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Equality in minority language maintenance – the phrasing of law

Abstract. This paper focuses on the doctrinal legal analysis of the international law on minority language maintenance as it is reflected in Czech and Polish legislation. Syntactic and semantic ambiguities and vagueness in word meanings are examined with a focus on legal differences between autochthonous and immigrant communities and on the inflexibility of legal guarantees. It is concluded that there is no legal consensus as to who should benefit from legal provisions on language maintenance, because there is no universally accepted definition of national minority and there is no consensus on the justifiability of legal differentiation between traditional autochthonous minorities and newer communities of immigrants with respect to language rights. Additionally, current legal documents do not impose obligations on states to guarantee enforceable and equal linguistic rights for minorities.

Key words: *doctrinal legal analysis, immigrants, minority language rights, Czech law, Polish law, phraseology.*

1. Introduction

Numerous documents of international and European law acknowledge language rights for linguistic minorities. However, there is no consensus as to who should be the beneficiaries of such provisions, because scholars of international law have not yet agreed on the definition of national minority (Dunbar 2016: 457). Equally, there is no consensus on the justifiability of legal differentiation between traditional "autochthonous" minorities and newer communities of "immigrants" with respect to language rights. Moreover, there are no clear-cut criteria for distinguishing between autochthonous and immigrant minorities (Kymlicka 2015: 2–3). However, even if the problems of defining beneficiaries are disregarded, the present international legal docu-

ments do not impose such obligations on states, which would guarantee enforceable minority linguistic rights for groups and individuals (de Varennes and Kuzborska 2017: 151).

Uncertainties and insufficient legal guarantees for minorities similar to those in international law also exist in domestic legal systems, where some minorities are granted greater linguistic rights than others comparable in terms of size, history, or the danger of their language becoming extinct.

This paper focuses on the legal language of the essential laws regulating minorities in Czechia and Poland. It is especially taken into consideration that legal discourse and, in particular, written laws, comply with specific genre features (Gotti 2012: 62–63). The analysed legal texts are assessed as "expository documents" which employ a "relatively objective tone" (Tiersma 1999: 139).

2. The legal framework for linguistic maintenance

2.1. Language rights as important within the system of human rights

Legal protection of minority languages is indispensable for minority identity. Holt and Packer (2005) note that "regulation of minority languages is an important and sometimes emotive issue" and that it "closely relates to identity and belonging" (*Ibid*.: 339); Packer (1996) also states that "language and culture are intimately connected to the identity of persons belonging to national minorities" (*Ibid*.: 171); and similarly, Weller (2004) mentions that the second-generation (i.e. cultural) minority rights are an indispensable component of "minority identity" (*Ibid*.: 266).

Moreover, legal arrangements regarding linguistic rights are important as the latter contribute to cultural "wealth" (Dunbar 2006: 190) and to the maintenance of cultural diversity (Packer and Holt 2004: 104; Holt and Packer 2005: 339; Packer 1996: 171).

Apart from being *per se* valuable, the protection of minority languages and the legal regulation of linguistic human rights have numerous practical implications (Holt and Packer, 2005: 340). At the same time, such protection must be seen as important in itself, due to the intrinsic value of minority languages and identities (Dunbar 2006: 190; de Varennes 1999: 309) and the "symbolic resonances" of such legislative protection (Holt and Packer 2005: 340).

2.2. The phrasing of law, European legal regulation

Within Europe, the maintenance and protection of minority languages are mainly guaranteed by two documents of the Council of Europe: the *European Charter for Regional or Minority Languages*[1] (1992) and the *Framework Convention for the Protection of National Minorities*[2] (1995). The former instrument focuses directly on minority languages. Minorities as groups are not defined, because they are not the *Language Charter*'s main concern. The purpose is to protect minority languages and cultural heritage and the promotion of minority rights as human rights is a "by-product" of the protection of languages (Dunbar 2004: 39–40). The linguistic human rights that can be derived from the *Language Charter* are those serving its purpose: the recognition, promotion, development, and maintenance of regional and minority languages. The languages of migrants are explicitly excluded from its scope (Dunbar 2004: 40).

