to fire at the enemy". Later he chose to take a politically neutral position concerning the Home Rule, but he was a linguistic nationalist in the first place.

109 Greene (n 106), 10.

110 M Krauss, 'The World's Languages in Crisis' (1992), 68 *Language* 1.

111 Fr Ó Huallacháin, *The Irish and Irish* (Baile Átha Cliath, Dublin 1994) 79.

Griffith, created the post of “Minister for Irish”, and nominated the president of Gaelic League to the job with the consent of the Dáil. The Ministry for Irish reported to the Dáil in the summer of the next year that the new Irish government should promote positively the Irish language.

The Treaty between Great Britain and Ireland signed on 6<sup>th</sup> December 1921 proclaimed the establishment of Saorstát Éireann or the Irish Free State as one of the Dominions. Soon after the conclusion of the Treaty, a Drafting Committee for the new Irish Constitution was organised. Its tasks were to research the constitutional legislation of foreign countries<sup>112</sup>, especially of the lately emerging East and Middle European states, and to keep close contact with the consultants in London, who watched the drafting process in order to keep the new Constitution consistent with the Treaty. The Committee publicised the last draft on 15<sup>th</sup> June 1922<sup>113</sup>, which the President submitted later to the Dáil on 18th September 1922. The bill was enacted as “The Constitution of the Irish Free State Act”. It stated in its Article 4:

The National language of the Irish Free State (Saorstát Éireann) is the Irish language, but the English language shall be equally recognised as an official language. Nothing in this Article shall prevent special provisions being made by the Parliament of the Irish Free State (otherwise called and herein generally referred to as the “Oireachtas”) for districts or areas in which only one language is in general use.

This was the first time that the Irish Gaelic language achieved officially the primary status in Irish legislation. Gaelic was declared as the national language, and English was defined as an official language. The distinction in the wording was subtle. De Valera later expressed his interpretation of the “national language” as followings:

It is the language that is most associated with this nation; the language that is in accordance with the traditions of our people. We are a separate people and our language was spoken until little over one hundred years ago generally by our people<sup>114</sup>.

Viewed from a simple interpretation, it was the adoption of two official languages. L. Kohn, one of the Irish delegates to the 1922 Treaty and also a member of the Drafting Committee, explained the text as a combination of nationalist principle and political realism<sup>115</sup>. The second sentence, which permitted an exclusive use of one of the official languages in a certain region, was inserted to secure Northern Ireland the opportunity to enter into the Free State; the legislators feared the bilingual fanaticism might impede the desired consummation<sup>116</sup>. The concept of *Irish Ireland* was not shared even within the nationalist group. A. Griffith, the third president of Sinn Féin, did not approve the idea that “the unity of the country is to be achieved through the intensive Gaelicisation of English-speaking Ireland, with the hegemony of the Gael as the ultimate ideal”, although he contributed eagerly to the revival of the language.

In the practice of government, the Senate and the Dáil represented each position. The Senate, which was

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112 The report of the research was published as *Select Constitutions of the World, prepared for presentation to Dáil Éireann by order of the Irish Provisional Government* (Stationary Office, Dublin 1922).

113 *Irish Year Book* (1922), pp.260-267.

114 Speech in the Dáil, 25<sup>th</sup> May 1937.

115 L Kohn, *The Constitution of the Irish Free State* (George Allen & Unwin, London 1932) 123.

116 D O’Sullivan, *The Irish Free State and Its Senate: A Study of Contemporary Politics* (Faber, London 1940).

supposed to be a cooling chamber against the exciting Dáil, rather took the role of an enthusiastic promoter of the Irish language. By contrast, the Dáil preferred actually realistic thoughts. In 1923 the Senate established a committee to research scientifically the endangered situation of the language. The authors of the report submitted by the Committee included Senators WB Yeats and AS Green. Although the government took no concrete action to implement the recommendations in the report, the Senate held on to the position as the guardian of the national language. In the same year, the former Royal Irish Constabulary was to be replaced with a new national police organisation. Civic Guard was the name given by the Dáil. However, the Senate amended the bill to rename the police into *Gárda Síochána*. One year later, the Senate also made an amendment in the reconstitution bill of Great Southern Railways Company so that Irish should be an obligatory subject in all examinations for its clerkship<sup>117</sup>. In contrast with the loyalty of Senate to the national language, “realistic” nationalists in the Dáil seemed more anxious about the potential annexation of Northern Ireland into *Saorstát*. The higher the linguistic barrier would be between Ulster and the rest of the island, the more difficult it might be to re-unite the whole nation.

The first case brought before the Court concerning the Article was *R v. Crotty*<sup>118</sup> in 1927. The defendant was prosecuted on a customs charge before a District Court. He wished to use Irish, but the Judge decided the process to be conducted in English, knowing that he was fluent in English. He appealed to the High Court, claiming that he had the right to use the National language. Without Article 4, it would have been a mere case of due process of law; the points would have been the extent of the defendant’s fluency in English and the provision of interpretation service. However, the High Court declared that “we are satisfied that the constitutional rights of [the appellant] have been disregarded at the hearing before the District Court.” Although the Article itself did not state any “rights”, the constitutional right to language was established there.

Two years later, *Attorney General v. Joyce and Walsh*<sup>119</sup> was disputed before the Court. The appellants, having been accused of murder, had witnesses who gave the information in their vernacular Irish, but the stenographers took the note only from the English translation version. The Court decided there had been no violation of law in doing so, but in the judgement O’Kennedy CJ stated significant proposals:

We may infer, and take judicial notice of the fact, that many of the persons concerned in the administration of justice at present are not competent to conduct the business of the Courts in the Irish language [...] Having said so much, however, it is necessary that I should say that it is the duty of the official stenographers to report every case fully and in every detail, and certainly, in a case where evidence is given in the Irish language, it is the duty of the stenographers employed for that purpose to record every word of the evidence so given in that language, and, if he fails to do so, it may have grave consequences[...]

The Chief Justice showed even more advanced attitude in *Ó Foghludha v. McClean*<sup>120</sup>. He wrote:

One of the distinguishing marks of a nation, in the sense if a distinct people (though not a necessary or universal mark), is the possession of a common national language. This nation of ours possessed

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117 *Ibid*, 119.

118 [1927] 61 ILTR 81.

119 [1929] IR 526.

120 [1934] IR 469.

that distinguishing characteristic in the Irish language. It was the common speech of every Irishman down to comparatively recent times, when it yielded before immense pressure, compulsion in the schools, social and political and commercial forces. [...] The declaration by the Constitution that the National language of the Saorstát is the Irish language does not mean that the Irish language is, or was at that historical moment, universally spoken by the people of the Saorstát, which would be untrue in fact, but it did mean that it is the historic distinctive speech of the Irish people, that it is to rank as such in the nation, and, by implication, that the State is bound to do everything within its sphere of action (as for instance in State-provided education) to establish and maintain it in its status as the National language and to recognise it for all official purposes as the National language. There is no doubt but that the term “National” in the Article is wider than, but includes, “official”, in which respect only the English language is accorded constitutional equality. None of the organs of the State, legislative, executive or judicial, may derogate from the pre-eminent status of the Irish language as the National language of the State without offending against the constitutional provisions of Art. 4.

The Article 4 of the 1922 Constitution, which had been stated in declarative style, became a normative provision through case laws. It achieved the positive power to bind legally both individuals and public organs. The governmental practice under the Constitution did not necessarily follow the theories, though. In 1932 Kohn summarised the linguistic practice as followings:

Speeches in Parliament are for the most part delivered in English, but the formal proceedings are conducted exclusively in Irish. Legislation has hitherto been passed only in English – an Irish translation being subsequently prepared in the Clerk’s Office – and the provision of Art. 42 of the Constitution, which enabled promulgation to be effected in either language, has hence remained a dead letter. Similarly, in the administrative practice of the Departments of State, English is the predominant medium of official intercourse, except in the Gaedhealtacht [sic] district, where Gaelic is almost exclusively used<sup>121</sup>.

#### 2.2.5. *Bunreacht na hÉireann of 1937*

In a decade after the Treaty, De Valera, who had been involved in the Easter Rising and had fought against the Saorstát in the civil war, took the leadership of the Saorstát government again. He expressed himself as an enthusiastic nationalist, and often referred to the love on the notion of Irish-speaking Ireland:

If I were told to-morrow: “ You can have a united Ireland if you give up your idea of restoring the national language to be the spoken language of the majority of the people”, I would, for myself, say no. [...] I would say it for this reason: that I believe that as long as the language remains you have a distinguishing characteristic of nationality which will enable the nation to persist. If you lose the language the danger is that there would be absorption<sup>122</sup>.

He planned to make the Free State an entirely independent state by promulgating its own Constitution without the

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121 Kohn (n 115), 129.

122 Speech in the Senate, 7<sup>th</sup> February 1939. *Senate Debates*, xxii, 1522-3.

interference from London. The Saorstát government began to consider the draft constitution in 1936 under his strong leadership. Its drafts inherited various points of the Constitution Act of 1922, though. The First Draft submitted to the Cabinet in October provided concerning the linguistic that:

The Irish language is the official language of Éire. The English language is recognised as a second official language. Special provision may be made by law for the recognition of only one of the said languages as the official language in districts or areas in which that language only is in general use<sup>123</sup>.