The latter instrument is focused directly on minorities and their members. It grants the right to develop one's own culture, and to preserve the elements of national identity, such as language and cultural heritage. The *Framework Convention* does not provide a definition, but we can draw a conclusion about what constitutes a national minority, at least for the purposes of the *Convention*. It lists the essential characteristics that define the self-identity of the individuals that make up a minority (Shaw 1990: 23). Although the *Framework Convention* does not define the terms, its potential application is wide and includes both "historical minorities" and "new minorities" (Dunbar 2004: 40).

Within the documents of the Council of Europe, the *European Convention on Human Rights* (1950) is also relevant to the protection of minority languages and their speakers, especially due to its provisions related to freedom of thought, conscience and religion (Article 9), freedom of expression (Article 10), freedom of assembly and association (Article 11), and prohibition of discrimination (Article 14).

Both Czechia and Poland have been member states of the European Union since 2004. The EU legal framework provides further protection to the Czech and Polish citizens who consider themselves speakers of minority languages. However, as on the other levels of international and supranational legislation, there is no universally accepted legal definition of national minorities or minority languages. Nic Shuibhne (2002) points to the

[1] *Language Charter* hereinafter.

[2] *Framework Convention* hereinafter.

definition provided by the European Bureau for Lesser Used Languages (Nic Shuibhne 2002: 49).[3] Nevertheless, the use of the term "lesser used" for a language is problematic in itself (*Ibid.*) and furthermore, the said definition is concerned with languages, rather than with their speakers and groups of speakers.

EBLUL classifies protected minority languages as "the national languages of two Member States which are not official languages of the EU", "languages of communities residing in a single Member State", "languages of communities residing in two or more Member States", "languages of communities which are minorities in the state in which they live but are the majority languages of other Member States", and "non-territorial languages" (EBLUL 1996). None of these categories includes the languages of newer communities, which can be considered "immigrant", such as the Vietnamese in both Czechia and Poland. Additionally, these categories do not contain languages in a position similar to Ukrainian in Poland, i.e. languages of communities which are minorities in an EU Member State but are majorities in non-EU states, such as Ukrainian in Poland.

Extra and Gorter (2001) add to the problem of defining national minorities and their languages by pointing to the fact that "in Europe as a whole there is not one majority language because all languages are spoken by a numerical minority" (Extra and Gorter 2001: 1). However, certain languages deserve special attention, because, unlike the EU official languages, they are "ignored in public and official activities of the EU" (*Ibid.*).

2.3. International legal regulation

Several documents produced within the structures of the United Nations provide basic treatment of linguistic rights. The *International Covenant on Civil and Political Rights* (ICCPR) (1966) guarantees the right of persons belonging to minorities to "enjoy their own culture" and to "use their own language" (Article 27). Practice has shown that it is difficult to apply this article. There have been many situations of conflict between the general interest and the interest of the minority and also situations of conflict between the interest of the minority as a group and individuals belonging to the minority.

The *Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (1992) calls for state policies which enable minorities to develop their culture and language (*Ibid.*: Article 4 (2)). More particularly, the *Declaration* requires states to provide opportunities for

[3] "EBLUL" hereinafter.

minority members to "learn their mother tongue or to have instruction in their mother tongue" (*Ibid*.: Article 4(3)). However, that this instrument is of a declaratory nature and therefore, it is not legally binding.

2.3.1. Particular language rights and applicability to immigrants in the wording of international law

Out of the numerous international legal documents devoted to language rights, let us have a closer look at the *Framework Convention* (1995), an instrument which addresses minorities specifically and guarantees the same right to persons belonging to national minorities: "the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, [...], and to defend himself or herself in this language, if necessary with the free assistance of an interpreter" (*Ibid*.: Article 10(3)).

The problem of the scope of application of linguistic rights, depending on minority membership, is complicated due to the lack of a universally accepted definition of "minority", "national minority" and "linguistic minority". Many international documents focus on minority rights and contain detailed provisions thereon without explicitly defining "minorities". The *Framework Convention* (1995) does not define "national minorities".

Similarly, the *Language Charter* (1992) does not define "national minorities" or "linguistic minorities". However, on the other hand, "minority languages", its primary subjects of protection, are defined. Various scholars of international law have attempted to express a definition of a "minority" which would be universally accepted and binding. These attempted definitions mostly link minority membership to the citizenship of the host state and therefore exclude resident aliens, temporary guest-workers, and refugees.