The capitalised adjective “National” disappeared from the text, and the Irish language was defined as an official language, similarly as English. I could not find the reason in the proceedings. The love of Irish was yet enormous; the Draft, which had been written in English, was titled as the “authoritative translation” although it had had no original Irish text. Throughout the drafting process, the accepted method was that the authors wrote the English version first and it was translated by members who had knowledge on legal affairs and Irish so cautiously that it would convey faithfully the intentions of the Dáil as expressed in the English text<sup>124</sup>. In the First Official Draft submitted to the Dáil in March 1937, the provision was modified as followings:

1. The Irish Language is the official language of Éire.
2. The English language is recognised as a second official language.
3. Special provision may be made by law for the recognition of only one of these languages as the official language in districts in which only that language is in general use<sup>125</sup>.

The missing words “as national language” were inserted into the first paragraph, and the third paragraph experienced subtle but intensive modification. The Draft Constitution was publicised in April, both in Irish and English, and the Irish version was printed in Gaelic type. The Constitution was enacted on 1st July 1937, which let Saorstát secede from the British Dominions and established the independent status of Ireland. The Irish Constitution today has straight continuity with the 1937 Bunreacht with dozens of amendments. Article 8 of the Constitution provides that:

1. The Irish language as the national language is the first official language.
2. The English language is recognised as a second language.
3. Provision may, however, be made by law for the exclusive use of either of the said languages for any use or more official purposes, either throughout the State or in any part thereof.

It entails that “[i]n case of conflict between the texts of any copy of this Constitution [...] the text in the national language shall prevail.”<sup>126</sup> The Article 18, Section 7 also requires that one of the five panels from which the members of Seanad Éireann are elected shall consist of persons having knowledge and practical experience in

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123 Art 4. In the First Official Draft of the Constitution, this article was shifted to Article 8 without any change in the wording.

124 D Keogh and AJ McCarthy, *The Making of the Irish Constitution 1937* (Mercier, Cork 2007), Chapter 3.

125 Art 8 of The Constitution of Free State Act 1937.

126 Art 25.5.4° of Bunreacht.

“National Language and Culture, Literature, Art, Education and such professional interests as may be defined by law for the purpose of this panel.<sup>127</sup>” In the next sections, we will see the concrete policies and applications under these present provisions.

### 3. The Position of Irish Language in the Contemporary Constitution

The previous section showed roughly how the Irish language had been treated since its introduction into the isle and until the final independence of the State in the early 20th century. Now I am going to shift the focus to how it has been treated under the contemporary legal regime. This section will proceed in the following order: firstly, the general framework of the languages in Irish legislation will be seen; secondly, the remarkable obligatory education system of the State will be reviewed shortly; and then, I am going to discuss the linguistic situation in the broadcasting media.

#### 3.1. General Framework for the Irish Language

##### 3.1.1. *Constitution*

As we have already seen in the previous section, the Irish Constitution today defines Irish both as the national language and as the first official language. The change from “National language” in the 1922 Constitution to “the first official language” as well as “national language” in the present Constitution is vague in the texts, but Judge O’Hanlon considered it as an improvement; he wrote in *State (MacFhearraigh) v. Gaffney*<sup>128</sup> that “in the Constitution of Ireland, the Irish language is elevated to a higher status than it had in the first Constitution, since it described, for the first time, as ‘the first official language’.” The elevation can be seen in the provision of Article 18 (7) quoted above, compared with that of Article 42 of the 1922 Constitution, which provided that “in the case of conflict between the two copies so deposited, that signed by the Representative of the Crown shall prevail”.

The recognition of Irish as the first official language as well as national language brings two consequences. Firstly, it imposes the obligation upon the government to use and promote the Irish language. It includes such measures as providing public services in Irish, accepting and responding to communications from individuals in Irish, demanding certain knowledge on the language from public servants and professionals of public nature<sup>129</sup>, and, as we will see in the following sections, it may imply obligatory education and broadcasting media. Secondly, each individual has the right not to be impeded in the use of Irish in a public situation. The right, established in the *Ó Foghludha v. McClean*, has been referred especially in the context of criminal proceedings. T. Ó Máille summarised the principles as followings:

A person who wishes to conduct proceedings through Irish before any court or tribunal has a constitutional right to do so, irrespective of whether he/she could do so equally well (or even better) in English. In such as case appropriate translation and interpretation service must be provided.

A person who wished to use Irish in such proceedings cannot compel another party to do so.

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<sup>127</sup> Art 18.7.1°i of Bunreacht

<sup>128</sup> Unreported, [1983] High Court. Cf, J Casey, *Constitutional Law in Ireland* (Roundhall, Dublin 2000) 75.

<sup>129</sup> For instance, Legal Practitioner Act of 1929 requires solicitors and barristers have competency in the Irish language.



The general rules of natural justice and fairness must be applied to ensure that a person who does not understand the language in which proceedings are conducted or documents drafted, is afforded the requisite translation or interpretation service to enable him/her to understand them<sup>130</sup>.

In addition, Article 40.1 of the Constitution provides for the equality before law and Article 40.3.1° ensures the right to have access to the Court. These rights support the constitutional interest of Irish citizens to enjoy service in Irish at judicial proceedings<sup>131</sup>.

Under the present Constitution, there have been not many cases in which the linguistic issue was argued before the Court. In *A.G. v. Coyne and Wallace*<sup>132</sup>, the defendants were charged for an offence of the Road Traffic Act of 1933 and they received the notice describing their conduct in question written in Irish, which was the dominant language in the area. For neither of them knew the language, they insisted the illegality of the treatment. Chief Justice Ó Dálaigh, considering the fact the Gardai had explained the meaning of the notice in English, judged that:

It therefore seems to me that a notice [...] will be valid if written either in Irish or English and that the notice will not be invalid if the recipient does not understand either Irish or English, or is illiterate, or does not understand either language. In any such case he can readily have the meaning of the notice explained to him.

Moore J referred to the interpretation of Article 8, Section 3 of Bunreacht in the judgement.

It was argued for the Attorney General that the true meaning of the Article was that either languages might be used unless provision had been made by law that one language only was to be used for some one or more official purposes. On consideration, I consider this construction to be correct.

*The State (Cussen) v. Brennan*<sup>133</sup> gave another standpoint to encourage Irish through public employment policy. The appellant had been a candidate for a post at the University College Cork as a paediatrician, but he did not pass the examination because the Commission responsible for the recruitment required candidates to show their fluency in Irish, which he failed to do. He claimed that the Commission had no authority to impose the Irish language qualification upon the candidates, and demanded the Court order it should make another examination. The Court held against him, however, on the ground of his delay to initiate the proceeding. In the judgement, Henchy J. wrote that:

It is incontestable that under a Constitution which recognises Irish as the first official language (Article 8) and which empowers the State in its enactment to have due regard to differences of capacity, physical and moral and of social function (Article 40, s1), a law may provide that proficiency in Irish is a qualification for an office when proficiency in Irish is relevant to the discharge of the duties of that office. As to this office, the Minister might have made proficiency in Irish as a qualification.

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130 T. Ó Máille, *The Status of the Irish Language* (Bord na Gaeilge, Dublin 1990) 1.

131 N Nic Shuibhne, 'State Duty and the Irish Language' (1997), 4 DULJ 1.

132 [1963] 101 ILTR 17.

133 [1981] IR 181.

This sentence justified public agencies to take positive measures in recruitment of the staff. According to the statistics researched in the 1990s, one fourth of the public bodies in Ireland undertook the assessment of bilingual competency of their staff<sup>134</sup>. Based on this judgement, Section 36 (1) and (2) of Employment Equality Act of 1998 explicitly provides that requiring “proficiency in the Irish language” for persons in public service does not constitute an illegal discrimination.

The same Judge also criticised the insufficient supply of Irish TV programmes in *The Minister for Posts and Telegraph*<sup>135</sup> and opened the possibility of Irish-specific TV station, the TG4, as reviewed later.

### 3.1.2. *Official Languages Act of 2003*

Bunreacht provides for the basic position of the two official languages. It is further embodied in detail by the Official Language Act of 2003. The Act regulates the linguistic practice of State organs and public bodies so that the behaviour of authorities would not be detrimental to Irish speakers, although the provisions are written in a neutral way.

The Act proclaims that everyone has the right to express him/herself in either of the official languages in the Oireachtas<sup>136</sup>. Official reports issued by the Oireachtas must be published both in the official languages simultaneously. The right to use official languages is also guaranteed in Court. No one before Court, whether a party or a witness, is deprived the right to employ either official language as the medium of expression<sup>137</sup>. When the State or a public body is a party to litigation, it must obey the linguistic choice of the other party. Such linguistic choice does not bring any extra expense or inconvenience to the speaker.

Public bodies are obliged to manipulate both of the official languages equally and without discrimination. When a person communicates to a public body in either official language in writing or by e-mail, then it should reply in the same language<sup>138</sup>. They are obliged to communicate with the general public in both Irish and English. Any official documents of highly public nature, such as annual reports and public policy proposals, must be published in both of the official languages. The Act even refers to the linguistic usage in the heading of stationery, signage or advertisements used by public bodies.

The Act permit the Minister for Community, Rural and Gaeltacht Affairs to exercise full leadership in promoting the Irish language. He/she has the power to set, with the consent of Minister of Finance, regulations to execute provisions of the Act<sup>139</sup>. He/she may require public bodies to establish a scheme to promote dispatch of public information in the Irish language<sup>140</sup>. Another influential actor to ensure implementation of the system is An Coimisinéir Teanga, established by the Act. The Coimisinéir, appointed by the President, is empowered to perform such tasks as monitoring compliance of the Act by public bodies, investigation into any failure of by a public body

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134 *Bilingualism in the State Sector: An Analysis of Policy Implementation 1993-1994* (Bord na Gaeilge, Baile Átha Cliath 1995) 32.