The *Language Charter* (1992) explicitly excludes the languages of migrants from its scope of application: "it does not include [...] the languages of migrants" (*Ibid*.: Article 1(a)). The *Framework Convention* (1995) requires states to provide more privileged treatment of those minorities inhabiting a certain area "traditionally" (*Ibid*.: Articles 10(2), 11(3), 14(2)). Its *Explanatory Report* (1995), however, points out that this term does not refer to "historical minorities", but rather to those "still living in the same geographical area" (*Ibid*.: Article 66).

The wording of the international documents in question is not clear. Paulston (1998) deals with the problematic nature of the term "minority" in itself: it "implies quantitative differences only", while "the most salient difference is that of super/subordinate status relationship" (Paulston 1998: 1).

Therefore, the practical application of the discussed provisions depends on electoral systems and other political factors (*Ibid*.).

Similarly, the status of some languages is "disputed" (Nic Craith 2006: 108), as it is often not agreed upon the distinction between languages and dialects. An example of a disputed language is Kashubian in Poland (*Ibid*.), while the change of its status is not dependent on changes in the language itself but rather on "the attitudes of [their] speakers" (*Ibid*.).

In addition to the problems with defining national minorities and minority languages, the explicit exclusion of "immigrant groups" or of the "languages of immigrants" is ethically problematic. Europe has a long history of immigration from outside the continent (Nic Craith 2006: 148). European countries differ in their pattern of immigration, but they are similar to one another in the public perception of non-Europeans as "foreigners" (*Ibid*.) and in the notion that the support to their language is often apprehended by the public as an obstacle to integration (Extra and Gorter 2001: 3). The emergence of nation states in the eighteenth century has led to the "fixation" with state borders and the notion that "immigrants" will remain loyal to their states of origin, while it will not be possible for them to maintain transnational identities (Nic Craith 2006: 149).

The legal problem of the text of the international documents is the fact that these treaties do not create "direct language rights" (de Varennes 2009: 31). The *Language Charter* only provides for "minority languages", rather than their speakers, it does not guarantee human rights to individuals (*Ibid*.) or groups and thus cannot be regarded as sufficient in safeguarding equality in linguistic maintenance. The *Framework Convention* only establishes a "framework" for governments, and thus has "inherent limitations" in its "programme-type" provisions (*Ibid*.).

Finally, even if wording problems disregarded, the accommodation and implementation of these international provisions in domestic legislations does not necessarily mean that linguistic maintenance is going to be provided for (Hogan-Brun and Wolff 2003: 4), due to the complex relationship between democracy and language policies (*Ibid*.: 7).

3. The phrasing of the laws of Czechia and Poland

3.1. The implementation of international obligations

Both Czechia and Poland are parties to the above-discussed international and European legal instruments. From the point of view of phraseology, the implementation of the said instruments is problematic due to the

"culture-boundness" of phraseology (Sabban 2009: 229), i.e. due to the fact that phrasemes are closely connected with culture, with regard to their idiomatized nature and semantic connotations.

The international treaties to which Czechia is a party become automatically a part of the Czech law, according to Article 10 of the *Constitution* (1993)[4]. Most minority languages in Czechia are protected by the *Framework Convention* (1995). According to the Ministry of Interior, these languages include Bulgarian, Croatian, Greek, Hungarian, Russian, Ruthenian, Serbian, and Ukrainian (Jirasová *et al.* 2005).