135 *The Minister for Posts and Telegraph v. Cáit Bean Uí Chadhain* (n 163).

136 Art 6 of Official Language Act 2003.

137 Art 8, *ibid.*

138 Art 9, *ibid.*

139 Art 4, *ibid.*

140 Art 11, *ibid.*

to comply with the provisions of the Act, and issuing advice to public bodies concerning the rights and obligations under the Act.

In short, the Official Language Act of 2003 clarified the linguistic rights and duties of individuals and public organisations, and it established the guardians of the regime as well.

### 3.1.3. *Good Friday Agreements*

Bunreacht and the Official Language Act protect the position of Irish as national language domestically. There is a regime dealing with the Irish language internationally. The Anglo-Irish Agreement of 1998, which led to the conflict in the northern part of the island to a suspension, held the linguistic matter among its foci of primary importance. In Northern Ireland, the pressure for the assimilation of English has been so intensive for Irish people that the linguistic nationalism, which the South showed early in the 20<sup>th</sup> century, has ironically survived till today<sup>141</sup>. It was necessary requirement to appease the linguistic demand to settle the antagonism between Nationalists and Unionists. The Agreement noted “the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster-Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland.”<sup>142</sup> The British Government undertook to take such measures in Northern Ireland as to:

- take resolute action to promote the language;
- facilitate and encourage the use of the language in speech and writing in public and private life where there is appropriate demand;
- seek to remove, where possible, restrictions which would discourage or work against the maintenance or development of the language;
- make provision for liaising with the Irish language community, representing their views to public authorities and investigating complaints;
- place a statutory duty on the Department of Education to encourage and facilitate Irish medium education in line with current provision for integrated education;
- explore urgently with the relevant British authorities, and in co-operation with the Irish broadcasting authorities, the scope for achieving more widespread availability of *Teilifís na Gaeilge* in Northern Ireland;
- seek more effective ways to encourage and provide financial support for Irish language film and television production in Northern Ireland; and
- encourage the parties to secure agreement that this commitment will be sustained by a new Assembly in a way which takes account of the desires and sensitivities of the community<sup>143</sup>.

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141 A MacPóilin, 'Aspects of the Irish Language Movement', in A MacPóilin (ed), *The Irish Language in Northern Ireland* (Ultach Trust, Belfast 1997) 171-189.

142 Strand 3 of Multi-Party Agreement annexed to Anglo-Irish Agreement of 10<sup>th</sup> April, 1998.

143 *Ibid.*

In order to realise the undertakings, Irish- and British government agreed to establish “an implementation body for language, to be known as The North/South Language Body, which shall be known in Irish as An Foras Teanga or in Ullans as The Boord o Leid<sup>144</sup>”. The Body, or An Foras Teanga, was given the mission to preserve and promote the “minority” languages of the island, Irish and Ulster Scots. With regard to the Irish language, it should perform such functions as:

- promotion of the Irish language;
- facilitating and encouraging its use in speech and writing in public and private life in the South and, in the context of Part III of the European Charter for Regional or Minority Languages, in Northern Ireland where there is appropriate demand;
- advising both administrators, public bodies and other groups in the private and volunteer sectors;
- undertaking supportive projects, and grant-aiding bodies and groups as considered necessary;
- undertaking research, promotional campaigns, and public and media relations;
- developing terminology and dictionaries;
- supporting Irish-medium education and the teaching in Irish<sup>145</sup>.

The Body, financed and administered by both of the Parties, has “all the powers necessary for, or incidental to, the exercise of its functions.<sup>146</sup>” The existing functions of Bord na Gaeilge in Ireland to promote the Irish language were transferred to the Body. In Northern Ireland,

We have seen how the Constitution, Official Language Act and the Anglo-Irish Agreements have set the general and basic framework to maintain and promote the use of Irish language. In the following two sections, I am going to examine two applications of the policies: education and broadcasting media.

## 3.2. Education

### 3.2.1. *Compulsory Irish*

The relationship between education and languages has been one of the hottest political issues throughout modern Irish history. As reviewed in the previous sections, the Irish language experienced serious damage in the modern era, and school education at that time also played a role in Anglicising the country. The Act of 1733 establishing public schools allowed only English as the teaching medium and subject. The Irish revival movement had to begin its activity outside the schools. Hyde had the ambition “to reform all education in Ireland from the national schools to the university upon native and autochthonous lines” in order to secure “the intellectual independence of Ireland<sup>147</sup>”. It was in 1899 that Gaelic League started the campaign for bilingualism in primary education in Irish-speaking districts in Oireachtas<sup>148</sup>. In the successive years the opportunity of Irish learning expanded both for

144 Art 1(e) of Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland Establishing Implementation Bodies, 8<sup>th</sup> May 1999.