Additionally, some minority languages in Czechia are protected by the Language Charter (1992), which was ratified by the Czech Republic in 2006. Four languages are protected under its Part II, which states the "objectives and principles" (*Language Charter* 1992: Article 7) pursued with regard to the protection of the languages "traditionally used" (*Ibid*.: Article 1) within a state. These languages include German, Polish, Romani, and Slovak (Jirasová *et al*., 2005). The "objectives and principles" in Part II of the *Language Charter* include, for example, "the recognition of the regional or minority languages as an expression of cultural wealth" (*Language Charter* 1992: Article 7(1(a))), "the need for resolute action to promote regional or minority languages in order to safeguard them" (*Ibid*.: Article 7(1(c))), "the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages" (*Ibid*.: Article 7(1(f))), and "the promotion of study and research on regional or minority languages at universities or equivalent institutions" (*Ibid*.: Article 7(1(h))). Part III of the *Language Charter* grants the strongest set of rights to two languages in Czechia: Polish and Slovak (Jirasová *et al*. 2005). These rights include the access to education in the protected minority languages and guarantees of access to state authorities in the respective languages (*Language Charter* 1992: Articles 8–14). Part III of the *Language Charter* lists a number of particular rights, grouped under several domains: education (*Ibid*.: Article 8), judicial authorities (*Ibid*.: Article 9), administrative authorities and public services (*Ibid*.: Article 10), media (*Ibid*.: Article 11), cultural activities and facilities (*Ibid*.: Article 12), economic and social life (*Ibid*.: Article 13), and transfrontier exchanges (*Ibid*.: Article 14). According to Article 2 of the *Language Charter*, each party is obliged to "apply a minimum of thirty-five paragraphs or sub-paragraphs from among the provisions of Part III of the Charter, including at least three chosen from each

[4] Cf. *Constitution of the Czech Republic*, constitutional Act No. 1/1993, Collection of Acts of the Czech Republic.

of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13" (*Ibid*.: Article 2(2)).

In Poland, the *Constitution* of 1997[5] provides, in Article 91, the principle for the relationship of the Polish national law and international law: "After promulgation thereof in the Journal of Laws of the Republic of Poland, a ratified international agreement shall constitute part of the domestic legal order [...]" (*Polish Constitution* 1997: Article 91(1), official translation).

The *Framework Convention* was ratified by Poland in 2000. However, in Poland, this convention does not play an important role in the protection of minority languages, because all minority languages are protected by the *Language Charter*.

The *Language Charter* was ratified by Poland in February 2009. According to the "Declaration contained in the instrument of ratification" as cited by the *Council of Europe* (n.d.), there are fifteen minority languages spoken in Poland and they are all protected under the regime of Part III of the *Language Charter*. Kashubian is protected as a regional language, Czech, Hebrew, Yiddish, Belarusian, Lithuanian, German, Armenian, Russian, Slovak, and Ukrainian are protected as national minority languages, and Karaim, Lemko, Romani, and Tatar are protected as ethnic minority languages.

3.2. National laws – the main minority acts

The most essential act related to minority law in Czechia is the *Czech Minority Act* (2001)[6]. It contains the definition of a "national minority" for the purposes of Czech law, the definition of a "member of a national minority" and the enumeration of minority rights granted to national minorities in Czechia (these rights include linguistic rights). Similar areas are covered by the *Polish Minority Act* (2005)[7] in Poland.[8]

In addition to the *Minority Acts*, the two countries have many mutually corresponding acts which are not specifically devoted to minority protection,

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[5] Cf. The *Constitution of the Republic of Poland* of 2 April, 1997, Journal of Laws No. 78, item 483.

[6] Cf. *Act on the Rights of the Members of National Minorities*, No. 273/2001, Collection of Acts of the Czech Republic. Translation own.

[7] Cf. *Act on National and Ethnic Minorities and on the Regional Languages* of 6 January, 2005, Journal of Laws No. 17, item 141. Official translation.

[8] The *Czech Minority Act* was analysed in its original Czech version, and the extracts included herein were translated into English by the author of the paper. The *Polish Minority Act* was analysed in the official translation.

but whose provisions relate to minority rights and minority languages and cultures. However, the analysis herein focuses on the two main minority acts, each in one of the respective countries.

The present phraseological analysis of the special-purpose language of the legal texts in question. The phraseological units taken into consideration include "lexicalized, reproducible bilexemic or polylexemic word group[s] in common use, which [have] relative syntactic and semantic stability" (Gläser 1998: 125). Moreover, these units may be "idiomatized" and may "carry connotations" or "have an emphatic or intensifying function in a text" (*Ibid*.). In the analysis of the Czech and Polish minority laws, the salient phraseological units include, for example, "national minority", "ethnic minority", "minority language" and "minorities traditionally living in the territory".