145 Article 5 of Annex I to the Agreement (n 144).

146 Para 1.9 of Part 5 of Annex II to the Agreement (n 144).

147 S Ó Buachalla, *Education Policy in Twentieth Century Ireland* (Wolfhound, Dublin 1988), 342.

148 Ó Huallacháin (n 111), 55.

Irish-speaking children and English-speaking people. When the State recovered its autonomy in 1922, the President of Gaelic League, S ÓCeallaigh, was appointed to the first Minister of Irish, and later to Minister of Education. The Cabinet promulgated the Regulation on 1st February 1922, also amended in 1924, that contained the following guidelines:

- Irish should be taught or used as the medium of instruction in all national schools which have a competent teacher.
- The new curriculum in which Irish is given a new status both as a subject and a medium of instruction and in which Irish history and geography are allotted an appropriate role should be implemented where possible<sup>149</sup>.

The policy was designed as a tripartite compulsion of Irish in the national schools; a compulsory subject for the curriculum, compulsory examination, and a necessary subject to pass in the certificate examination<sup>150</sup>. Irish was made compulsory in all standards in the national schools from the St. Patrick's Day in 1922. In the succeeding years, the scope of compulsion expanded progressively. It became a necessary subject for the award of Intermediate Certificate in 1927. In 1937, it became a necessary subject for the award of Leaving Certificate examination. The rapid reformulation of linguistic education was accompanied with innumerable troubles and oppositions though.

### 3.2.2. *Protection of National Language versus Constitutional Rights*

The compulsory introduction of Irish language into education has invoked a series of emotional, political and legal conflicts in the State. Principal parties to the argument were English-speaking parents and teachers. As the enthusiasm in the civil war period cooled down, opposition to the compulsory policy became vociferous in the eastern districts.

One of the earliest cases brought before the Court concerning compulsory Irish was *McEneaney v. Minister of Education*<sup>151</sup> of 1941. Before the reformation of 1932, teachers had enjoyed increments notwithstanding their ability of Irish language. The 1932 Regulation required them to demonstrate sufficient fluency both in English and Irish to give instruction in all subjects in the curriculum. A number of teachers failed to do so and their increments were withheld. The Supreme Court held that, although “the object of the Department to promote the use of the Irish language was indeed a laudable one, the methods adopted to promote this object must not be contrary to the rules of law.”

The more serious question concerning the compulsion arouse from the constitutional right to education. Article 42 of Bunreacht provides that:

1. The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

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149 Óbuachalla (n 147), 348

150 A Kelly, *Compulsory Irish: Language and Education in Ireland 1870s – 1970s* (Irish Academic Press, Dublin 2002), 18.

151 [1941] IR 430.

2. Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State.
3. 1° The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.
3. 2° The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral intellectual and social.

The fundamental freedom of Family to education guaranteed under these provisions was invoked to dispute the School Attendance Bill of 1942, which declared that “the child shall not be deemed [...] to be receiving suitable elementary education in a manner other than by attending a national school, a suitable school, or a recognised school [...]”<sup>152</sup>. The Bill made it possible for the State to impose the Irish teaching on all children. The inspector of Department of Education condemned the educational situation at home and private schools for no provision was made for studying Irish there; the teachers was teaching French instead<sup>153</sup>. The constitutionality of the enforcement of certain content to be educated was argued in *Re Article 26 and the School Attendance Bill 1942*<sup>154</sup> before the Supreme Court. The Court held that the State is free to act, so long as it does not require more than “a certain minimum education”, which in the view of the court indicates a minimum standard of elementary education of general application. In *Carberry v. Yates*<sup>155</sup>, the Circuit Court once held that teaching Irish was not necessarily a component of a “suitable education”. However, the Supreme Court also reversed the judgement, approving the State’s discretion to determine what a minimum and suitable education is.

### 3.2.3. *Education Act of 1998*

Today, the Education Act of 1998 establishes the basic framework of education in the State. Until the legislation, the educational system of Ireland had been of *ad hoc* nature and lacked theoretical coherency<sup>156</sup>, but the Act finally defined what the roles of the State, local authorities, schools, teachers and parents should be in education. It contained several provisions for the teaching of the Irish language.

One of the objectives for which the Act was enacted was stated as “to contribute to the realisation of national policy and objectives in relation to the extension of bilingualism in Irish society and in particular the achievement of a greater use of the Irish language at school and in the community<sup>157</sup>” as well as “to contribute to the maintenance of Irish as the primary community language in Gaeltacht areas<sup>158</sup>”. With respect to the goals, the Act appointed the Minister of Education and Science and An Chomhairle Náisiúnta Curaclaim agus Measúnachta for the implementation bodies.

The Minister of Education and Science is primarily responsible for the State’s educational policy; he or she plans

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152 Section 4 of the Bill.

153 D Glenndinning, *Education and the Law* (Butterworth, Dublin 1999), 82.

154 [1943] IR 334.

155 [1935] 69 ILTR 86.

156 Glenndinning (n 153), 163-165.

157 Section 6(i) of the Act.

158 Section 6(k), *ibid*.

and co-ordinates the provision of education in recognised schools and centres for education<sup>159</sup>. He or she has also the function to provide support services through the medium of Irish to recognised schools which provide teaching through Irish and to any other recognised schools which requests such provision, taking due consideration of the need to reflect the diversity of educational services provided in the State into account. Under Section 31 of the Act, the Minister establishes a body of persons:

- a) (i) to plan and co-ordinate the provision of text books and aids to learning and teaching through Irish,  
(ii) to advise the Ministers on policies relating to the provision and promotion of education through the medium of Irish,  
(iii) to provide support services to such schools through the medium of Irish, and  
(iv) to conduct research into any or all matters to which this section applies, and
- b) to plan and co-ordinate the provision of textbooks and aids to the learning and teaching of Irish and to conduct research into and to advise the Minister on strategies which have as their objective the enhancement of the effectiveness in the teaching of Irish in recognised schools and centres for education.

An Chomhairle Náisiúnta Curaclaim agus Measúnachta, or National Council for Curriculum and Assessment, is a board consisting of “representative[s] of bodies and persons involved in the education system at early childhood and primary and post-primary levels, in particular national associations of parents, recognised school management organisations and recognised trade unions and staff associations representing teachers”, including “representative of Irish language organisations<sup>160</sup>”. It “advise[s] the Minister on strategies which have as their objective the enhancement of the effectiveness in the teaching and use of the Irish language in schools”.

Under the two controlling agencies, the schools are expected to “promote the development of the Irish language and traditions, Irish literature, the arts and other cultural matters” and “in the case of schools located in a Gaeltacht area, contribute to the maintenance of Irish as the primary community language<sup>161</sup>”.

### 3.3. Broadcasting Media

#### 3.3.1. *Establishment of National Channel*

The broadcasting audiovisual media, radio and television in any form, play a great role in the maintenance and promotion of endangered languages today. Its importance has been emphasised in the provisions like Article 11 of the European Charter for Regional and Minority Languages by the European Council as well as Article 16 of Declaration on the Rights of Indigenous Peoples adopted by the UN General Assembly. From its dawn, the independent Irish government has devoted to establishing broadcasting media in the national language.

In 1923, Walsh, the Postmaster-General of Saorstát Éireann, prepared a White Paper concerning the possibility of Irish broadcasting. He cared for the negative effects on the restoration of the Irish language if Irish

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<sup>159</sup> Section 7, *ibid.*

<sup>160</sup> Section 40, *ibid.*

<sup>161</sup> Section 9, *ibid.*

people could hear only British broadcasts. The first radio station was established in 1926 and called 2RN, “to Erin”, and operated by the Post Office. Hyde made the first opening speech of the station, saying “a nation is made from within itself, it is made first of all by its language”.<sup>162</sup> In the next year, the government opened another radio station in Cork. The programmes were mostly transmitted from Dublin's 2RN via telephone network. In 1932, first nation-wide radio station was established (Radio Éireann). Radio Éireann manage to allocate over four percent of its airtime to Irish-language programmes. This situation improved during the 1940s when over 11 percent of airtime was devoted to Irish-language programmes. They conveyed informational content not only in the Irish language but also about the language.

In 1957, Minister for Posts and Telegraphs proposed the establishment of national television service on a commercial basis. Two years later, considering the discussions in the period, the Minister declared that the new television station and existing national radio should be operated by a semi-public organ, Radio Telefís Éireann (RTÉ), and it should be funded on license fees and advertisements. The principles applied to RTÉ were defined in the Broadcasting Authority Act of 1960, of which Article 17 declared that:

In performing its functions, the Authority shall bear constantly in mind the national aims of restoring the Irish language and preserving and developing the national culture and shall endeavour to promote the attainment of these aims.

However, this provision had little effect on the practice of RTÉ, for it was commercial-based and the Irish programmes were unpopular among the listeners, most of who were English monolinguals. Only 6% of the total air time was devoted to Irish programmes in the 60's. The situation became even worse in the successive years; in 1975, the ratio of Irish programmes to total airtime of RTÉ was 2.8%; in 1985 and 1995, it went to 2%.

The native Irish speakers in the Gaeltachats have strongly protested this situation. Some of them resorted to self-help by establishing their own radio- and television stations for the local area without the permission of national authority. One typical case can be seen in *The Minister for Posts and Telegraph v. Cáit Bean Uí Chadhain*<sup>163</sup>. The defendant was prosecuted for the illegal operation of television station. She claimed that the Broadcasting Authority failed in its duty under Section 13 of the Broadcasting Act of 1976 in the light of the small amount of time devoted to television programmes in Irish. The Court did not accept the claim as a legitimate defence and sentenced her guilty. But this case reminded the authority of the necessity of Irish channels. In 1989, Feachtas Náisiúnta Teilifíse (FNT) was established as a pressure association to demand Irish broadcasting channels. As the result, TG4 started in 1996 as an Irish channel within RTÉ organisation.