The purpose of the *Czech Minority Act* is to regulate minority rights, ensure respect for the "national and ethnic identity as a part of human rights" and enable minorities to maintain their "own culture, traditions and language", and the "harmonious coexistence of national minorities with the majority population" (*Czech Minority Act* 2001: Preamble).

The initial sections of the *Act* further specify its area of regulation: It regulates the rights of the members of national minorities and the responsibilities of authorities in relation to minority protection (*Ibid*.: § 1). In the following section, the Act defines the terms "national minority":

> A national minority is a society of citizens of Czechia who live in the territory of the present Czech Republic and who differ from the other citizens typically by their common ethnic origin, language, culture and traditions and who constitute a numerical minority among the inhabitants of Czechia and who at the same time express the will to be accepted as a national minority for the purposes of a common striving for the preservation and development of their uniqueness, language and culture, and at the same time for the purposes of the expression and preservation of the interests of their society which was historically created (*Ibid*.: § 2(1)).

The following sections of *Czech Minority Act* specify the rights of the members of national minorities. While some apply to members of all national minorities, some others are reserved for the members of the minorities that have been "traditionally and for a long time living in the territory of the Czech Republic" (*Ibid*.: §§ 8–11). The latter group of rights include the right of multilingual signs and inscriptions (*Ibid*.: § 8), the right of using the language of a national minority in official communication and in hearing before a court (*Ibid*.: § 9), the right of using the language of a national minority

during elections (*Ibid*.: § 10), and the right of education in the language of a national minority (*Ibid*.: § 11).

The purpose of the *Polish Minority Act* is declared in Article 1: "to regulate the issues connected with the maintenance and development of the respective cultural identity of national and ethnic minorities", "the preservation and development of the regional language",[9] and the "observance of the principle of equal treatment of individuals irrespective of their ethnic descent" (*Polish Minority Act* 2005: Article 1).

The *Act* defines the terms "national minority", "ethnic minority", and "minority language" for the purposes of the Polish law (*Ibid*.: Articles 2–3). National minority is defined as follows:

> 1. A national minority, as defined by this *Act*, shall be a group of Polish citizens who jointly fulfil the following conditions: 1) is numerically smaller than the rest of the population of the Republic of Poland; 2) significantly differs from the remaining citizens in its language, culture or tradition; 3) strives to preserve its language, culture or tradition; 4) is aware of its own historical, national community, and is oriented towards its expression and protection; 5) its ancestors have been living on the present territory of the Republic of Poland for at least 100 years; 6) identifies itself with a nation organized in its own state. 2. The following minorities shall be recognized as national minorities: 1) Byelorussians; 2) Czechs; 3) Lithuanians; 4) Germans; 5) Armenians; 6) Russians; 7) Slovaks; 8) Ukrainians; 9) Jews (*Ibid*.: Article 2).

The maintenance of minority languages is regulated by *Chapter 2*, by guaranteeing the right of minority members to spell their names and surnames according to the orthography of their language, to learn their language and to use it freely in public and in their private lives. In the municipalities where the minority comprises at least 20 percent of the population, the minority is allowed to use the language in contact with local state authorities. The same condition is set for the use of the minority language for the local names of localities, sites, and streets.

3.3. The style of the minority acts

The contents and the topics included are comparable in the acts in question and the analysed documents follow the same structure: they delimit their own purposes and areas of regulation, they define the basic terms, and list the rights applicable to minorities, and specify them to a varying de-

[9] This provision refers to the Kashubian language.

gree of detail. The acts in issue cover almost identical topics, but their actual regulation and particularity vastly differ.

The inclusion of the *Preamble* in the *Czech Minority Act* is in accordance with the Act's overall formal, declaratory, and inexact nature. The entire act mostly declares values and only to a lesser extent (than the *Polish Minority Act*) grants actual rights. The *Preamble* introduces the document and presents a condensed summary of the values which are further mentioned throughout the main text of the act. However, the *Czech Minority Act* does not mention the bearer of such values. They are enumerated in an emphatic but uninformative way. The emphatic enumeration makes it clear that the readers are supposed to be impressed by the seriousness of the matter regulated by the act. However, it is not made clear what particular information the readers are given and by whom they are being impressed.

The *Preamble* of the *Czech Minority Act* consists of a single sentence of enormous length and complexity: 116 words in the original Czech text[10] and 7 paragraphs. The basic structure of the sentence is that "The Parliament of Czechia [...] has passed the following Act [...]" (*Czech Minority Act* 2001: Preamble). Both the subject and the predicate of the sentence are extensively modified by numerous additional clause elements, which are themselves further modified by other clause elements. Overall, the sentence lacks coherence and the various modifiers do not lead to accurate expression:

> The Parliament of the Czech Republic as a democratic and legal state,
>
> having in consideration the right to national and ethnic identity as a part of human rights,
>
> having in respect the identity of the members of national minorities as both individuals and a group evincing themselves and itself above all by their or its own culture, traditions or language,
>
> having in consideration the creation of a multicultural society and being in pursuit of cohabitation of national minorities in harmony with the majority inhabitants,
>
> guaranteeing to the members of national minorities the right to effective participation in cultural, social and economic life and in public affairs, especially in those that are related to national minorities,
>
> being protective towards the rights of the members of national minorities in accordance with international treaties about human rights and fundamental freedoms by which Czechia is bound, with the Constitution and the Charter of human rights and fundamental freedoms,
>
> has passed the following Act of Czechia [...] (*Ibid*.).

[10] 160 words in my English translation, which I consider accurate.

The Parliament is the subject of the entire sentence, but only after the five ideological proclamations, do the readers learn about the action that the Parliament has taken and thus about the main point of the sentence. The five proclamations contain nouns and adjectives derived from verbs (nominalizations) and thus the actor of the actions implied in those nouns and adjectives is not clear. Such ambivalent phrases include "the creation of a multicultural society" and "pursuit of cohabitation", where it the language does not suggest who is the actor creating a multicultural society or pursuing cohabitation.

Secondly, the *Preamble* is abundant with present participles. In the contemporary Czech language, the use of participles[11] is extremely uncommon and highly archaic, and it is also uncommon in legislative acts.

These include: "being protective, guaranteeing, having in respect and having in consideration (which is used repetitively).

The *Polish Minority Act*, similarly to the *Czech Minority Act*, states its area of regulation at the beginning. While the *Czech Minority Act* only briefly mentions that it regulates the rights of the members of national minorities and the related obligations of state authorities (*Czech Minority Act* 2001: § 1), the *Polish Minority Act* (2005) is much more eloquent on this topic. It states that:

> This *Act* shall regulate the issues connected with the maintenance and development of the respective cultural identity of national and ethnic minorities, the preservation and development of the regional language, and the observance of the principle of equal treatment of individuals irrespective of their ethnic descent; it also defines the tasks and powers of government administration agencies and of local government units in this regard (*Ibid*.: Article 1).

This introductory Article of the *Polish Minority Act* contains much more information than the introductory article of the *Czech Minority Act*.

Article 1 of the *Polish Act* mentions the "maintenance and development of [...] cultural identity" as its primary purpose. The *Preamble* of the *Czech Act* refers to a similar concept when stating that the Parliament respects the "national and ethnic identity as a part of human rights". Obviously, the same notion in the *Polish Act* is much simpler and formulated in a plain language. Moreover, one of the advantages of the *Polish Act* is that itexplicitly mentions both "maintenance" and "development" of national identity as important intentions of legal regulation, whereas the *Czech Act* only lists that national identity as a "part of human rights".

[11] This grammatical feature is called "přechodník přítomný" in Czech.

3.4. *Rights granted by the minority acts*

Both acts cover similar topics with regard to the rights which they guarantee. In each of the acts, identical topics are dealt with to a different degree of abstractness and detail. The *Polish Minority Act* is much more explicit than the *Czech Act*, while the *Czech Act* leaves the details of regulation to other statutes and government decrees.

The right of free choice of minority membership is only seemingly regulated in the Czech law. One of the introductory provisions (*Ibid*.: § 4) is titled "free choice of minority membership", but the provision regulates different topics than indicated by the title: the information about minority membership is to be kept secret and is to be used only for the purpose for which it was collected. The *Polish Act* (*Ibid*.: Articles 5 and 6), on the contrary, does regulate the free choice of minority membership as such. Under Polish law, every person has the right to decide freely on the enjoyment of minority rights and no one can be forced to prove his or her membership in a given minority (*Polish Minority Act* 2005: Article 4). Furthermore, forced assimilation and discrimination based on minority membership is prohibited (*Ibid*.: Articles 5 and 6).