### 3.3.2. *Position of Irish Language in Media Today*

With such background, Ireland has developed several regulations concerning linguistic practice in broadcasting media. Today, the following provisions are significant for the Irish language:

Section 28(2)(a) Broadcasting Act 2001 obliges the public broadcasters “to provide a comprehensive range of programs in the Irish and English language that reflect the cultural diversity of the whole island of

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162 I Watson, 'Irish-language Broadcasting: History, Ideology and Identity' (2002), 24 *Media, Culture & Society*, 741.

163 [1982] Supreme Court, 16<sup>th</sup> July 1982.



Ireland and include, both on television and radio, programs that entertain, inform and educate, provide coverage of sporting, religious and cultural activities and cater for the expectations of the community generally as well as members of the community with special or minority interests and which, in every case, respect human dignity”. Section 28(2)(b) then requires the public broadcasters to “provide programs of news and current affairs in the Irish and English languages”.

The Radio and Television Act of 1988 stipulated in Section 6(3) that with respect to areas comprising the Gaeltacht Region, particular attention should be paid to the preservation of the Irish language as a spoken language.

The 2003 Broadcasting Funding Act sets aside 5 percent of net receipts for television license fees for the funding of grants to support certain types of television and radio programmes (including programs on Irish heritage, culture and language). News and current affairs programmes are not eligible for funding under the terms of the Act but they have to be broadcast at peak times.

## 4. Conclusion

We have reviewed the linguistic history, policies and legislation in Ireland though roughly. After the long period of oppression, modern Éire began the revival project of its own language. The Irish Gaelic has been connected so closely with Irish nationalism, and it has been enshrined as the first official language as well as the national language in the Constitution. Although the constitutional provisions are descriptive rather than normative, case laws and following legislation have established certain rights and obligations to language. The State has also tried to expand people's knowledge on the language through education and mass-media.

These efforts, however, have not succeeded greatly to restore the linguistic situation so far. Compulsory Irish lesson does not make English-speaking Irish children bilingual but language haters; Irish people now are third least motivated to learn foreign languages in the EU<sup>164</sup>. The number of Irish-speaking population in Gaeltachats today is about the same or less to that of 1960s, despite the rapid increase of total population in the island. The alienation of Gaelic in daily lives together with the enshrinement of the language in official status have made the total situation *Irelandised*.

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164 Eurobarometer (n 22), 24.

## Conclusive Comment

In this paper, we have seen the linguistic policies and legislation of first, the European Communities and then of Ireland. (The) European Communities have generally admitted the value of multilingual condition in societies. They have struggled to realise the principle of linguistic equality and diversity in the fields of official languages of the organisations involved with the protection of human rights and promotion of minority languages, though with some limitations. In Ireland, Irish Gaelic, as national language, has been protected and promoted at a national level since their independence. Although the State has already given up the idea of de-Anglicising the island, it has repeatedly manifested the will to establish a bilingual society<sup>165</sup>.

The linguistic environment of the world today is getting more and more advantageous to a limited number of major languages. The gigantic presence of some principal languages, English among all, endangers the survivability of other less popular languages in the European area. Considering the trend of globalised humanity, the attempts of the Irish and European people to preserve and re-build their own cultural identity on languages are surprisingly praiseworthy. For the conclusive comment however, I will point two risks involved in the attempts: reactive unification and enshrinement of languages.

Firstly, the promotion of minor languages must inevitably be accompanied with unification of local variance. In the case of the Irish, various local dialects were abstracted in order to forge the sole Standard Irish language to be taught in schools. It is necessary for State governments to sacrifice variants and to put them together into a unique body to concentrate resources for promotion. Some measures should be taken to preserve the diversity, at least in written texts and audiovisual materials, for the sake of coming generations. A second Joyce would write another Ulysses upon the rich heritage of various Irish.

Secondly, the ideal of multilingualism can easily become merely a name. As we saw in the case of OHIM, it is natural for practitioners to prefer a smaller number of working languages even in an EU organisation. It is even more natural for individuals to be assimilated into more powerful languages which can promise them better positions than they currently have, politically, economically or socially. Without any affirmative and tangible measures, minor languages could become holy relics enshrined only in official documents within a few decades.

In order to save Irish and other European languages from Irelandisation, it is critically significant to found a society in which everyone fully enjoys the linguistic diversity, not only in official situations, but also in daily lives.

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165 For example, Report of the Constitution Review Group established by the government on 27<sup>th</sup> April 1995, 15.

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