4. Conclusions

International law differentiates between the languages of indigenous peoples, autochthonous national minorities and immigrant communities. However, such differentiation is far from being unproblematic, especially due to the phrasing of the relevant legal documents which is often ambiguous.

Dunbar (2006) and Cheesman (2001) find the differentiation between autochthonous national minorities and immigrant communities with respect to their linguistic rights "controversial" (Dunbar 2006: 194) or argue that immigrant communities and traditional national minorities should be treated the same (Cheesman 2001: 147–149).

Kymlicka (1995) advocates that the incorporation of various nations into one state may be involuntary, caused by artificial creation of state borders. Therefore, the thereby created national minorities should be granted a certain level of cultural and linguistic maintenance (*Ibid*.: 8). Immigrants, on the contrary, cannot make such historical claims as they freely enter the new culture (*Ibid*.: 10–15). Bauböck (1996) rejects the idea that "immigrants implicitly renounce their cultural claims when they leave their countries of origin, when they enter the receiving society, or when they may return" (*Ibid*.: 203).

Insofar binding law, the treatment of minority languages and equal conditions for various minorities remain insufficient. Non-binding declarations, such as the *Universal Declaration of Human Rights* (1948) or, more recently, the *Universal Declaration of Linguistic Rights* (1996) contain proclamations of equality and non-discrimination for all minority languages and their speakers, but do not in themselves provide for enforceable guarantees.

Nevertheless, no matter what the stance of the international or domestic legislators is with respect to language rights and maintenance of immigrant minority languages, the law should unambiguously adhere to a consistent stance, within a single piece of legislation at minimum. The above analysis of international law and of the domestic laws of Czechia and Poland above has revealed that the phrasing of legal documents adds to the uncertainty regarding the position of immigrant communities in terms of state support for language maintenance. Due to the uncertainty in the community of international legal scholars regarding how the definition of a national minority should be phrased, numerous minority communities have unclear statuses within the domestic legislations of their home states. It has been illustrated on the examples of the domestic laws of Czechia and Poland that states take different approaches to the stylistics and phraseology of legal documents and these approaches might have various drawbacks.

The problems with correct wording of human rights documents establishing equality in language rights are interconnected with the "complex relationship" between identity and language (O'Reilly 2003: 16). O'Reilly further notes that "the role of language in ethnic identity is always symbolic in part and no less significant for this, even where the communicative status of a language is in question" (*Ibid*.: 30).

Doctrinal legal research, such as in this paper, is a useful tool in exploring the criteria which states use to make distinctions among linguistic minority groups and investigating which legal distinctions among categories of minority languages might be objectively justifiable. The ultimate aim of such research is to propose a legal reform that protects cultural heritage and secures an equal and non-discriminatory environment for minority language speakers.

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L'égalité dans le maintien d'une langue minoritaire – les phraséologismes du langage juridique

Résumé

Cet article a pour objectif de faire une analyse juridique doctrinale de la loi internationale concernant le maintien des langues minoritaires dans la législation tchèque et polonaise en se servant des expressions figées utilisées au sein des documents internationaux. Le but est d'analyser les ambiguïtés et les imprécisions sémantiques du sens des mots et, plus spécifiquement, l'accent est mis sur les mots marquant la distinction juridique entre les communautés autochtones et les communautés immigrantes et l'insuffisance de fléxibilité et de garanties juridiques. Notre étude vise à montrer qu'il n'existe pas de consensus juridique précisant ceux qui bénéficient des dispositions juridiques concernant le maintien des langues minoritaires. En fait, il n'y a pas, à l'heure actuelle, de définition généralement acceptée de minorité ethnique et il n'y a pas de consensus concernant la légitimité de la distinction juridique entre les minorités autochtones traditionnelles et les communautés des immigrants moins anciennes, vu les lois linguistiques. De surcroît, les documents juridiques contemporains n'obligent pas les états à garantir aux minorités des lois linguistiques justes et exigibles.

Mots clés: *analyse juridique doctrinale, lois domestiques et internationales, phraséologie, immigrants, droits linguistiques des minorités.*